Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Simple Moves North Shore Movers Inc. v. Kenney*, 2022 BCCRT 452

B E T W E E N :

SIMPLE MOVES NORTH SHORE MOVERS INC.

APPLICANT

A N D :

MICHELLE KENNEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This dispute is about payment for a residential move. The respondent, Michelle Kenney, hired the applicant, Simple Moves North Shore Movers Inc. (Simple), to move her from one apartment to another. The parties agreed to a $239 hourly rate.

2. Ms. Kenney paid a $200 deposit to book the move. After the move, when presented with an invoice based on 12.5 hours of work, Ms. Kenney refused to pay it. She later tried to pay $1,100, which I infer is what she believes she owed.

3. Simple claims $3,030.33, based on its invoice. An employee represents Simple.

4. Ms. Kenney says the move should have taken 4-5 hours rather than 12.5 hours. She says the movers were inexperienced and incompetent. She does not say what amount she should have to pay. Ms. Kenney represents herself.

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 whether Simple is entitled to some or all of the claimed $3,030.33 under its contract with Ms. Kenney.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Simple must prove its 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. The background facts are undisputed. Ms. Kenney hired Simple to move her from a 1,092 sq. ft. 2-bedroom condo (origin) to a 664 sq. ft. 1-bedroom condo (destination). As Ms. Kenney was downsizing, there was only 1 bed to move. The distance of the move was a 4-minute drive. Ms. Kenney paid a $200 deposit to book the move. Simple promised 1 truck, 2 movers and an on-site move supervisor, which it provided. The move took place on June 23, 2021. Before the move was finished, Simple called in a 4th mover and an extra truck to collect the bed and six chairs that did not fit in the first truck. The move took 11.5 hours, to which 1 hour was added for travel time. Ms. Kenney refused to pay Simple's invoice. In the months following the move, Ms. Kenney tried to pay Simple $1,100, but Simple did not accept her e-transfers.

12. Ms. Kenney says when she booked the move she spoke on the phone with Simple's "move coordinator". She says the move coordinator estimated 4 hours at $239 per

hour, totaling $1,003.80. In contrast, Simple says it does not employ move coordinators (as opposed to move supervisors) and does not estimate condo moves. I find nothing turns on this as the emailed estimate is clear that Simple provides a "Promised Price" only after an in-person consultation, which undisputedly did not occur here. It says in any other case, the moving cost is finalized after the move. I find Simple provided an estimate only and not a fixed-price contract.

13. The estimate is clear that there were "no hidden charges", just the hourly rate. The billed time was to start when the truck arrived at the origin and end when the truck left from the destination, although 1 hour of travel was to be added. Breaks, including lunch "if necessary", were also to be added to the hours. Ms. Kenney says she understood that she would likely have to pay for a lunch break.

14. Ms. Kenney argues that the move should have been completed in 4 or 5 hours, not 12.5 hours. It is generally an implied term in contracts for professional services that the professionals will perform the services to a reasonably competent standard. In open-ended contracts to pay by the hour, courts may also imply a term that the hours spent were reasonably required and put to some useful purpose (see *Herbert v. Smith*, 2010 NSSM 44, paragraph 26). I find it is appropriate to imply both terms here. Still, the burden is on Ms. Kenney to show the hours were not spent reasonably or to a reasonably competent standard.

15. Ms. Kenney says the 2 movers were not adequately trained. She says 1 mover admitted that it was his first day on the job and that he received no previous training. Simple acknowledges that its 2 movers were "trainees" but says they had 5 hours of classroom time. Simple provided no training documentation in support or statements from the movers. So, I prefer Ms. Kenney's evidence on this point, and I find at least 1 mover had no training or experience and the other was still a trainee.

16. Ms. Kenney says the movers did not appear to know how and where items should be loaded, or how to safety load and transport items. For example, she says the movers did not bring a dolly down to her storage locker, and instead carried boxes individually. Simple did not specifically dispute this, and I accept it.

17. Ms. Kenney says Simple failed to provide sufficient dollies, tie-downs and safety equipment. Ms. Kenney relies on a statement from GM, who provided “door security watch” and I infer is Ms. Kenney’s friend. GM said the 2 movers did not have gloves, enough dollies, straps for dollies, or a flat-bed furniture dolly. Although none of the parties or witnesses said so explicitly, I find the movers likely had only 1 dolly or hand-truck, and would have been more efficient with 2 given the number of boxes, discussed below.

