



Civil Resolution Tribunal

Date Issued: September 27, 2022

File: SC-2022-001796

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *467306 BC Ltd. v. Kendrick Equipment (2003) Ltd.*, 2022 BCCRT 1058

BETWEEN:

467306 B.C. LTD.

APPLICANT

AND:

KENDRICK EQUIPMENT (2003) LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about damage to an overhead door. The applicant, 467306 BC Ltd. (467), leased commercial space to the respondent, Kendrick Equipment (2003) Ltd. (Kendrick). 467 says Kendrick damaged the space's overhead door and refused to pay to have it repaired. 467 seeks \$2,366.70, the amount it paid to repair the door.

2. Kendrick says the door was damaged before it moved in. It denies owing 467 any money.
3. The parties are each represented by an authorized employee.

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). 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.
5. 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.
6. 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.
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.

Settled claims

8. In its original Dispute Notice, 467 also claimed for unpaid rent. The parties settled this claim and so the only claim before me in this dispute is about the overhead door's repair.

Late evidence

9. 467 provided some evidence late, after the parties had already provided submissions. Kendrick was provided with an opportunity to review and provide submissions on the late evidence, which it did. So, I find there is no prejudice in allowing the late evidence. Consistent with the CRT's flexible mandate, I have allowed and considered the late evidence as I find it relevant.

ISSUE

10. The issue in this dispute is whether Kendrick must pay 467 \$2,366.70 for a damaged overhead door.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant 467 must prove its claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
12. It is undisputed that Kendrick leased "Bay 5" from 467 from November 1, 2020 to October 31, 2021. There was no written agreement between the parties. 467 says in September 2021 it noted damage to the bay's overhead door. On November 22, 2021, after Kendrick vacated the space, 467 provided Kendrick with an invoice for repairing the door for a total of \$2,366.70, the amount claimed in this dispute.
13. Kendrick says the door was damaged by the bay's previous tenant, GWE. In support, Kendrick provided 4 witness statements including from its President, Vice President,

former Operations Manager, and another individual whose relationship to Kendrick is unknown. Each of the statements says that the bay's overhead door was damaged prior to Kendrick occupying the space on November 1, 2020. Although these statements support Kendrick's argument the damage was pre-existing, as employees (or former employees) of Kendrick, I find they are not disinterested witnesses.

14. However, I still find 467 has not proven Kendrick caused the door's damage. There is no evidence before me indicating the door's condition before Kendrick moved in, such as a walk-through inspection done by the parties or a statement from GWE. As noted, 467 bears the burden of proving Kendrick damaged the bay door. On balance, I find it has not done so. I dismiss 467's claim.

15. 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. As 467 was not successful, I dismiss its claim for reimbursement of tribunal fees. Kendrick did not pay any fees. Neither party claimed dispute-related expenses.

ORDER

16. I order 467's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair