



# Civil Resolution Tribunal

Date Issued: March 16, 2022

File: SC-2021-006926

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rivera dba United Locksmith v. Metropolitan Food Merchants Inc. dba Terminal Station Commissary, 2022 BCCRT 285*

B E T W E E N :

LUIS RIVERA (Doing Business As UNITED LOCKSMITH)

**APPLICANT**

A N D :

METROPOLITAN FOOD MERCHANTS INC. DOING BUSINESS AS  
TERMINAL STATION COMMISSARY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about payment for locksmith services. The applicant, Luis Rivera (dba United Locksmith), says the respondent, Metropolitan Food Merchants Inc. dba Terminal Station Commissary (MFM), hired him to install a cellphone-accessible electronic lock on a back door, plus a front door lock system. Mr. Rivera says his technician completed the work as requested, save for a final Wi-Fi connection for the back door that Mr. Rivera says MFM's representative and general CM advised he would configure to his cellphone later. Mr. Rivera says later MFM was unable to connect the back door lock to Wi-Fi and then MFM refused to pay for that work. Mr. Rivera claims \$1,073.60 for the back door job.
2. MFM says both front and back door locks were defective and not installed as agreed. MFM says it paid another locksmith to fix the front door problem and that it replaced the cell lock for the back door with a code lock. MFM did not file a counterclaim for the front door lock.
3. Mr. Rivera is self-represented. MFM is represented by CM.

## **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. CRTA section 39 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. 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. CRTA section 42 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. MFM submitted evidence past the CRT's deadline. Bearing in mind the CRT's mandate and because Mr. Rivera had an opportunity to comment on it, I allow the late evidence and have considered it in coming to my decision.

## **ISSUE**

9. The issue in this dispute is whether Mr. Rivera's locks were defective and if not, whether he is entitled to the claimed \$1,073.60.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Rivera must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
11. The parties had no formal written contract. However, the parties' text messages in evidence show they agreed MFM wanted a "cloud based" or cell phone lock system for the back door. The texts also show that MFM agreed to the back door lock cost of \$873.60 plus \$210 for labour, for a total of \$1,073.60 as claimed. MFM also agreed to \$1,085 plus tax for the front door lock materials and \$280 plus tax for labour for that door.

12. Mr. Rivera claims \$1,073.60 as the outstanding balance owing under his August 31, 2021 invoice #418 for \$2,812.53, which stated it was due October 1, 2021. That invoice set out the following breakdown: a) service call, labour to supply and install “panic bar + mortise deadlatch + mortise lock” for \$1,365, b) supply and install Schlage NDE electronic lock for \$1,073.60, and c) supply and install 2 latch protection plates for \$240. The cell phone backdoor lock is the NDE electronic lock for \$1,073.60. I find the invoice matches the parties’ agreement as set out in their text messages.
13. On September 7, 2021, MFM undisputedly paid Mr. Rivera \$1,605 for the locks, which Mr. Rivera describes as a “partial payment”. This payment left a \$1,738.93 balance owing under the \$2,812.53 invoice. Given my conclusion below, nothing turns on MFM’s total payment, since it is undisputed MFM did not pay the claimed \$1,073.60 for the back door lock.
14. I turn back to the relevant chronology. On August 28, 2021, Mr. Rivera began installation of the back door lock. On August 31, 2021, Mr. Rivera texted CM and asked for a call back, but CM did not reply. On September 2, 2021 at 5:08 p.m., CM texted that he could not get the back door lock to “take cell #s”. CM advised the 1-800 number on the support card was not a Canada-supported phone number. Mr. Rivera responded that he would speak to the Canada brand representative the next day, and Mr. Rivera texted that representative’s information in the morning of September 3.
15. On September 4, 2021, Mr. Rivera asked for full payment, saying that if the lock was broken he would replace it but that “customer configuration” was out of his hands. CM responded that all the installed equipment, for both locks, was defective and asked for a refund of what MFM had paid and for Mr. Rivera to take his equipment. After a further text exchange, later on September 4 CM wrote that Mr. Rivera’s equipment had been removed and that Mr. Rivera could have it back if he refunded MFM’s money.

16. Mr. Rivera submitted a January 18, 2022 signed statement from his technician JS. JS confirmed MFM's evidence that when JS first attended there were some technical issues with the back door lock, so that JS had to return to finish the back door lock's installation on another day. JS confirmed Mr. Rivera's evidence that on this occasion, he tried to assist CM in programming the lock but that CM said he was too busy to do it with JS there and that JS could leave. CM did not address this in his submissions for MFM, and so I accept this description is accurate. JS wrote he returned a 3<sup>rd</sup> time on Saturday (I infer September 4, 2021) to try and help with the back door lock's set-up, but that CM explained the difficulties with Mr. Rivera and JS saw the back door lock had been taken out.
17. I turn then to the applicable law. When defective work is alleged, the burden of proof is on the party asserting them defects, which here is MFM. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61 and *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124.
18. Significantly, MFM submitted no evidence from another locksmith about the locks installed by Mr. Rivera. MFM also submitted no evidence of its alleged purchase of the code lock it says it bought to replace the cellphone-accessible lock Mr. Rivera installed. Similarly, MFM submitted no evidence about the front door lock fix MFM says it had done after Mr. Rivera's installation. I note Mr. Rivera submitted photos of the back door lock and the front door lock and its panic bar. Based on these photos, there is nothing obviously deficient about the locks.
19. I acknowledge MFM submitted a copy of a June 29, 2021 invoice for \$183.05 from Dennis The Locksmith Ltd. (Dennis). However, I place no weight on this invoice because the invoice pre-dates Mr. Rivera's work and there is no evidence it relates to either of the lock systems Mr. Rivera installed in September 2021. So, while MFM says both locks were defective, I find that allegation unproven.
20. In particular, since this dispute is about payment for the back door lock, as noted I find MFM chose not to have JS assist it with configuring the lock to CM's cellphone. I find Mr. Rivera attempted to assist when MFM tried to configure the lock and I

accept that Mr. Rivera had inadvertently give him the wrong 1-800 number for Canada. However, I find nothing turns on this because Mr. Rivera followed up in a timely way. In any event, in the circumstances, I find it unproven the back door lock itself was defective as opposed to CM simply not following the necessary steps to configure the lock with his cell phone. In any event, I find this customer configuration was not something Mr. Rivera agreed to be responsible for, particularly given my finding above that JS offered to assist with it and CM declined.

21. In short, because I find it unproven the back door lock was defective, I find MFM must pay for it. As I find it also unproven that the front door lock was defective, there can be no set-off for MFM's prior payment for that front door work against the \$1,073.60 owing for the back door.
22. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Rivera is entitled to pre-judgment interest under the COIA on the \$1,073.60. Calculated from October 1, 2021 to the date of this decision, this interest equals \$2.20.
23. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Rivera was successful, I find he is entitled to reimbursement of \$125 in paid CRT fees. Mr. Rivera did not claim dispute-related expenses.

## **ORDERS**

24. Within 21 days of this decision, I order MFM to pay Mr. Rivera a total of \$1,200.80, broken down as follows:
  - a. \$1,073.60 in debt,
  - b. \$2.20 in pre-judgment interest under the COIA, and
  - c. \$125 as reimbursement for CRT fees.
25. Mr. Rivera is entitled to post-judgment interest, as applicable.

26. 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.
27. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

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Shelley Lopez, Vice Chair