



# Civil Resolution Tribunal

Date Issued: April 6, 2022

File: SC-2021-006933

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Willes v. Purewal*, 2022 BCCRT 386

BETWEEN:

CHRISTINE WILLES and SUSAN WILLES

**APPLICANTS**

AND:

MANJEET PUREWAL and GURJIT PUREWAL

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. The parties are neighbours, and this dispute is over payment for a replacement fence. The applicant sisters, Christine Willes and Susan Willes, say the respondents, Manjeet Purewal and Gurjit Purewal, verbally agreed to replace the parties' shared fence when it was damaged during the construction of the respondents' home. The applicants say they failed to do so, and had to install fencing and cedar hedges along

the property line themselves. The applicants seek a total of \$3,727.77 for fencing and cedar hedges.

2. The respondents admit they agreed to replace the fence at their own cost, which they did once their home construction was complete. They say they do not owe the applicants any money for the fence or for their cedar hedges.
3. The parties are each self-represented.

## **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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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.
6. Section 42 of the CRTA says that 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. In resolving this dispute the CRT may make one or more of the following orders, where permitted by section 118 of the CRTA:
  - a. Order a party to do or stop doing something,
  - b. Order a party to pay money, or
  - c. Order any other terms or conditions the CRT considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether the respondents owe the applicants anything for the replacement fence or cedar hedges.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicants must prove their case on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that in April 2020, the respondents damaged part of a shared fence between the applicants’ and respondents’ properties while removing a tree. The parties all agree that a conversation took place where the respondents agreed to replace the fence once construction had completed.
11. Essentially, the applicants say that they lost confidence in the respondents’ promise to replace the fence, so they replaced portions of the fence themselves before construction of the respondents’ home was complete. The applicants say they repeatedly asked the respondents when they were planning to rebuild the fence, but say the respondents advised they had “no plans” to do so. The applicants also say a fence was not possible in some areas due to unstable ground caused by the respondents’ choice of backfill material, so they had to plant a cedar hedge for privacy. It appears this work was done in approximately April/May 2021.

12. The respondents say the applicants did not consult them prior to placing a new fence and cedars, and that it was always the respondents' intention to replace the fence. In fact, the applicants' own submissions are that they had their lawyer contact the respondents' lawyer, who advised the applicants that the respondents "intended to put up a fence". The respondents say they had to wait until after construction was complete or the fence would potentially be damaged with ongoing construction activities. The respondents advise the home construction was complete in August 2021, and the landscaping inspection was completed in December 2021, after which time they were able to construct the fence. In any event, the respondents say the applicants' choice to install cedars on their property is solely their decision, and is not the respondents' responsibility.
13. It is undisputed that the respondents did install a replacement fence along the shared property line and on the respondents' side of the applicants' new cedar hedging.
14. Based on the evidence, I find the parties clearly discussed the fence's replacement, and the respondents acknowledged their responsibility to replace it after having damaged it. I also find the respondents did, in fact, replace the fence. Although the applicants are apparently unhappy with how long it took, I find the respondents fulfilled their agreement. It is evident the applicants believed a fence would be placed after backfill was completed, while the respondents waited until all construction activities were done. I find waiting until the major construction and landscaping were done was reasonable, to avoid damaging a brand-new fence with further activities. I also find this is consistent with the parties' initial agreement that the fence would be replaced after construction completed. Therefore, I find the applicants installed a fence and cedars on their own, with no agreement by the respondents about sharing the cost, and despite being reassured by the respondents' lawyer that a fence was forthcoming at the respondents' sole cost. I also agree with the respondents that the applicants' desire to install cedar hedges on their property is not their financial responsibility.

15. Although the applicants say they had to plant the hedge because the backfill material would not support a new fence, I find this is incorrect as a new fence has been successfully installed.
16. In summary, I find the applicants have not proved the respondents agreed to pay for half of any of the fencing or hedges the applicants installed, so I dismiss their claims.
17. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicants were not successful, I find that they are not entitled to reimbursement of their paid tribunal fees. The respondents did not pay fees and no dispute-related expenses were claimed.

## **ORDER**

18. I order the applicants' claims, and this dispute, dismissed.

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Andrea Ritchie, Vice Chair