



Civil Resolution Tribunal

Date Issued: December 23, 2022

File: SC-2022-003168

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *National Risk Management Group Ltd. v. Batrik*, 2022 BCCRT 1366

B E T W E E N :

NATIONAL RISK MANAGEMENT GROUP LTD.

APPLICANT

A N D :

MARY BATRIK

RESPONDENT

A N D :

NATIONAL RISK MANAGEMENT GROUP LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a residential tenancy inspection.
2. The applicant and respondent by counterclaim, National Risk Management Group Ltd. (NRMG), was retained by the respondent and applicant by counterclaim, Mary Batrik, to complete a residential tenancy inspection of Mrs. Batrik's rental unit, and associated services. NRMG says Mrs. Batrik initially paid a \$224 retainer with her credit card, but later reversed the charge. NRMG says it completed the residential tenancy inspection, but Mrs. Batrik has failed to pay its invoice. NRMG claims \$597.13 for its unpaid invoice.
3. Mrs. Batrik does not dispute that she retained NRMG to conduct a residential tenancy inspection. Mrs. Batrik says she has already paid NRMG \$224 for the inspection, and did not sign any agreement with NRMG or agree to any additional fees beyond the \$224 payment. Mrs. Batrik also says that NRMG did not provide its services in time, and the inspection and report were inadequate. In her counterclaim, Mrs. Batrik claims \$224 for "full reimbursement of services that were not provided in time and a complete stop of any additional arbitrary fees".
4. Mrs. Batrik is self-represented. NRMG is represented by its owner, Jolene Johnson.

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. In some respects, both parties in this dispute call into question the credibility, or truthfulness, of the other. 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.
9. As noted, in her counterclaim Mrs. Batrik seeks an order for \$224 as reimbursement for services that were not provided in time and "a complete stop of any additional arbitrary fees". To the extent Mrs. Batrik seeks an order that NRMG stop charging additional fees, the CRT had no jurisdiction to grant such an order in this small claims dispute, because it is a request for injunctive relief (an order to do or stop doing something) that is not provided for in CRTA section 118. So, I decline to grant such a remedy. My decision below addresses NRMG's claim for payment of its invoice, and Mrs. Batrik's counterclaim for reimbursement of \$224.

ISSUE

10. The issues in this dispute are:

- a. Did NRMG breach the parties' agreement through negligence or otherwise?
- b. To what extent, if any, is Mrs. Batrik responsible to pay NRMG's invoice?
- c. Must NRMG reimburse Mrs. Batrik \$224 for services that were allegedly not provided in time?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant NRMG must prove its claims on a balance of probabilities (meaning more likely than not). Mrs. Batrik bears the same burden for her counterclaim. I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.

Did NRMG breach the parties' agreement through negligence or otherwise?

12. NRMG is a legal advocate Mrs. Batrik retained to assist her with a residential tenancy matter.

13. Mrs. Batrik says she agreed to have NRMG serve a notice of entry form on her tenant and perform a residential tenancy inspection of her rental unit. Mrs. Batrik does not dispute that NRMG provided these services. However, Mrs. Batrik says NRMG did not provide the inspection report to her in time for an April 12, 2022 hearing, and says the inspection and report were inadequate.

14. The evidence shows that NRMG completed a condition inspection report for Mrs. Batrik's rental unit on March 7, 2022. It also shows NRMG provided the inspection report and associated photographs to Mrs. Batrik by email on March 28, 2022. Mrs. Batrik says she could not access the inspection report in the email. However, there is no evidence Mrs. Batrik followed up with NRMG and advised she could not access the inspection report until May 2, 2022, after the April 12, 2022 hearing date. In response, I find NRMG promptly provided the documents again by email. Emails

between the parties also suggest that NRMG sent the inspection report and documents by regular mail on two occasions, although it is unclear on which dates. Finally, NRMG says its employee delivered the inspection report with a USB key with the photographs to Mrs. Batrik in person. Mrs. Batrik does not dispute this. I find the evidence does not show that NRMG failed to provide the inspection report to Mrs. Batrik in a timely manner.

15. To the extent Mrs. Batrik alleges NRMG's services were inadequate, I find she alleges that NRMG was professionally negligent. In claims of professional negligence, it is generally necessary for the party alleging negligence to prove a breach of the applicable standard of care with expert evidence: see *Bergen v. Guliker*, 2015 BCCA 283. This is because the standards of a particular industry are often outside of an ordinary person's knowledge and experience. There are 2 exceptions to this general rule. First, there is no need for expert evidence when the alleged breach relates to something non-technical. Second, there is no need for expert evidence when the breach is so egregious that it is obviously below the standard of care. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112. I find neither of these exceptions apply here.
16. Here, I find expert evidence would be necessary to prove whether NRMG negligently provided any of the agreed-to services. Mrs. Batrik submitted a "home inspection report" from a licensed home inspector. Mrs. Batrik argues that the home inspection report is far more detailed than the report completed by NRMG. However, the home inspection report is not expert evidence about NRMG's standard of care, and on its face, is not the same type of inspection as a residential tenancy inspection. Mrs. Batrik did not provide any expert evidence, so I find she has not proved that NRMG's services were inadequate.

To what extent, if any, is Mrs. Batrik responsible to pay NRMG's invoice?

