



Civil Resolution Tribunal

Date Issued: September 1, 2022

File: SC-2021-009327

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chapman v. Action Movers and Contents Inc.*, 2022 BCCRT 982

BETWEEN:

MICHELLE CHAPMAN

APPLICANT

AND:

ACTION MOVERS AND CONTENTS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a residential move. The respondent, Action Movers and Contents Inc. (Action), moved household possessions for the applicant, Michelle Chapman. Ms. Chapman says that Action damaged several items during the move, including a mirror, desk, paper shredder, table leaf, and her brother's TV. She claims

\$3,288 for the estimated repair or replacement value of the damaged items, plus \$1,500 for “the trouble of having to go this far and suffering,” which totals \$4,788.

2. In its Dispute Response, Action initially denied causing any damage. However, in its later submissions, Action admitted that it caused some damage but not the TV damage. Action says the amount of Ms. Chapman’s claim is unreasonable, but it does not say what damage it caused or how much it owes Ms. Chapman. Action also says that the parties agreed Action’s liability for damage was limited to “value protection” of \$0.60 per pound for moved possessions.
3. Ms. Chapman is self-represented in this dispute. An employee or principal represents Action.

JURISDICTION AND PROCEDURE

4. These are the formal 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.
5. 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. 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 in the interests of justice.
6. 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.

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. The maximum CRT small claim amount is \$5,000. Ms. Chapman submitted as evidence calculations that estimated repair or replacement costs of \$3,708.08, which together with \$1,500 for “trouble” totalled \$5,208.08. However, I find Ms. Chapman’s claims are limited to the \$4,788 she claimed in her Dispute Notice.

ISSUES

9. The issues in this dispute are:
 - a. Did Ms. Chapman agree to a contractual term limiting Action’s liability to \$0.60 per pound for damaged items?
 - b. How much does Action owe for the damage to Ms. Chapman’s possessions?
 - c. Does Action owe \$1,500 or another amount for inconvenience and suffering?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Ms. Chapman must prove her claims on a balance of probabilities, meaning “more likely than not.” I have read the parties’ submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision. Action chose not to submit any documentary evidence despite having an opportunity to do so.

Liability Limits

11. The undisputed evidence is that there was no formal written contract for Action’s moving services. Ms. Chapman does not dispute Action’s submission that she

accepted Action's quote online, and that she also accepted its terms and conditions. So, I find that Ms. Chapman saw and accepted the terms and conditions, and that they became part of the parties' binding contract.

12. I find the contract's terms and conditions said that Action's services included Released Value Protection that covered furniture and personal effects to a maximum value of \$0.60 per pound of weight, subject to certain exclusions. Action suggests that its liability for damage is limited to this Released Value Protection of only \$0.60 per pound. I disagree, for the following reasons.
13. A company intending to limit or exclude liability in a contract must do so in clear and unambiguous terms (see *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, 1997 CanLII 307 (SCC) at paragraphs 27 and 28). I find the terms and conditions did not clearly indicate that Action's responsibility for damage was limited to the Released Value Protection coverage it provided. Although not binding on me, I note that other CRT decisions have reached the same conclusion in similar circumstances, for example *2 Burley Men Moving Ltd. v. Iranzad*, 2022 BCCRT 501.
14. I find that the terms and conditions did limit Action's responsibility for damage in 2 situations. Specifically, I find the terms and conditions said Action did not take responsibility for damage where others assisted with moving the damaged item, or for forcing furniture through tight spaces. However, I find the evidence does not show that either of those situations applied. So, I find the terms and conditions do not limit Action's responsibility for moving damage. I address the claimed damage and its value below.

TV Damage

15. Ms. Chapman says Action caused internal damage to her brother's TV during the move, so it now only displays thin lines on the screen. However, Ms. Chapman's brother is not named as a party to this dispute. Ms. Chapman does not explain how she has standing to claim damages for a TV that she does not own.

16. I find the submitted evidence does not show that Ms. Chapman had any rights to her brother's TV. So, I find that Ms. Chapman does not have standing to bring a claim for damage to her brother's TV.
17. Further, I find it is unproven that Action damaged the TV, for the following reasons. Ms. Chapman only complained of TV damage 2 weeks after the move, after she moved the TV again and around the time she admits she "angrily threw the TV" into a truck. There is no evidence that Ms. Chapman turned on the TV or that it worked either before Action's move or in the 2 weeks following that move. Ms. Chapman also quoted her roommate, SS, who said he saw a box on top of the TV and a scratch on its screen during Action's move. However, she did not submit SS's witness statement, so I find the quotation is not reliable and I give it little weight. In any event, the quotation provides little support for a finding that Action damaged the TV.
18. For the above reasons, I dismiss Ms. Chapman's claim for TV damages.

Mirror, Shredder, and Table Leaf Damage

19. I find photos in evidence show a mirror detached from its wooden frame, a partially disassembled paper shredder that Ms. Chapman says no longer works, and a table leaf with faint nicks and scrapes. Action does not directly dispute that it damaged Ms. Chapman's mirror, paper shredder, and table leaf. So, I find Action is responsible for that damage.
20. Ms. Chapman says she fixed the mirror with tape, but it was not as secure as it used to be. Given that she says tape alone "fixed" the mirror, albeit insecurely, I find Ms. Chapman does not claim that Action caused the slight scratches on its wooden frame that are visible in a submitted photo. Ms. Chapman submitted an advertisement for a new wood-framed mirror priced at \$139.99. However, I find the cost of a new mirror would likely over-compensate Ms. Chapman for the used mirror with a scratched frame. There is no evidence showing the repair or replacement value of Ms. Chapman's used mirror. On a judgment basis, I find Ms. Chapman is entitled to \$50 for mirror damage.

