



Civil Resolution Tribunal

Date Issued: April 14, 2022

File: SC-2021-007094

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Miller v. 2 Burley Men Moving Ltd.*, 2022 BCCRT 431

B E T W E E N :

HAYLEY MILLER

APPLICANT

A N D :

2 BURLEY MEN MOVING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about residential moving services. The applicant, Hayley Miller, hired the respondent, 2 Burley Men Moving Ltd. (Burley), to move her belongings from Alberta to British Columbia.

2. Ms. Miller says Burley advised the move would cost \$4,900, but then charged her much more. Ms. Miller undisputedly paid \$8,638.75. She claims \$3,720.05, which is close to but not exactly the difference between what she paid and \$4,900. She alternatively says she should be charged no more than \$7,000 plus certain fees based on a later verbal commitment.
3. Burley says its prices are based on weight, and because Ms. Miller's shipment was overweight, the price was increased. Burley says it gave Ms. Miller a discount and does not owe any refund.
4. Ms. Miller represents herself. Burley is represented an employee.

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, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt 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.

ISSUE

9. The issue in this dispute is what Burley was entitled to charge Ms. Miller under their contract, and what remedy, if any, is appropriate.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Miller must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. At the outset, I note Ms. Miller provided photos that she says document damage Burley caused to some of her belongings. The photos do not directly relate to Ms. Miller's claim that she was overcharged. Before this dispute, Burley offered reimbursement for the damage, which Ms. Miller says was "ridiculous". It is not clear if Ms. Miller received any payment, but given there is no claim for reimbursement for property damage before me, I make no findings about whether Burley damaged any of Ms. Miller's property.
12. There is no written contract or quote in evidence. It is undisputed that on July 7, 2021, Ms. Miller spoke to a Burley employee, "Earl", to arrange her move from Alberta to BC. Earl quoted \$4,700 plus a \$200 "out of the way" fee. Ms. Miller says this is the price she should be charged for the move, despite the fact that her belongings required a second truck.

13. Burley says \$4,900 was an estimate based on the information Ms. Miller provided. It says long-distance moves are booked by weight so its employees never promise a specific price for a move. On balance, I find the \$4,900 quote was an estimate and not a fixed-price contract. I reach this conclusion based in part on Ms. Miller's subsequent emails to Burley about price, in which she does not mention the \$4,900 quote. So, I find Burley is not bound by the \$4,900 estimate.
14. On July 22, 2021, Burley's movers arrived to load Ms. Miller's belongings but did not finish loading. The next day Burley advised that her possessions would not fit in the truck and she would need to pay an additional \$3,000. Ms. Miller spoke with Earl. She says Earl advised the best he could do was \$7,000 plus the scale fee to move all her possessions to her new home in BC.
15. Burley did not provide a statement from Earl and did not say it could not obtain a statement. On balance, I accept Ms. Miller's evidence about Earl's July 23 verbal offer, which is consistent with the emails she sent Burley immediately following her conversation with Earl. I find Ms. Miller accepted Earl's offer and Burley was bound by it, since Earl was undisputedly Burley's representative.
16. On July 27, the movers arrived at Ms. Miller's new home with the first truck. The movers gave Ms. Miller an invoice for \$7,638.75. This included a \$7,000 moving fee, \$75 scale fee, \$200 "out of territory fee" and tax. Ms. Miller paid this invoice.
17. I find Burley was authorized to charge Ms. Miller \$7,000 for the move, \$75 for the scale fee (the exact amount Ms. Miller does not dispute), and tax. I find Ms. Miller did not agree to the \$200 "out of territory fee". I say this because it is undisputed that Earl did not mention the fee when renegotiating with Ms. Miller, despite mentioning the scale fee. Also, Ms. Miller's July 24 emailed stated that Earl told her the total price was fixed at "\$7,400 and change". The out of territory fee would push the price to over \$7,600. I find Burley must refund \$200 plus tax for a total of \$210.
18. The rest of Ms. Miller's belongings arrived at her new home on July 31, 2021. At that time, the movers presented an invoice for \$1,981.50. Ms. Miller negotiated with CA.

CA said the movers could unload if Ms. Miller paid \$1,000. Ms. Miller says CA and others told her that if she did not pay, it would put her belongings in storage and she would incur additional fees to retrieve them. Burley does not dispute this, so I accept it. I find that Ms. Miller paid the \$1,000 under protest to access her belongings and avoid additional expenses, not because she agreed to the additional charge.

19. I find Burley was not authorized to charge Ms. Miller the additional \$1,000 after Earl agreed that \$7,000 plus a scale fee would cover the move. Burley argues that \$7,000 was the pricing for up to 9,000 lbs, and the additional charge was because Ms. Miller's belongings were over that weight. However, even if Ms. Miller had agreed that the price was subject to a weight limit, which I find unproven, Burley has not provided any evidence of what Ms. Miller's belongings weighed. Burley does not say how it determined that Ms. Miller's belongings weighed over 9,000 lbs. It did not provide any documentation of the weight of either truck, or any statements from the drivers or movers. When a party fails to provide relevant evidence with no explanation, the CRT may draw an adverse inference. An adverse inference is when the CRT assumes that a party did not provide relevant evidence because it would have been damaging to their case. I find that an adverse inference is appropriate here. I note Burley is an experienced litigant that has participated in at least 20 CRT disputes decided on their merits, so it should be aware of the importance of providing evidence to support disputed invoices.
20. With that, I find Burley must refund Ms. Miller \$1,000 she paid on July 31 plus the \$210 overcharge on the July 27 invoice, for a total of \$1,210.
21. The *Court Order Interest Act* applies to the CRT. I find Ms. Miller is entitled to pre-judgment interest on the \$1,210 from the July 31 invoice date to the date of this decision. This equals \$3.85.
22. 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. As Ms. Miller was only partially successful, I order Burley

to reimburse her \$62.50 for half the \$125 in CRT fees she paid. Neither party claimed any dispute-related expenses.

ORDERS

23. Within 14 days of the date of this order, I order Burley to pay Ms. Miller a total of \$1,276.35, broken down as follows:
- a. \$1,210.00 as reimbursement for overcharges,
 - b. \$3.85 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
24. Ms. Miller is entitled to post-judgment interest, as applicable.
25. 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.
26. 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.

Micah Carmody, Tribunal Member