



# Civil Resolution Tribunal

Date Issued: March 1, 2022

File: SC-2021-05533

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Davis (dba Power Movers) v. Haywood-Anderson*, 2022 BCCRT 221

B E T W E E N :

GEORGE DAVIS (Doing Business As POWER MOVERS)

**APPLICANT**

A N D :

SARAH HAYWOOD-ANDERSON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about a residential move. The applicant, George Davis (Doing Business As Power Movers), provided moving services for the respondent, Sarah Haywood-Anderson. Mr. Davis says Ms. Haywood-Anderson refused to pay anything for the move, which took 2 days. He claims a total of \$3,813 for moving services, late fees, unpaid parking tickets, GST, and overtime.

2. Ms. Haywood-Anderson says Mr. Davis breached their contract by failing to complete the move on the agreed date, failing to provide competent movers or the correct size truck, and abandoning the work before the move was complete
3. Ms. Haywood-Anderson also says she had to pay different movers \$500 to complete the job, so any amount owing to Mr. Davis should be reduced by that amount. Ms. Haywood-Anderson did not file a counterclaim.
4. Mr. Davis is self-represented. Ms. Haywood-Anderson is represented by a lawyer, Megan Young.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in

mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Mr. Davis fail to properly estimate his moving services?
  - b. Did Mr. Davis breach the parties' contract by abandoning Ms. Haywood-Anderson's belongings?
  - c. To what extent, if any, is Mr. Davis entitled to the claimed \$3,813 for moving services?
  - d. Is Ms. Haywood-Anderson entitled to a \$500 set-off for hiring other movers to complete the job?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Davis must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

11. On February 4, 2021, Ms. Haywood-Anderson contacted Mr. Davis about her requested move for February 25, 2021. She completed an online inventory form and provided photos of her apartment contents so Mr. Davis could prepare an estimate. Mr. Davis also came to her apartment on February 10, 2021 to inspect the space and her belongings.
12. Mr. Davis provided Ms. Haywood-Anderson with a 9-page estimate dated February 11, 2021, which she signed that day and emailed back to Mr. Davis. I find this estimate became the parties' contract. The contract stated the move would take an estimated 3.5 hours, plus 1 hour of travel time, with 2 movers at a \$135 hourly rate, totalling \$637.88. The second page contained a "notes" section that included various details and explanations about Ms. Haywood-Anderson's move, including that while the movers would try to finish within the estimated time, the final bill would be charged hourly in quarter-hour increments. Other relevant terms and conditions of the parties' agreement, which were set out on pages 3 to 8 of the estimate, are discussed further below.
13. The parties agreed in advance that Ms. Haywood-Anderson would pay the full amount owing in cash on the move day.
14. It is undisputed that Ms. Haywood-Anderson's move on February 25, 2021 took much longer than estimated and could not be completed in one load. Ultimately, Mr. Davis collected the second load of Ms. Haywood-Anderson's belongings on February 26. The parties say that at the end of the day on February 25, they negotiated a price for the extra time and that Ms. Haywood-Anderson agreed to pay Mr. Davis \$1,260 including tax. The parties disagree about whether this amount was intended to cover only the services performed on February 25 or the entire 2-day move. In any event, given my conclusions below, I find nothing turns on this agreement.
15. At some point on February 26, the parties' relationship broke down, and the parties' text messages show that both parties suggested calling the police to intervene. Mr. Davis demanded payment of the agreed \$1,260 before he would deliver Ms. Haywood-Anderson's remaining belongings to her new residence. The evidence

shows Ms. Haywood-Anderson then paid the \$1,260 by credit card, but that Mr. Davis proceeded to unload and abandon her belongings in the alley behind her new residence.

16. The evidence shows Ms. Haywood-Anderson later contested the \$1,260 payment with her credit card company, and the payment was reversed. So, she did not pay Mr. Davis anything for the 2-day move. While Ms. Haywood-Anderson does not specifically argue that she owes Mr. Davis nothing for his services, she denies that she is contractually liable for the claimed amounts because she says Mr. Davis breached the parties' contract.