21. Turning to the non-functional shredder, Ms. Chapman submitted an advertisement for a similar shredder model that cost \$64.12. I find Ms. Chapman is entitled to \$64.12 as reasonable damages for the replacement value of her shredder.
22. Ms. Chapman says she repaired the table leaf damage by refinishing it herself. She submitted an \$11.94 advertisement for wood stain and a \$10.85 advertisement for varnish. I find those are reasonable repair expenses, so I allow Ms. Chapman's claim for table leaf repair materials totalling \$22.79.

Desk Damage

23. Ms. Chapman submitted several close-up photos of significant scratches and scrapes on a desk. She also submitted a photo of the entire desk, which only showed only small scratches and scrapes, particularly on the upper edge of the desk's writing surface. Ms. Chapman does not say when each photo was taken. I infer from the apparent level of damage shown that the photo of the entire desk was taken before Action's move, and the close-ups were taken after that move.
24. Based on the submitted photos, I find Ms. Chapman's desk was likely slightly scratched and scraped before Action's move. I find it was more scratched and scraped after Action's move. I find there is no evidence showing whether the additional damage caused by Action was repairable. So, I find Ms. Chapman is entitled to the replacement value of her desk in its used, pre-move condition. However, there is no direct evidence of that desk's replacement value.
25. Ms. Chapman submitted advertisements for 4 new desks that appeared somewhat similar but significantly larger than her used desk, ranging in price from \$1,169.99 to \$1,884.99. The advertisements show only a model name, price, and small photo for each desk, and no other information. There is no evidence, such as more detailed advertisements or product brochures, showing the advertised desks' features or the materials used in their construction, or the materials and features of Ms. Chapman's used desk. So, I find the evidence before me does not show that the advertised desks were comparable to Ms. Chapman's used desk and were reasonable replacements.

26. Given the significantly larger size of the advertised new desks, I find that the advertised price of the new desks would likely over-compensate Ms. Chapman for her smaller desk. Further, given the pre-existing scratches and scrapes on Ms. Chapman's used desk, I find that replacing the desk with a new, scratch-free desk would result in what is known in law as betterment. A betterment occurs when a restoration or repair increases the value of damaged property (see *Madalena v. Kuun*, 2009 BCSC 1597). Damages can be reduced to account for betterment, and I find it is appropriate to do so in these circumstances. On a judgment basis, and accounting for the advertised desk size differences and betterment, I find Ms. Chapman is entitled to \$400 for the replacement value of her used desk.

Inconvenience and Suffering

27. As noted, Ms. Chapman claims \$1,500 for the trouble of having to bring a CRT claim, and alleged suffering. I find Ms. Chapman has not submitted any evidence showing that Action caused her unreasonable inconvenience. I also note that under CRT rule 9.5(5), parties are generally not compensated for their time spent on a CRT dispute.

28. Turning to suffering, I infer that Ms. Chapman claims Action caused her stress and anxiety, or similar distress. To receive damages for her alleged suffering, I find Ms. Chapman would have to prove it was more than minor and transient, and was a serious and prolonged mental disturbance that rose above the level of ordinary annoyances, anxieties, and fears (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 and *Saadati v. Moorhead*, 2017 SCC 28). However, I find Ms. Chapman submitted no evidence showing that she experienced any suffering, and in particular no medical evidence of the existence, severity, or cause of any suffering. So, for the above reasons, I dismiss Ms. Chapman's \$1,500 claim for trouble and suffering.

CRT Fees, Expenses, and Interest

29. The *Court Order Interest Act* (COIA) applies to the CRT. I find that under the COIA, Ms. Chapman is entitled to pre-judgment interest on the \$536.91 owing. I find this

interest is reasonably calculated from the date of Action's November 13, 2021 move until the date of this decision. This equals \$3.10.

30. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. Ms. Chapman was partly successful in this dispute, so I find she is entitled to reimbursement of half of her paid CRT fees, which equals \$87.50. Action paid no CRT fees and claims no CRT dispute-related expenses.
31. Ms. Chapman did not claim CRT dispute-related expenses in her Dispute Notice, but did so in her later submissions. Ms. Chapman claims \$7 for printing and computer use, although as an online tribunal the CRT does not typically order these types of expenses reimbursed. Further, I find receipts in evidence show this \$7 was spent on gift cards. So, I find the \$7 expense is unproven and I do not order its reimbursement. Ms. Chapman also claims \$47.25 in corporate search fees that she undertook to make her CRT claim, as shown in a submitted receipt. I find that is a reasonable dispute expense. Ms. Chapman was partly successful in this dispute, so I order Action to reimburse half that amount, which equals \$23.62. Ms. Chapman did not formally claim a \$300 expense for taking a day off work to "deal with this," as noted in her submitted expense calculations. So, I find she is not entitled to that unproven \$300 expense, which is also inconsistent with the CRT rule about compensation for time spent on a dispute.

ORDERS

32. I order that, within 30 days of the date of this decision, Action pay Ms. Chapman a total of \$651.13, broken down as follows:
 - a. \$536.91 in damages,
 - b. \$3.10 in pre-judgment interest under the COIA, and
 - c. \$87.50 in CRT fees and \$23.62 in CRT dispute-related expenses.

33. Ms. Chapman is also entitled to post-judgment interest under the COIA, as applicable.

34. I dismiss Ms. Chapman's remaining claims.

35. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Chad McCarthy, Tribunal Member