



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *2 Burley Men Moving Ltd. v. Fraser*, 2022 BCCRT 468

B E T W E E N :

2 BURLEY MEN MOVING LTD.

APPLICANT

A N D :

SHARON FRASER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about moving fees. The applicant, 2 Burley Men Moving Ltd. (Burley), says the respondent, Sharon Fraser, refused to pay its invoice without justification. It claims for \$2,559.37.

2. Ms. Fraser says Burley is only rightly owed an amount within Burley's verbal estimate of \$1,600 to \$1,800, less compensation for damage caused by Burley during the move. Ms. Fraser did not say how much compensation would be appropriate and did not file a counterclaim.
3. An employee represents Burley. Ms. Fraser represents herself.
4. For the reasons that follow, I find Burley has partially proven its claims and make the orders set out below.

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. Some of the evidence in this dispute amounts to a "they said, she said" scenario. 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

ISSUES

9. As noted above, Ms. Fraser acknowledges Burley should be paid, but says something less than the claimed amount is appropriate. So, I find the issues in this dispute are as follows:
 - a. Should I reduce Burley's invoice based on its verbal estimate or agreement?
 - b. Is Ms. Fraser entitled to a set-off for property damage?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Burley as the applicant must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed background facts. On July 25, 2021, Ms. Fraser phoned Burley to obtain a quote for moving household goods within BC. Burley verbally provided a range of \$1,600 to \$1,800. Ms. Fraser agreed to hire Burley.
12. Burley alleges that the parties entered into a written contract. A July 30, 2021 printout shows it was titled "Appointment Confirmation - Terms and Conditions". The contract had the following key terms. Burley would send 2 movers at 8:00 a.m. on July 28, 2021, to move the contents of Ms. Fraser's 1 bedroom apartment to another location.

Ms. Fraser would pay an hourly rate of \$150, and to pay for 6 hours of travel plus \$150 for fuel. Burley also agreed to provide a basic coverage rate for damaged articles at a rate of \$0.60 per pound per article. Ms. Fraser had to submit such claims for damaged items within 30 days of move completed, and to a \$50 deductible for such claims. The appointment confirmation did not refer to any estimate.

13. The appointment confirmation was not signed and there is no evidence about when or if Burley sent it to Ms. Fraser. As discussed further below, I find it unproven that this appointment confirmation was a binding contract.
14. A July 28, 2021 invoice shows the movers arrived that day at 8:30 and charged for 4 hours of driving and 11.25 hours of labour, at the hourly rate of \$150, for a total of \$2,287.50. The movers also added GST and the fuel surcharge, for a total of \$2,539.37. Ms. Fraser says she did not pay it because Burley said it wanted cash only, she had only up to \$2,000 cash set aside for the move, and she couldn't find her cash amongst her belongings.

Issue #1. Should I reduce Burley's invoice based on its verbal estimate or agreement?

15. In the non-binding decision of *2 Burley Men Moving Ltd. v. Nash*, 2021 BCCRT 1086 (*Nash*), a CRT Vice Chair found that Burley's terms and conditions printout did not apply. This was because the document was not signed and there was no evidence that it was sent to the respondent customer. The Vice Chair also noted that Burley was a relatively sophisticated litigant in that it had appeared before the CRT multiple times. As such, Burley knew that it was required to produce evidence relevant to the dispute. See *Nash* at paragraph 13.
16. I find the reasoning in *Nash* applicable to this dispute. As noted above, the July 30, 2021 appointment confirmation was unsigned and there is no indication it was sent to Ms. Fraser before the move. The printout date is also 2 days after the move completed. So, I find the printout was not binding.

17. Ms. Fraser's submission is that Burley's representative provided a quote for up to \$1,800 for the move. Burley provided no submissions or evidence from the person that Ms. Fraser talked to. So, I find Ms. Fraser's version of events is largely uncontradicted by any evidence. Given this, I find Burley was entitled to charge up to \$1,800. I find Ms. Fraser should pay this amount unless she can prove entitlement to compensation for damage done to her property.

Issue #2. Is Ms. Fraser entitled to a set-off for property damage?

18. Ms. Fraser did not file a counterclaim. However, I have considered whether she is entitled to any set-off against the \$1,800 I have ordered her to pay Burley. Ms. Fraser provided photos of the following damage that she says Burley is liable for: black marks on a mattress, wall damage, a broken stationary bike monitor, a bed missing a support slat, and a broken dresser wheel.

19. Previous CRT decisions have held that the *Motor Vehicle Act* (MVA) applies to movers like Burley that operate a business vehicle on a highway as described in section 237. Section 37.39(2) of the *Motor Vehicle Regulation* (MVR), made under the MVA, says carriers who operate a business vehicle and accept household goods for shipment must issue a bill of lading meeting various requirements. The bill must incorporate conditions set out in 18 articles. Articles 1 and 5 essentially make the carrier liable for damage caused by the carrier's negligence, but the burden of disproving negligence is on the carrier. See *Stevens v. Blakes Moving & Storage (1993) Ltd.*, 2020 BCCRT 1205 and *Haar v. Abraham Mahar (dba Abe Moving Services)*, 2020 BCCRT 528. In *Stevens* at paragraph 18, the CRT held that articles 1 and 5 were implied terms even though the carrier did not properly issue a bill of lading as required under the MVR.

20. In *Hall v. Kelowna Movers*, 2018 BCCRT 265, the Vice Chair found that the law of bailment applied to movers, and as such, the burden of proof was on the movers to show the loss was not a result of their failure to take the care a reasonable person would take of the goods.

21. CRT decisions are not binding but I find the above-cited decisions persuasive. I find that under both the MVR and the law of bailment, the burden is on Burley to disprove negligence. Burley did not provide any evidence from its movers or other evidence to show it took reasonable measures to safeguard Ms. Fraser's goods. So, I find Burley is liable for the damage shown in the photographs.
22. The difficulty here is that, as noted above, Ms. Fraser did not quantify her loss. So, on a judgment basis, I set off Burley's claim by \$100, and order Ms. Fraser to pay the balance of \$1,700.
23. The *Court Order Interest Act* applies to the CRT. Burley is entitled to pre-judgment interest on the \$1,700 debt from July 28, 2021, the date of the move to the date of this decision. This equals \$5.62.
24. 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. I see no reason in this case not to follow that general rule. Ms. Fraser succeeded in some respects, but Burley ultimately proved the majority of its claim. So, I find Burley is entitled to reimbursement of \$125 in CRT fees.

ORDERS

25. Within 14 days of the date of this order, I order Ms. Fraser to pay Burley a total of \$1,830.62, broken down as follows:
 - a. \$1,700 in debt,
 - b. \$5.62 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
26. Burley is entitled to post-judgment interest, as applicable.
27. 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.

28. 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.

David Jiang, Tribunal Member