



# Civil Resolution Tribunal

Date Issued: March 7, 2022

File: SC-2021-003314

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kelly v. Belltower Consultants Incorporated*, 2022 BCCRT 245

BETWEEN:

BARBARA KELLY

**APPLICANT**

AND:

BELLTOWER CONSULTANTS INCORPORATED and HANDS DOWN  
BEST MOVERS LTD.

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about moving fees. The applicant, Barbara Kelly hired the respondent, Belltower Consultants Incorporated (Belltower) for moving services. Belltower operates under the business name Planet Xpress Deliveries. Belltower subcontracted the work to the respondent, Hands Down Best Movers Ltd. (Hands Down), who then

performed the move for Ms. Kelly instead of Belltower. Ms. Kelly claims the respondents charged more than estimated, overcharged the hours worked, failed to perform promised packing services and failed to reimburse her for food she bought for the movers. Ms. Kelly claims \$1,846.40.

2. The respondents deny Ms. Kelly's claims. Belltower says Ms. Kelly agreed to pay for the hours worked, not the estimated time. Hands Downs says that it was not involved in providing the estimate and that it properly charged Ms. Kelly for the labour provided.
3. Ms. Kelly was self-represented. Belltower was represented by an employee or principal. Hands Down was represented by its owner, Fraser Smith.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

6. 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.
7. 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.
8. The parties reached an agreement relating to alleged lighting fixture damage before this adjudication, and so this issue is not before me in this decision.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Belltower's estimate misrepresent its moving charges? If so, what is the remedy?
  - b. Did the respondents overcharge Ms. Kelly?
  - c. Is Ms. Kelly entitled to a reimbursement because the movers were unqualified or inefficient?
  - d. Is Ms. Kelly entitled to a reimbursement of moving expenses because she allegedly performed some of the work herself?
  - e. Did the respondents breach the contract by leaving items behind?
  - f. Does Hands Down owe Ms. Kelly \$33.90 for food she provided to the movers?

## EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. Kelly, as the applicant, must prove her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision. The respondents did not provide any evidence, though they had the opportunity to do so.
11. Belltower emailed Ms. Kelly its moving fee schedule on December 27, 2020. These rates charged \$99 per hour for a 2-person team with a 3-ton moving truck. Belltower inspected Ms. Kelly's property and sent her a January 6, 2021 email estimating that her move would require 6 hours of labour. However, the email says it will charge Ms. Kelly for the actual hours worked, not the estimated amount.
12. It is undisputed that Ms. Kelly hired Belltower. In doing so, I find that she entered a contract with Belltower to pay \$99 per hour for its moving services.
13. Hands Down showed up to move Ms. Kelly's property on March 26, 2021 instead of Belltower. Ms. Kelly says that Hands Down was not known to her and she only expected Belltower to move her items. Belltower says that Hands Down is an independent contractor and it is common for moving companies to use such businesses. Ms. Kelly says that she wanted Belltower to perform the move, not Hands Down. However, Ms. Kelly did not explain why Hands Down was objectionable other than she did not know it. Since Ms. Kelly let Hands Down perform the moving services, I find that Ms. Kelly agreed to hire Hands Down and pay it the same moving fees she agreed to pay Belltower.
14. It is undisputed that Hands Down started moving Ms. Kelly's items on March 26, 2021 but it was unable to finish in one day. Hands Down issued Ms. Kelly a March 26, 2021 invoice for \$1,274.13, representing 13 hours of work. Ms. Kelly paid Hands Down \$600 on March 26, 2021. The invoice acknowledges the \$600 payment and says that Ms. Kelly will receive a \$200 discount.

15. Hands Down completed the move on March 27, 2021 and issued a \$1,180 invoice. The March 27, 2021 invoice charges for 20 hours of work and includes a \$800 deduction. I find that the 20 hours charged is the total hours charged by Hands Down for both moving days and the \$800 deduction represents Ms. Kelly's March 26, 2021 payment and a \$200 discount.
16. Ms. Kelly says that Hands Down agreed to accept \$1,000 on March 27, 2021 as full payment for its moving services. Since this is confirmed by Hands Down's March 27, 2021 receipt, I find that Ms. Kelly fully paid for the Hands Down's moving services by paying a total of \$1,600.

