



Civil Resolution Tribunal

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File: SC-2022-004482

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gray v. 2 Burley Men Moving Ltd.*, 2023 BCCRT 114

B E T W E E N :

PETER T GRAY and CHERYL L GRAY

APPLICANTS

A N D :

2 BURLEY MEN MOVING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about residential moving services. The applicants, Peter T Gray and Cheryl L Gray, hired the respondent, 2 Burley Men Moving Ltd. (Burley), for a local residential move within a BC city. The Grays say Burley charged them, and they paid, for 8 hours of travel time that they never agreed to, given that the move was local.

They claim \$1,200 for a refund of the 8 hours of travel time fees. Burley says it informed the Grays of the travel charges before the move, so it owes no refund.

2. The Grays are represented by Mr. Gray in this dispute. Burley is represented by an authorized employee or principal.

JURISDICTION AND PROCEDURE

3. 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.
4. 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. Although the parties' submissions each call into question the credibility of the other party to some extent, the credibility of interested witnesses cannot be determined solely by whose demeanour appears most truthful in a courtroom or tribunal proceeding. Determining the most likely account includes assessing its harmony with the rest of the evidence. Further, in the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Here, I find I can properly assess and weigh the written evidence and submissions before me. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find that an oral hearing is not necessary in the interests of justice.
5. 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.

6. 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.

ISSUE

7. The issue in this dispute is whether the Grays agreed to pay for 8 hours of travel time, and if not, does Burley owe them a \$1,200 refund?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the Grays, as the applicants, must prove their claim on a balance of probabilities, meaning “more likely than not.” I have read all the parties’ submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
9. Burley gave the Grays a move estimate, which included a truck and 2 movers at a total labour rate of \$150 per hour. The Grays accepted the estimate and booked the move a few weeks before its November 30, 2021 start date. The Grays’ move was to a new residence less than 1 kilometre from their old one. However, the move involved loading the Grays’ possessions onto the truck on November 30, 2021, holding them overnight, and delivering them to the new residence the following day. Burley completed the move on that basis. None of the above is disputed.
10. The Grays do not dispute Burley’s loading and unloading labour or fuel charges. The Grays say that although they paid Burley’s \$2,924.37 December 1, 2021 invoice, they did not realize it included a \$1,200 charge for 8 hours of “extra travel” time at \$150 per hour. I find that is consistent with the December 1, 2021 invoice in evidence, which does not provide a separate subtotal for travel time fees.
11. Burley says it needed to hold the Grays’ possessions at its premises overnight, which were in a different city. Burley says that meant it drove 2 hours to the Grays’ old residence and 2 hours back to its premises the 1st day, then 2 hours to the Grays’

new residence to unload and 2 hours back to its premises again the 2nd day, for a total of 8 hours travelling. The Grays deny agreeing to any charges for travel time.

12. The Grays say that Burley advertised itself as a local mover in their city, which I find is confirmed by screenshots of Burley's website in evidence. Burley does not directly dispute that it advertised local moves in that city, or that the truck and crew it used for the Gray's move was from another city. The Grays say if they had known they would be charged extra travel time, they would not have hired Burley, and would have looked for a local mover with no extra travel charges.
13. What travel time charges did the parties agree to, if any? Burley says it sent the Grays an appointment confirmation email on November 9, 2021 that confirmed travel time expenses, so the Grays knew about them and agreed to them. The Grays say they received no such email, although they say they agreed to the move around that time based on Burley's verbal estimate. I find it likely the Grays verbally accepted Burley's estimate around November 9, 2021, which formed a binding contract between the parties. A key question in this dispute is, did that contract allow Burley to charge for travel time?
14. Burley submitted "appointment confirmation" documents with a creation date of November 9, 2021. I find these contained alleged move terms, including "2 hr travel" and "local [city name]," but nothing about 8 hours of travel time or whether there would be charges for travel. Regardless, I find there is no confirmation email in evidence. I find nothing before me shows that Burley sent the Grays a confirmation email. Further, Burley's documents show that the Grays' email address it had on file used the pattern "name@othername@gmail.com," which does not appear to be a valid email address format. Burley does not comment on whether their alleged confirmation email bounced back as undeliverable, or how they know the alleged email was both sent and received.
15. Next, an unexplained, incomplete second Burley invoice attached to the completed December 1, 2021 invoice listed similar terms to those in the Burley confirmation documents, including the same "2 hr travel" term. I find Mr. Gray likely signed that

incomplete second invoice, dated November 30, 2021, after Burley began the move, because it listed partial labour times that correspond with those in the completed December 1, 2021 invoice. On the evidence before me, I find the Grays likely did not see and agree to the incomplete second invoice, or its travel time term, before the move began. So, I find the incomplete invoice does not show the Grays agreed to a travel time term at the time the contract was formed, which was well before the move start date. Further, I find the incomplete invoice does not explicitly say that travel time was considered moving “work” or that there would be any charges for it. Overall, I find the incomplete November 30, 2021 invoice does not show that the parties agreed to any extra travel time charges.

16. The Grays noted there were terms and conditions printed on the back of Burley’s invoice documents. I find there is no evidence that the Grays saw and agreed to those terms and conditions before the move was partially complete, so I find those terms did not form part of the parties’ contract. Even if those terms and conditions were part of the contract, as noted they did not say that travel time was considered work that would attract fees.
17. Finally, I find the evidence does not show the Grays knew or should have expected that Burley’s truck and crew would be travelling from a different city, or that they would be responsible for any travel time at Burley’s hourly rate. I also find the evidence fails to show that the Grays knew or should have known where Burley’s yard was located, or that there would be any significant travel time to and from that yard for what was admittedly a short-distance local move.
18. For the above reasons, I find the submitted evidence shows Burley was not entitled to charge any amount for travel time under the parties’ agreement. Specifically, I find Burley was not entitled to charge the \$1,200 for travel time that the Grays paid. I find the Grays overpaid by \$1,200, and I allow their refund claim for that amount.

CRT Fees, Expenses, and Interest

19. The *Court Order Interest Act* (COIA) applies to the CRT. I find that under the COIA, the Grays are entitled to pre-judgment interest on the \$1,200 owing. Although the faded payment receipts in evidence are difficult to read, they appear to be dated December 1, 2021, which was the move completion date. So, I find this interest is reasonably calculated from December 1, 2021 until the date of this decision. This equals \$18.98.
20. 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. I see no reason in this case not to follow that general rule. They Grays were successful, so I find they are entitled to reimbursement of the \$125 they paid in CRT fees. Neither party claims CRT dispute-related expenses, so I order no further reimbursements.

ORDERS

21. I order that, within 30 days of the date of this order, Burley pay the Grays a total of \$1,343.98, broken down as follows:
 - a. \$1,200 in debt,
 - b. \$18.98 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
22. The Grays are also entitled to post-judgment interest under the COIA, as applicable.

23. 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