17. As noted, NRMG claims \$597.13 for its unpaid April 5, 2022 invoice.
18. It is undisputed that Mrs. Batrik initially paid NRMG \$224 on March 3, 2022, the same day as her initial consultation with NRMG. NRMG says the \$224 payment was a retainer for Mrs. Batrik's residential tenancy matter. Its March 3, 2022 invoice lists the \$224 charge as a retainer.
19. For her part, Mrs. Batrik says the \$224 payment was full payment for residential tenancy inspection. I do not accept Mrs. Batrik's submission on this point because I find it is inconsistent with NRMG's online intake form fee schedule, which shows that NRMG services are charged at an hourly rate.
20. The undated intake form appears to be signed by Mrs. Batrik. Mrs. Batrik says she did not sign any agreement with NRMG, including the intake form. She says she has never seen the intake form before and alleges that NRMG forged her signature. However, beyond her bare assertion, Mrs. Batrik provided no evidence to support this allegation. Further, Mrs. Batrik did not otherwise explain how she contacted NRMG and engaged its services. Given that Mrs. Batrik does not dispute retaining NRMG to perform the residential tenancy inspection, I find it more likely than not that she completed and signed NRMG's online intake form. As noted, this includes NRMG's fee schedule. I find Mrs. Batrik was aware of NRMG's fee schedule and agreed to pay for NRMG's services on that basis. Therefore, I find the \$224 payment was a retainer, and was not full payment for the residential tenancy inspection.
21. NRMG's April 5, 2022 invoice charged Mrs. Batrik for an initial consultation, document service, travel, a residential tenancy inspection, and emails to client. It also charged Mrs. Batrik \$20 for a USB drive, \$3 for postage and \$45 for a "NSF charge back fee". The \$224 retainer was not applied to this \$597.13 invoice.
22. NRMG says Mrs. Batrik charged back the paid \$224 retainer to her credit card. Mrs. Batrik does not dispute that she started a chargeback to her credit card for the \$224 payment, but says she later revoked it.

23. NRMG provided a transaction detail document that it says shows the chargeback. However, I find the document itself only shows that Mrs. Batrik paid \$224 on March 3, 2022. The evidence does not show that the \$224 payment was ever reversed or charged back to Mrs. Batrik's credit card. As the applicant, NRMG bears the burden of proving its claims. I find NRMG has not proved that the \$224 payment was reversed, or that Mrs. Batrik charged back the \$224 payment to her credit card.
24. As I have found NRMG did not prove that Mrs. Batrik charged back the \$224 retainer, I find NRMG is not entitled to reimbursement of the \$45 NSF chargeback fee included on its invoice.
25. NRMG also charged \$252 for the residential tenancy inspection, at \$90 per hour for 2.8 hours. I find this includes travel time. It also charged \$90 for document service. The two hourly rates listed in the fee schedule are \$150 per hour for "legal advice/advocacy/legal research/legal preparation" and \$75 per hour for "legal administrator time". It is undisputed that the inspection was completed by MR, who is an NRMG employee. The evidence shows MR also completed the document service. NRMG says MR is a "licensed private investigator under supervision". However, there is no hourly rate listed for a private investigator, and there is no hourly rate listed for travel time. Therefore, I find the 2.8 hours billed for MR to complete the residential tenancy inspection, and the 1 hour billed for MR's document service, should be charged at \$75 per hour, which is the amount listed in the fee schedule for legal administrator time. Collectively, this totals \$285.
26. I find the other charges on NRMG's invoice are consistent with the NRMG's fee schedule, and are not obviously unreasonable. Therefore, I find NRMG has proved is entitled to payment of \$486.89 for its invoice, including GST. However, the \$224 I have found Mrs. Batrik already paid must be deducted from this amount. After applying the \$224 retainer, I find Mrs. Batrik is responsible to pay NRMG \$262.89 for the outstanding balance of its invoice.

Is NRMG responsible to reimburse Mrs. Batrik \$224 for services that were not provided in time?

27. As noted, in her counterclaim Mrs. Batrik claims reimbursement of \$224 from NRMG and alleges that NRMG did not provide its services “in time”. As discussed above, I have already found that NRMG provided its services in a timely manner, is entitled to payment its outstanding invoice, subject to some reductions. Therefore, Mrs. Batrik is not entitled to any reimbursement, and I dismiss Mrs. Batrik’s counterclaims.

Interest, CRT fees and expenses

28. The *Court Order Interest Act* applies to the CRT. Although NRMG initially claimed contractual interest in its application for dispute resolution, it did not advance this claim in submissions, and instead said court ordered interest applied. There is no evidence the parties agreed to any contractual interest. Therefore, I find NRMG is entitled to pre-judgment interest on the \$262.89 from April 5, 2022, the date of NRMG’s invoice to the date of this decision. This equals \$2.44.

29. 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 NRMG is entitled to reimbursement of \$125 in CRT fees. As Mrs. Batrik was unsuccessful in her counterclaim, I dismiss her fee claim. Neither party claimed dispute-related expenses, so I award none.

ORDERS

30. Within 30 days of the date of this order, I order Mrs. Batrik to pay NRMG a total of \$390.33, broken down as follows:

- a. \$262.89 in debt,
- b. \$2.44 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

31. NRMG is entitled to post-judgment interest, as applicable.

32. I dismiss Mrs. Batrik's counterclaims.

33. 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.

Leah Volkers, Tribunal Member