***Did Belltower misrepresent the estimated moving charges?***

17. As discussed above, I find that Ms. Kelly agreed to pay Belltower, the actual hours worked rather than the estimated amount. However, Ms. Kelly says Hands Down work time greatly exceeded Belltower's 6 hour estimate. Ms. Kelly says that Belltower under-estimated the quote to win her business. I find that Ms. Kelly essentially claims that Belltower's estimate misrepresented the amount of work required.
18. Hands Down says that it was not involved in Belltower's quote. Since there is no evidence showing that Hands Down was involved with the quote, I dismiss Ms. Kelly claim for misrepresentation against Hands Down and I consider Ms. Kelly's misrepresentation claim against Belltower below.
19. Misrepresentations can be made either negligently or fraudulently. Negligent misrepresentation is when:
  - a. A respondent makes an untrue, inaccurate, or misleading representation,
  - b. The respondent makes the representation negligently, and
  - c. The applicant suffers damage from reasonably relying on the misrepresentation.

20. A fraudulent misrepresentation is when:
- a. A respondent states a fact to an applicant,
  - b. The respondent knows the statement is false, or is reckless about whether it is true or false, and
  - c. The misrepresentation entices the applicant to enter a contract with the respondent.
21. To prove damages for either negligent or fraudulent misrepresentation, Ms. Kelly must prove that Belltower's quote was false, inaccurate, or misleading, and she reasonably relied on it.
22. Ms. Kelly says that Hands Down told her that the move took longer because her new building had a small elevator requiring more trips. Also, she says Hand Down said it took a long time to transport each load to its truck because it had to park 140 feet away from the building entrance. Belltower's January 6, 2021 email estimate warned Ms. Kelly that parking restrictions, walking distances to and from the truck and elevators can cause a move to take longer than estimated.
23. Ms. Kelly acknowledges that the small elevator size and the distance to the truck likely increased the move time. However, she says that she told Belltower that the elevator was small when it gave the estimate. Since Belltower did not dispute this submission, I accept this as accurate.
24. Although the actual moving time greatly exceeded Belltower's estimate, I find that Ms. Kelly has not proved that Belltower negligently or recklessly misquoted the estimated moving expenses. I reach that conclusion because I find that Ms. Kelly has not proved that Belltower was aware that the moving truck would need to park so far from the building when it gave its quote. Further, I find that Ms. Kelly has not proved that the increased labour needed did not result from this unexpected 140 feet of walking distance from the truck to the building. Also, Belltower had specifically warned Ms. Kelly that long walking distances could increase the moving time. So, I find that Ms.

Kelly has not proved that Belltower misrepresented the estimated the amount of labour needed.

***Did the respondents charge for too many hours of work?***

25. Ms. Kelly claims that Hands Down charged her 20 hours of moving labour but she says it only worked 15.25 hours. Ms. Kelly provided her own detailed time records in support. Since the respondents did not provide their own time records or any statements from the movers, I accept Ms. Kelly's submission and time records and find that Hands Down only provided 15.25 hours of moving services.

26. So, I find that Ms. Kelly owes Hands Down a debt for 15.25 hours of moving services. At the agreed rate of \$99, I find that Ms. Kelly owed \$1,509.75 for the moving services. Since Ms. Kelly paid Hands Down \$1,600, I find that Hands Down overcharged her \$90.25 and Hands Down owes her that amount. Since there is no evidence showing that Ms. Kelly made any payments to Belltower, I find that Belltower does not owe Ms. Kelly a reimbursement.

***Is Ms. Kelly entitled to a reimbursement because the movers were unqualified or inefficient?***

27. Ms. Kelly says that Hands Down employed a different swamper worker each day. Ms. Kelly says the swamper workers were inexperienced, untrained and worked slowly, which increased the moving time. In contrast, Hands Down says its workers are professionals and they worked hard. I find this submission is supported by Ms. Kelly's March 26, 2021 email sent to Belltower which says the movers were working hard. Overall, I find that Ms. Kelly has failed to prove that the movers were inexperienced or inefficient.

***Is Ms. Kelly entitled to a reimbursement because she allegedly had to wrap and pack her items?***

28. Ms. Kelly says Hands Down failed to wrap and properly pack items. She says she needed to spend time doing this herself. However, Hands Down charged Ms. Kelly on an hourly basis. So, whether Ms. Kelly performed some of the moving work herself

does not change the amount of her debt for the work performed. So, I find that she is not entitled to a reimbursement and I dismiss this claim.