***Did Mr. Davis fail to properly estimate his moving services?***

17. First, Ms. Haywood-Anderson says that Mr. Davis failed to make commercially reasonable efforts to complete the move within the estimated 4.5 hours. She says Mr. Davis provided inexperienced and slow movers, and the truck was too small for the size of her move, so it could not be completed in one trip. It is undisputed that the first load on February 25 took from approximately 9 am to 8 pm, and I find the second load on February 26 likely took 4 hours or less.
18. Mr. Davis says the move took longer than estimated because Ms. Haywood-Anderson was not packed when he and the movers arrived on February 25, her furniture was not disassembled, and she had not reserved the elevator in her building.
19. I find the parties' contract specifically stated that the time estimate was based on the residence being fully packed before the moving crew arrived, including all belongings in boxes and all furniture emptied and disassembled. It is undisputed that Mr. Davis had provided several boxes to Ms. Haywood-Anderson in the days before the move to assist with her packing.
20. While Ms. Haywood-Anderson says she was fully packed and ready, I find the evidence shows otherwise. I find the parties' text messages show Ms. Haywood-Anderson texted Mr. Davis at about 10:30 am on the move day to say she still needed

at least 3 more boxes and asked him to pick them up for her. Mr. Davis also undisputedly had to go out to obtain a specific tool for disassembling her furniture.

21. Ms. Haywood-Anderson provided a witness statement from a friend, RM, who was present for some of the move on February 25. RM stated that when he arrived, there were “piles and piles of boxes and furniture” in Ms. Haywood-Anderson’s apartment. However, he does not specifically say the boxes were packed or comment on how much packing remained to be completed, if any. Overall, I find RM’s statement unhelpful in determining how packed Ms. Haywood-Anderson was.
22. As noted, Mr. Davis had been to Ms. Haywood-Anderson’s 750 square foot apartment before preparing the estimate. I find it is unlikely that Mr. Davis would so significantly underestimate the time or truck size required to complete the move unless the apartment was not packed on the move day. On balance, I accept Mr. Davis’ evidence that when the movers arrived, Ms. Haywood-Anderson’s residence was largely in the same state as the photos she had provided for the purpose of the estimate, which I find showed her apartment completely unpacked.
23. I find Ms. Haywood-Anderson’s submission that Mr. Davis’ movers were slow or inexperienced is unsupported on the evidence. RM stated that while there was a “size discrepancy” between the 2 movers, they were working “quickly enough”. RM did not suggest the movers appeared slow, unmotivated, or inexperienced.
24. Ms. Haywood-Anderson also argues it took longer because the parties agreed there would be 3 movers, but there were only 2 movers. She points to an initial estimate Mr. Davis provided that stated there would be 3 movers. However, that estimate is undated and unsigned. I also find that Mr. Davis advised Ms. Haywood-Anderson by text on February 14 that he would be present for her move (as a third body), but he was unable to work due to injury. I find that Mr. Davis amended the initial undated estimate and the signed February 11, 2021 estimate replaced it and became the parties’ contract. So, I find Ms. Haywood-Anderson agreed to the 2 movers.

25. Overall, I find the main reason that the move took longer than estimated was that Ms. Haywood-Anderson was largely unpacked before the movers arrived and her furniture still required disassembly. I also accept that moving disorganized and unpacked items likely contributed to the move not being completed in one load. Ms. Haywood-Anderson admits she was unable to book the elevator at the 6-storey apartment building she was moving out of, which I find likely caused some additional minor delay.
26. Overall, I find Mr. Davis did not breach the parties' contract by failing to complete the move within the estimated 4.5 hours.

***Did Mr. Davis breach the parties' contract by abandoning Ms. Haywood-Anderson's belongings?***

27. Ms. Haywood-Anderson also argues that Mr. Davis breached their contract by dumping and abandoning her belongings in the alley behind her new residence. In contrast, Mr. Davis says he was contractually entitled to unload Ms. Haywood-Anderson's possessions without completing the move because she engaged in verbally abusive behaviour towards his movers.
28. I accept Mr. Davis' assertion that Ms. Haywood-Anderson insulted his movers, which I find is supported by statements from the 2 movers who said Ms. Haywood-Anderson disrespected them, and a contemporaneous video Ms. Haywood-Anderson took during the move where Mr. Davis mentioned the verbal abuse. I find Article 23 of the parties' contract permitted Mr. Davis to unload Ms. Haywood-Anderson's items without bringing them into her home in such circumstances. So, I find unloading her belongings in the alley behind her residence was not a breach of contract.

***Is Mr. Davis entitled to the claimed \$3,813 for moving services?***

29. Given I have found Mr. Davis did not breach the parties' contract, I find he is entitled to payment for his moving services under the contract's terms. I also find he is not bound by his previous \$1,260 offer to reduce the cost of either the February 25 portion of the move or the entire 2-day move.

