



# Civil Resolution Tribunal

Date Issued: August 11, 2022

File: SC-2022-000089

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Valley Waste & Recycling Incorporated v. EPS 4450*, 2022 BCCRT 909

BETWEEN:

VALLEY WASTE & RECYCLING INCORPORATED

**APPLICANT**

AND:

EPS 4450

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

## **INTRODUCTION**

1. This dispute is about waste totes. The applicant waste hauler, Valley Waste & Recycling Incorporated (Valley), claims \$1,232 for 11 organic waste totes it says the respondent strata corporation, named as EPS 4450 (strata), used and failed to return.
2. The strata admits it received Valley's garbage totes but denies it failed to return any.
3. Valley is represented by an employee. The strata is represented by its strata council president, CB.

## **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, the parties of this dispute call into question the credibility, or truthfulness, of the other. 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.
8. Valley's original claim said it provided 20 totes and that 9 homeowners returned totes, with 11 being owed. In its later submissions, Valley corrected this to say 113 totes were provided and 102 homeowners returned their totes, still claiming 11 totes as outstanding. Bearing in mind the CRT's flexible mandate, I allow the change in the claim description. I say this because the substance of the claim (compensation for 11 totes) is the same and because the strata had an opportunity to respond to the change. I address below the parties' submitted evidence and arguments.
9. The respondent "EPS 4450" does not appear to be a legal entity, as named. As a strata corporation, I would expect the strata's legal name to be The Owners, Strata Plan EPS 4450. Given my conclusion below, nothing turns on the fact Valley appears to have incorrectly named the respondent.

## **ISSUES**

10. The issues are whether the strata failed to return 11 waste totes as claimed, and if so, is Valley entitled to \$1,232.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant Valley must prove its claim on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
12. The parties signed a September 18, 2017 waste hauling contract, which includes Valley providing organic waste totes (also referred to as toters). The strata cancelled the agreement effective September 17, 2020. As part of the contract, Valley provided the strata with a number of organic waste totes, which were to be returned on

termination of the contract. The strata was under construction in 2017 and was built over 3 years. The parties' contract was for 125 units, which is what the strata would have once fully occupied. However, at the time the contract started, there was only service for 8 units as that was the number of completed units. None of this is disputed.

13. What is disputed is the number of totes Valley provided and the number the strata returned.
14. Valley says it provided 113 organic waste totes and that 102 homeowners returned totes. Valley claims \$100 plus GST and PST for the 11 totes it says were not returned, which totals the claimed \$1,232.
15. Valley says its contract was an "escalating" one, where the number of totes provided would increase over time once units are completed, sold, and occupied. The contract undisputedly does not specify how the increase in units occurs and it does not specify how the receipt of the totes is to happen. Rather, the contract's "special instructions" only say that "service begins with 8 units at \$13.50/unit. Valley will supply organic totes only".
16. Valley says "based on our experience", the escalating contracts are based on notification from the strata council, property manager "and/or" unit owner that a unit requires service. Valley says it then delivers a tote to the unit address, and that additional unit is added to the totes' quantity figure in future invoices.
17. Valley further says that "industry practice" is to deliver the tote to the site address and that there is no requirement to obtain a signature for the delivery.
18. I agree with Valley that the customer, here the strata, is responsible under the parties' contract for totes delivered under it. However, I find Valley must prove the number of totes delivered and the shortfall in the number of totes returned.
19. The strata says Valley's records show only 90 were delivered and Valley admits over 90 totes were returned. At the same time, the strata says that during its construction its site was large and open with multiple points of access. It says, "bins may simply

have disappeared into the local homeless camps”. The strata says it should not be held responsible for any allegedly missing totes, given Valley has no proper accounting of totes delivered and no proof of receipt.

20. Valley says it has “not historically entered the deployment” of totes into its system where the customer calls its salespeople directly. Valley further says the salesperson would use their own personal vehicle to deliver the totes but that information was not logged into its routing system. Valley says this practice is not an unusual one, and that failure to log it into its system is due to a fast-approaching collection day and because it is not efficient to send a commercial truck and driver to just drop off one tote.
21. I find Valley’s recordkeeping was inadequate. Apart from a largely incomprehensible handwritten list, there is no reconcilable record in evidence that even 90 totes were delivered, let alone 113. While Valley refers to an “industry practice” as support for its approach, it submitted no evidence to prove such a practice. I find Valley has not established that it delivered 113 totes as claimed. While it admits “not every [tote] delivery was documented”, Valley says it was servicing 113 units and so that is why it calculates 11 missing totes. It bases the 113 figure on its August 2020 invoice. I do not accept Valley’s assertion that just because there may have been 113 occupied units that that was the number of totes Valley provided. In support of my conclusion, there is a sticky note on one dispatch ticket that Valley submitted, which indicated that one unit “already had tote”. I also do not find Valley’s own August 2020 invoice, shortly before the contract’s termination, establishes that 113 totes had been delivered just because 113 units may have been serviced. Similarly, I do not agree with Valley that just because one unit requested a replacement tote that Valley likely had delivered the 113 totes as claimed.
22. I also find Valley has not shown it only picked up 102 totes. Valley’s documentation of this is similarly inadequate.

23. Further, there is nothing in the parties' contract about the value of replacing any missing totes. Other than its own invoice, Valley submitted no evidence to support the claimed \$100 plus tax cost per tote.
24. Given my conclusions above, I dismiss Valley's claim as I find it unproven the strata received or failed to return the claimed 11 totes.
25. 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 Valley was unsuccessful, I dismiss its claim for reimbursement of paid CRT fees. The strata did not pay CRT fees. There is some indication one of the parties claims \$175 in dispute-related expenses, no evidence was submitted by any party to support such an expense claim. So, I make no order for expenses.

## **ORDER**

26. I dismiss Valley's claim and this dispute.

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Shelley Lopez, Acting Chair and Vice Chair