



Civil Resolution Tribunal

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File: SC-2022-002447

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Eriksen v. B.C. Moving and Storage Ltd.*, 2022 BCCRT 1156

B E T W E E N :

DELLA MARIE ERIKSEN

APPLICANT

A N D :

B.C. MOVING AND STORAGE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a leather couch. The applicant, Della Marie Eriksen, hired the respondent, B.C. Moving and Storage Ltd. (BCMS), to move the couch and other household items. Ms. Eriksen says BCMS damaged the couch and claims \$1,518 as its replacement value.

2. BCMS denies damaging the couch. It also says that, to any extent that it did damage the couch, Ms. Eriksen contributed as she rushed the movers and prevented them from using the usual precautions. These include using shrink wrap or blankets to protect the couch during the move.
3. Ms. Eriksen represents herself. BCMS' owner represents it.
4. For the reasons that follow, I find Ms. Eriksen has partially proven her claim.

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 "she said, they 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.

BCMS' Late Evidence

9. BCMS provided as late evidence a written statement from DS, the dispatcher for BCMS. DS generally discusses phone conversations they had with Ms. Eriksen. Ms. Eriksen had the opportunity to view the evidence and provide submissions. I find the evidence relevant to this dispute. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice to the parties in allowing their late evidence. I note however, that my decision does not turn on DS' evidence as they were not present during the move.

ISSUE

10. The issue in this dispute is whether BCMS negligently damaged Ms. Eriksen's couch, and if so, whether any remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Eriksen must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. I begin with the undisputed background. Ms. Eriksen hired BCMS to move her household items to another residence. The parties did not rely on or refer to any written agreement.

13. BCMS' 2 movers were RD and CJ. They both provided written statements about the move. Ms. Eriksen also summarized events in an affidavit. I find their evidence consistent about the following facts.
14. RD and CJ arrived at Ms. Eriksen's residence on the planned date of March 28, 2022. RD and CJ moved the couch from the residence onto the moving truck. They then unloaded and moved it into Ms. Eriksen's new residence. While moving the couch through the front entrance of the destination address, they damaged the front door. I find from the photos that they chipped off wood and paint from the door.
15. The movers and Ms. Eriksen disagree on whether the movers damaged the couch at this time. On balance, I find it likely that they did so for several reasons. I find it likely that the impact that damaged the front door would also damage the couch. It is undisputed that the movers hit the door with the couch. Ms. Eriksen provided pictures of the couch. It had abrasions and tears on some edges and corners that I find would be consistent with the impact causing the damage.
16. I also find there is a close connection in time between the move and Ms. Eriksen's report of the damage. While Ms. Eriksen did not immediately point out the damage to the movers, she emailed and phoned BCMS about it the same day shortly after the movers left.
17. The evidence before me also suggests the couch was undamaged before the move. Both parties provided pictures of the couch before moving started. They do not show any preexisting damage, though I note the photos are blurry. Ms. Eriksen also provided an affidavit from her sister, DE. In the July 12, 2022 affidavit, DE said that the couch was in excellent condition before the move. While I find DE is not neutral, I find her affidavit still adds to the weight of evidence that generally supports Ms. Eriksen.
18. I return to the chronology. After the move, the parties exchanged emails in March and April 2022. BCMS waived its moving fee to compensate for the door damage.

However, BCMS denied causing any damage to the couch and refused to compensate Ms. Eriksen for it.

19. I turn to the applicable law. I find that Ms. Eriksen essentially alleges negligence. To prove BCMS negligently damaged the couch, Ms. Eriksen must show that BCMS owed her a duty of care, it breached the standard of care, and that the breach caused or contributed to reasonably foreseeable damage. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
20. Notably, in moving disputes the mover has the burden of disproving negligence. This is so, even though Ms. Eriksen bears the burden to prove her claims as applicant. See, for example, my decision of *2 Burley Men Moving Ltd. v. Fraser*, 2022 BCCRT 468 at paragraph 21. CRT decisions, including my own, are not binding, but I find the reasoning applicable to this dispute.
21. As Ms. Eriksen hired BCMS I find it owed her a duty of care. I find the applicable standard is that of a mover exercising the skill and care expected of a reasonably prudent and careful mover in similar circumstances. The standard is not perfection.
22. Here, both movers say Ms. Eriksen instructed them to refrain from using moving blankets or protective wrap. The movers says she requested this because she wanted to save time. Ms. Eriksen denies giving these instructions. She says she observed RD having difficulty with the plastic wrap. She says the movers decided on their own not to use any wrap or protective blankets. I find there is essentially an evidentiary tie on whether Ms. Eriksen instructed the movers to refrain from using a protective cover on the couch. As BCMS bears the burden to show it was not negligent, I find this does not assist BCMS.
23. There is no evidence before me that suggests the impact of the couch on the door was inevitable. I find that a prudent and careful mover would have avoided hitting the door with the couch. I find that avoiding such impacts would be normally expected of movers. I have already found that the movers hit the door hard enough to chip a piece of wood off it. I find that BCMS has not proven that it was not negligent.

24. This leaves the issue of the appropriate damages. A January 27, 2019 receipt shows Mr. Eriksen paid \$1,517.99 for it. Ms. Eriksen claims for the full replacement value of her couch. However, I find this would overcompensate Ms. Eriksen as her couch was used and there is no indication it is unusable or irreparable. In law, this is known as betterment.
25. In *Belanger v. 2 Burley Men Moving Ltd.*, 2020 BCCRT 1198, the CRT considered how to measure damages for a sofa worth \$3,700 new. The CRT found it unproven that the damaged sofa was irreparable. The CRT ultimately decided to limit damages to 50% of the cost of purchasing the sofa new. Although this decision is not binding, I find similar considerations apply in this dispute. On a judgment basis, I award Ms. Eriksen 50% of the value of her couch, or \$759.
26. The *Court Order Interest Act* applies to the CRT. Ms. Eriksen is entitled to pre-judgment interest on the damages award of \$759 from March 28, 2022, the date of the move, to the date of this decision. This equals \$4.88.
27. 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. I find Ms. Eriksen is entitled to reimbursement of \$125 in CRT fees.

ORDERS

28. Within 30 days of the date of this order, I order BCMS to pay Ms. Eriksen a total of \$888.88, broken down as follows:
 - a. \$759 as damages,
 - b. \$4.88 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
29. Ms. Eriksen is entitled to post-judgment interest, as applicable.

30. 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.

David Jiang, Tribunal Member