Civil Resolution Tribunal

Date Issued: April 14, 2022

File: SC-2021-006303

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ottenson v. 2 Burley Men Moving Ltd.*, 2022 BCCRT 442

BETWEEN:

WENDY OTTENSON and CHRISTOPHER OTTENSON

APPLICANTS

AND:

2 BURLEY MEN MOVING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about moving services.

2. The applicants, Wendy Ottenson and Christopher Ottenson, say they hired the respondent moving company, 2 Burley Men Moving Ltd. (Burley), for a long-haul

residential move from Regina to Nanaimo. The Ottensons say Burley damaged several pieces of their furniture, did not properly weigh their property, and overcharged them. The Ottensons also say Burley was late picking up and dropping off their property, resulting in Mr. Ottenson having to take time off work.

3. The Ottensons claim a total of $4,500, but do not break up this amount based on their various claims. Burley admits it damaged some of the Ottensons's property, but says the damages payable are limited by a clause in the parties' contract. Burley denies overcharging.

4. The Ottensons are self-represented. Burley is represented by 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 parties to a dispute that will likely continue after the dispute resolution process has ended.

6. 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.

7. 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.

8. 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.

ISSUES

9. The issues in this dispute are:

    a. How much are the Ottensons entitled to for their undisputedly damaged property?

    b. Did Burley overcharge the Ottensons and, if so, by how much?

    c. Is Mr. Ottenson entitled to lost wages for taking time off work?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, as the applicants, the Ottensons must prove their claims 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.

How much are the Ottensons entitled to for their undisputedly damaged property?

11. As noted above, the Ottensons state Burley negligently handled their furniture while providing its moving services. The Ottensons provided photos of several pieces of damaged furniture, including a dining chair, bar stool, dining table, leather chair, end tables, a bench, dresser, desk, office chair, and coffee table. They also show dirt marks/stains on a couch.

12. Burley does not deny damaging this furniture, but says the Ottensons's claim is limited to the signed "protection plan" which limits compensation for damaged property to $0.60 per pound. Burley said this term was agreed to and signed by the Ottensons on the parties' contract. Burley says it offered a $420 refund based on the "protection plan" limitation, but did not provide how it came up with that number. It is also unclear whether that amount was ever actually paid to the Ottensons.

13. Both parties submitted copies of their contract. The front page of the contract states "Client Disclaimer (see reverse for terms)". The contract is signed by Mr. Ottenson, under where it states "I have read, understood and accept terms and conditions as detailed on reverse". Notably, neither party submitted a copy of the backside of the parties' agreement, which details the agreement's terms. Nothing on the front page limits Burley's liability for damaging a customer's property. Parties are told they must provide all evidence that is relevant to their dispute. As Burley intends to rely on the terms to limit their liability for the furniture damage, it should have submitted that evidence in support. However, it did not. Therefore, I find Burley has not proven there was a limitation clause.

14. So, what are the Ottensons's losses for their damaged property? In support of their claim, the Ottensons provided a spreadsheet detailing the damaged items and either their replacement cost or cost to repair, totaling $5,053. However, the Ottensons did not provide any receipts, invoices, or repair quotes for any of the items. I find the Ottensons have failed to provide evidence in support of the amount they seek.

15. That said, given that Burley acknowledges it damaged several of the Ottensons's items, and because I find there is no evidence before me about any agreed limitation of liability, on a judgment basis I find Burley must compensate the Ottensons $1,500 for the damage as indicated in the photographs provided. As there is no indication the Ottensons have already paid to repair or replace these items, I find pre-judgment interest under the *Court Order Interest Act* (COIA) is not payable on this amount.

Did Burley overcharge the Ottensons and, if so, by how much?

16. The parties' agreement was that the move would be charged by weight, at $950 per 1,000 lbs, plus a $75 administration charge and a $900 storage fee. The Ottensons say they were told the truck would be weighed before packing up their items, after the truck was fully loaded, and again after the truck was unloaded. The Ottensons further say Burley estimated the weight would be approximately 5,000 lbs, but they were later billed for 7,120 lbs. Although the Ottensons disagreed with the amount charged, Burley would not release their property unless the bill was paid in full, with any discrepancy to be worked out later. They say they were only told via a text message that the weight was 7,120 lbs. The Ottensons asked several times for copies of the weigh scale tickets, but they were never received. Burley now says no weigh scale tickets are available for this job because those crew members are no longer with the company.

17. I find Burley is unable to substantiate the weight of the load for which it billed the Ottensons. So, I find Burley should only have billed the Ottensons for the 5,000 lbs it estimated, not the unverifiable 7,120 lbs. Therefore, I find the Ottensons should have only been billed a total of $5,748.75 (5,000 lbs at $950/1,000 lbs, plus $75 admin fee and $900 storage fee, plus GST). It is undisputed the Ottensons actually paid $8,000.95. I find they are entitled to the difference of $2,252.20.

18. The Ottensons are entitled to pre-judgment interest under the COIA on the $2,252.20 from the date of payment (August 6, 2021) to today's date. This amounts to $6.98.

Is Mr. Ottenson entitled to lost wages for taking time off work?

19. Mr. Ottenson says Burley was a day late in delivering their property, and arrived August 6, 2021 instead of August 5, 2021. He claims for 2 days of work he had to take as "vacation" days. I dismiss this claim for two reasons.

20. First, there is no evidence Mr. Ottenson suffered any monetary loss by taking the time off.

21. Second, there is nothing in the evidence that indicates the parties had agreed to a specific date the Ottensons's property would arrive from Regina to Nanaimo. Therefore, I am unable to conclude that Burley was late or otherwise unreasonably delayed delivery, resulting in Mr. Ottenson having to take unscheduled time off work.

Conclusion

22. I find the Ottensons are entitled to a refund of $2,252.50 plus $1,500 for damaged property, for a total of $3,752.50, plus applicable pre-judgment interest.

23. 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 Ottensons were successful, I find that they are entitled to reimbursement of the $200 they paid in tribunal fees. As Burley was not successful, I dismiss its claim for $50 in CRT fees. No dispute-related expenses were claimed.

ORDERS

24. Within 21 days of the date of this decision, I order the respondent, 2 Burley Men Moving Ltd., to pay the applicants, Wendy Ottenson and Christopher Ottenson, a total of $3,958.73, broken down as follows:

    a. $3,752.50 in damages,

    b. $6.23 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $200 in tribunal fees.

25. The Ottensons are also entitled to post-judgment interest, as applicable. I dismiss Burley's claim for $50 in CRT fees.

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 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.

Andrea Ritchie, Vice Chair