30. Mr. Davis provided Ms. Haywood-Anderson with an April 29, 2021 invoice totalling \$3,599.40, which set out the following charges (all plus GST):
- a. 2 men, 7 hours at \$135 per hour (\$945) on February 25,
  - b. 2 men, 1 hour travel time at \$135 on February 25,
  - c. 2 men, 4 hours of overtime at \$202 per hour (\$808) for February 25,
  - d. 4-hour minimum rate at \$135 per hour (\$540) for February 26, and
  - e. \$500 for late payment, for services performed on each of February 25 and 26.
31. I find the parties' contract provided for overtime rates at 1.5 times the standard hourly rate for any moves over 8 hours, so I accept Mr. Davis was entitled to charge \$202 per hour for overtime. As noted, the move on February 25 took from 9 am to 8 pm. I find that under the parties' contract, Mr. Davis was entitled to charge 1 hour of travel time on top of the actual move time. So, I find Mr. Davis was entitled to charge for 4 hours of overtime (5 pm to 9 pm), which is \$808.
32. However, it is undisputed that one mover left at 2 pm and was not replaced until 5 pm, so I find Mr. Davis was only entitled to charge \$135 per hour for 5 hours (9 am to 2 pm), which is \$675. Article 55 of the parties' contract says the client will receive a \$30 per hour discount per scheduled mover not present. So, I find Mr. Davis was entitled to charge \$105 per hour for 3 hours (2 pm to 5 pm), which is \$315.
33. I find the parties' contract also provides that there is a minimum 4-hour charge for all moving services. I find this minimum charge applies per day. Therefore, I find Mr. Davis was entitled to charge the claimed \$540 for February 26.
34. As for the late payment charges, Article 39 on page 5 of the agreement says the client agrees to pay an additional \$500 for late payment of a bill, as an administration fee for dealing with collection of overdue and delinquent payments. Mr. Davis invoiced Ms. Haywood-Anderson for the agreed \$1,260 on February 26, which she initially paid, so it was not technically paid late. There is no evidence before me that Mr. Davis



billed Ms. Haywood-Anderson for the February 26 services before the April 29, 2021 invoice. Therefore, I find only the April 29, 2021 invoice was paid “late”, and so Mr. Davis is only entitled to a single \$500 late payment charge.

35. Given my findings above, I find Mr. Davis is entitled to \$2,979.90 including GST for his moving services on February 25 and 26, 2021.
36. Mr. Davis also claims reimbursement of a parking ticket he received while loading Ms. Haywood-Anderson’s belongings at her old residence, totalling \$178. I find the parties’ contract required the client Ms. Haywood-Anderson to secure parking and that she would be responsible for any parking tickets. So, I allow the \$178 parking ticket claim.
37. I note Mr. Davis’ April 29 invoice and the parking ticket add up to \$3,777.40. Mr. Davis did not explain the difference between that amount and the claimed \$3,813, though I infer it may relate to packing supplies Mr. Davis provided on the move day. In any event, there is no evidence before me supporting any additional expenses, so I find they are unproven.
38. Therefore, I find Ms. Haywood-Anderson must pay Mr. Davis \$3,157.90, subject to any set-off discussed below.

***Is Ms. Haywood-Anderson entitled to a set-off for the cost to complete the move?***

39. Ms. Haywood-Anderson says she had to hire additional “movers” to complete her move when Mr. Davis left her belongings in the alley on February 26, 2021. Ms. Haywood-Anderson provided a February 26 invoice from Fenda Services Inc. (Fenda), which I find is a cleaning company. The invoice says it is for “last min after hours moving in assistance 7:00 pm” (reproduced as written) and shows 4 cleaners spent 3.4 hours working.
40. Given that I have found Mr. Davis was contractually entitled to unload Ms. Haywood-Anderson’s belongings without completing the move, I find he is not responsible for

any costs she incurred to bring her belongings from the alley into her new residence. I find Ms. Haywood-Anderson has not proven any entitlement to a set-off, and I order her to pay Mr. Davis \$3,157.90 for his services.

***Interest, CRT fees, and dispute-related expenses***

41. The *Court Order Interest Act* applies to the CRT. Mr. Davis is entitled to pre-judgment interest on the \$3,157.90 from April 29, 2021, the date of the final invoice, to the date of this decision. This equals \$11.92.
42. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I find Mr. Davis was substantially successful, and so is entitled to reimbursement of \$175 in CRT fees. He did not claim any dispute-related expenses.

**ORDERS**

43. Within 14 days of the date of this decision, I order Ms. Haywood-Anderson to pay Mr. Davis a total of \$3,344.82, broken down as follows:
  - a. \$3,157.90 in debt,
  - b. \$11.92 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
44. Mr. Davis is entitled to post-judgment interest, as applicable.
45. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.

46. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Kristin Gardner, Tribunal Member