***Did the respondents breach the contract by leaving items behind?***

29. Ms. Kelly also says the respondents forgot to bring items from her former home's garage. Ms. Kelly says that Belltower viewed her garage on January 5, 2021 when it prepared its quote and she specifically asked Belltower to move the garage items. Since Belltower does not dispute this submission, I accept this as accurate and find that Belltower agreed to move all Ms. Kelly's garage items. However, I find that Ms. Kelly has not proved that Hands Down was aware of the garage items or that it agreed to move them. So, I find that Ms. Kelly has not proved that Hands Down breached the contract by failing to do so. So, I dismiss this claim against Hands Down and only consider below whether Belltower breached the contract by leaving items.

30. The respondents says that Ms. Kelly supervised the move so, if items were left behind in the garage, then she forgot to move those items too. However, Ms. Kelly says, and the respondents do not dispute, that she was wrapping and packing items while Hands down moved her possessions. As such, I am not satisfied that Ms. Kelly was supervising the move. So, I find that Belltower breached the contract by failing to move the garage items as agreed.

31. Ms. Kelly provided a witness statement from her friend, MN saying that they needed to bring 2 carloads of items because the movers left them. Since the respondents do not dispute this, I accept this as accurate. Based on MN's statement that 2 carload deliveries were needed, and on a judgement basis, I find that Belltower owes Ms. Kelly damages of \$200 for breach of contract for failing to move her garage items.

***Must Hands Down reimburse Ms. Kelly for the cost of food she provided***

32. Ms. Kelly says Hands Down asked her to buy a pizza for its workers and Hands Down said it would repay her. Ms. Kelly says she bought them a \$33.90 pizza but she was not reimbursed. Hands Down says that Ms. Kelly offered to buy them a pizza as a



courtesy. Hands Down says that Ms. Kelly did not ask to be repaid and it never offered to pay her.

33. I find that Hands Down essentially argues that the pizza was a gift. Under the law of gifts, after someone proves that they transferred an item, the burden shifts to the recipient to prove it was a gift (see *Pecore v. Pecore*, 2007 SCC 17). Here is undisputed that Ms. Kelly provided Hands Down's workers with food costing \$33.90. I find that Ms. Kelly's submission that Hand Down agreed to pay for the food equally as likely as Hands Down's submission that Ms. Kelly gifted the food. So, I find that Hands Down has failed to satisfy its burden of proving that food was a gift. As such, I find that Hands Down owes Ms. Kelly a \$33.90 debt for the food.
34. For the above reasons, I find that Hands Down owes Ms. Kelly \$90.25 for overcharged work and \$33.90 for food. This totals \$124.15. I find that Belltower owes Ms. Kelly \$200 for failing to move the garage items.

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

35. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Kelly is entitled to pre-judgment interest from Hands Down on the \$124.15 of debt from March 27, 2021, the date of payment, to the date of this decision. This equals \$0.53. Ms. Kelly is also entitled to pre-judgment interest from Belltower on the \$200 damages from March 27, 2021, the date of the contract breach, to the date of this decision. This equals \$0.85.
36. 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 see no reason in this case not to follow that general rule. Since Ms. Kelly was partially successful in this dispute, I find that she is entitled to reimbursement of one-half of her CRT fees. This equals \$67.50. Ms. Kelly also claimed dispute-related expenses of \$1.07 for postage and \$21 for corporate registry searches. I am satisfied that these expenses were reasonably incurred in preparation for this dispute. Since Ms. Kelly was partially successful, I find that she is entitled to reimbursement of one-half of these expenses. This totals \$11.03.

37. Since Belltower and Hands Down are each partially responsible for Ms. Kelly's damages, I find that each are responsible for one-half of the CRT fees and dispute-related expenses awarded to Ms. Kelly. The respondents did not claim reimbursement of dispute-related expenses.

## **ORDERS**

38. Within 30 days of the date of this order, I order Hands Down to pay Ms. Kelly a total of \$163.94, broken down as follows:

- a. \$124.15 in debt,
- b. \$0.53 in pre-judgment COIA interest, and
- c. \$39.26 in CRT fees and dispute-related expenses

39. Within 30 days of the date of this order, I order Belltower to pay Ms. Kelly a total of \$240.11, broken down as follows:

- a. \$200 in damages,
- b. \$0.85 in pre-judgment COIA interest, and
- c. \$39.26 in CRT fees and dispute-related expenses

40. Ms. Kelly is entitled to post-judgment interest, as applicable.

41. 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.

42. 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.

---

Richard McAndrew, Tribunal Member