18. Ms. Kenney says she sold most of her large pieces of furniture because she was downsizing. Simple did not dispute this. Ms. Kenney also relies on an online moving time and price estimator. It provides an estimate of 3 to 5 hours for a 1-bedroom apartment and 5 to 7 hours for a 2-bedroom apartment. I infer that this does not include driving time, but as noted, the driving time here was minimal. I accept this evidence of average moving times, recognizing that various factors can cause a move to take more or less time than average.

19. One of those factors is the number of boxes to move, which is disputed here. Ms. Kenney says she had no more than 100 boxes. Simple says she had over 200 boxes. Ms. Kenney provided witness statements from 2 friends. ST said they helped Ms. Kenney pack and estimated they saw 70-80 boxes. EN said they were in Ms. Kenney’s old condo just before the move and estimated they saw 75-80 boxes. Neither of the 2 movers gave a statement. Simple’s move supervisor, JF, gave a written statement that I return to below, but JF did not describe the number of boxes. With that, I find there were no more than 100 boxes. For its part, Simple says a typical 1-bedroom condo has 20-30 boxes, although it provided no evidence in support.

20. Simple says the move involved long walks from where the truck could be parked to the elevators. Based on Ms. Kenney’s photos I find the walks were not unusually long.

21. Simple relies on an unsigned statement from JF describing the “extraordinary circumstances” of the move. JF said there was a storage locker in the building, an extra storage locker in the unit, an “extra glass sheet” to move, and boxes “hiding everywhere”. I find the presence of storage lockers and a glass sheet are not

particularly unusual or onerous for a residential move, and the estimate already noted the glass sheet and 1 of the 2 storage lockers.

22. There are 2 issues of substance in JF's statement. The first is that JF said there was no elevator key, so the entire building was able to use the elevator. In contrast, Ms. Kenney says she provided an elevator key, but the movers did not know how to use it. The second is that JF said that upon viewing the apartment and its contents they estimated loading would take 4 hours. In contrast, Ms. Kenney says JF said they would be "out in 2.5 hours." I find this is important not because it was a binding estimate, but because JF's initial impression is useful evidence of how long the move should have taken, absent unforeseen circumstances.

23. On balance, I prefer Ms. Kenney's evidence on both points. Simple's representative, JP, says JF "dictated" their statement to JP. JF did not sign the statement, so I am not satisfied they read the statement to ensure it accurately captured their evidence. As a result, I put less weight on JF's unsigned statement. I find the movers did not know how to use the elevator key, and JF's loading estimate was 2.5 hours.

24. Considering all the evidence, I am satisfied that not all of the 12.5 hours were reasonably required. I find Simple's decision to have 2 inexperienced trainees on the same move was an error in judgment. I find at least one experienced mover and with adequate equipment, Simple could have loaded at the origin in no more than 3 hours and unloaded at the destination in the same time. In reaching this conclusion, I have considered JF's initial 2.5-hour estimate and added time to account for Ms. Kenney's large number of boxes and an extra storage locker that may not have been immediately apparent.

25. In addition to the 6 hours of moving time, the contract requires a further hour for travel, which I allow, and time for lunch, for which I allow 30 minutes. In total, I find 7.5 hours is appropriate. At $239 per hour plus GST, the total is $1,882.13, from which Ms. Kenney's $200 deposit must be deducted. I order Ms. Kenney to pay $1,682.13. I have factored into this assessment that Simple used a second truck and a fourth mover, for which it added $89 to its invoice. However, the contract was clear that the

hourly rate covered everything and there were no hidden charges, so I do not allow this additional charge.

26. I find it is not necessary to address Ms. Kenney's misrepresentation argument. I find the argument unpersuasive given Simple's website does not make strong claims about speed or efficiency or the degree of training and skill its movers have.

27. The *Court Order Interest Act* says interest must not be awarded if there is an agreement about interest between the parties. It is not entirely clear whether the parties had an agreement about interest but Simple says it does not seek interest in this dispute, so I make no order for interest.

28. 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 Simple was partially successful, I find it is entitled to reimbursement of $87.50 for half its $175 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order Ms. Kenney to pay Simple a total of $1,769.63, broken down as follows:

    a. $1,682.13 in debt, and

    b. $87.50 in CRT fees.

30. Simple is entitled to post-judgment interest, as applicable.

31. 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.

32. 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