



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *2 Burley Men Moving Ltd. v. Machek*, 2022 BCCRT 402

B E T W E E N :

2 BURLEY MEN MOVING LTD.

APPLICANT

A N D :

MORGAN MACHEK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is over payment for residential moving services. The applicant, 2 Burley Men Moving Ltd. (Burley), performed moving services for the respondent, Morgan

Machek, but Ms. Machek only paid \$1,000. Burley claims the outstanding \$703.75 balance.

2. Ms. Machek says Burley was 6 hours late and then failed to deliver her belongings, alleging one of the corners of her road was too sharp. After some back and forth about delivery timing, Burley returned the next day with the same large truck. At this point, Burley undisputedly refused to deliver the items from the truck inside her home, and instead required Ms. Machek to hire a U-Haul for “shuttle service”. Ms. Machek says in all the circumstances, she owes nothing further.
3. Burley is represented by an employee or principal. Ms. Machek is 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). CRTA section 2 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. 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. 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.

ISSUE

8. The issue in this dispute is whether Ms. Machek owes Burley anything further for its moving services.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Burley must prove its 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.
10. Burley submitted a partially illegible copy of its waybill issued to Ms. Machek, which sets out a total due of \$1,703.75. Burley refers to this as the parties’ contract, which I accept because Ms. Machek does not dispute it and because she signed the waybill. I find the moving contract at the time it was made provided for Burley to pick up Ms. Machek’s belongings at her old address and deliver them into her home at her new address, which is not disputed.
11. Burley undisputedly required Ms. Machek to hire a U-Haul as it refused to deliver her belongings directly into her home, and instead the U-Haul was used as a shuttle service. The evidence is unclear about what role Ms. Machek had, if any, in carrying out that shuttle service apart from renting the U-Haul.

12. Ms. Machek argues that having had to pay for a U-Haul, she might as well have skipped hiring Burley and done the move herself. She says she “went with a moving company” so she was not running around trying to sort out the move details herself.
13. I turn then to the contract’s terms that I can read. It is dated September 1, 2021. It provided for 2 men at \$150/hour, plus travel time and a fuel surcharge fee. The delivery address is set out, which Ms. Machek undisputedly provided to Burley before the move began. It appears the “total time” was around 10 hours, plus “extra” travel time. Burley’s earlier “appointment notes” appear to indicate the expected travel would be \$75 and the fuel fee was \$50.
14. The contract’s terms and conditions page says Burley’s pick-up time is only an estimate. So, I find nothing turns on the fact that Burley was undisputedly 6 hours later than originally scheduled.
15. I turn to the central issue, namely the road access for Burley’s truck. The contract’s terms and conditions page included the following (reproduced as written, except where noted):

The following items can and may affect these terms and conditions:

- ... Situations our movers consider dangerous to ... 2 Burley men employees or equipment
16. There is no further explanation of what would happen if Burley’s movers determined the situation, such as the road access, was dangerous to its movers or Burley’s equipment. In other words, the contract did not expressly say Ms. Machek would have to pay for any extra time Burley spent dealing with situations it deemed dangerous. I return to this clause below.
 17. Ms. Machek says Burley’s truck was 38 feet and she had a “40 foot” truck back in the next day without issue, for a mattress delivery. However, Ms. Machek submitted no supporting evidence about that other truck or its ability to negotiate the road access, such as a witness statement from that delivery driver. At the same time, Burley

submitted no evidence in support of its position that it could not reasonably or safely access Ms. Machek's home to fulfil the moving contract, such as a witness statement from its driver or photos of road while Burley was there.

18. Here, Burley is the party asserting it was entitled to refuse to deliver Ms. Machek's belongings into her home and instead require Ms. Machek to hire a U-Haul. Burley relies on the alleged road access issue. I therefore find Burley has the burden of proving its delivery truck could not reasonably or safely access Ms. Machek's home. I find Burley has not done so. I also find the contract's term quoted above is not sufficiently clear about what Ms. Machek might be responsible for if the movers faced what they considered a situation dangerous. So, I find Burley cannot simply rely on that quoted term alone to support its position it was entitled to refuse direct delivery and require Ms. Machek to hire a U-Haul to shuttle her belongings.
19. I find the most appropriate outcome for Burley's failure to completely fulfil the moving contract is the following.
20. A September 7, 2021 receipt shows Ms. Machek paid U-Haul \$93.86. While Burley submitted its Nanaimo office reimbursed Ms. Machek for this, there is no supporting evidence of it, and Ms. Machek denies she was repaid. So, I find Burley agrees it was responsible for the \$93.86 but has not proved it reimbursed Ms. Machek that amount.
21. I find Burley is entitled to the claimed \$703.75, less the \$93.86 U-Haul bill and less the "extra travel time". I say this because the evidence shows Burley spent extra time leaving Ms. Machek's home and returning the next day with the same truck, for the delivery with the shuttle service. As noted, Burley's submitted waybill is not entirely legible but I find it likely shows 2.75 hours in total "extra travel" time. At \$150 per hour, this equals \$412.50. Together with the \$93.86, the total deduction is \$506.36. So, I find Ms. Machek owes Burley \$197.39 (\$703.75 minus \$506.36).
22. The *Court Order Interest Act* (COIA) applies to the CRT. I find Burley is entitled to pre-judgment interest under the COIA on the \$197.39. Calculated from September 1, 2021 to the date of this decision, this equals \$0.53.

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 Burley was only partially successful, I allow half its paid \$125 in CRT fees, which is \$62.50. No dispute-related expenses were claimed.

ORDERS

24. Within 30 days of this decision, I order Ms. Machek to pay Burley a total of \$260.93, broken down as follows:

- a. \$197.39 in debt,
- b. \$0.53 in pre-judgment interest under the COIA, and
- c. \$62.50 in CRT fees.

25. Burley is entitled to post-judgment interest, as applicable.

26. Under CRTA section 48, 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 CRTA section 58.1, the Provincial Court of BC can enforce a validated copy of the CRT's order. 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 a Provincial Court of BC order.

Shelley Lopez, Vice Chair