Date Issued: August 16, 2023

File: SC-2022-009998

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bronson v. 2 Burley Men Moving Ltd.*, 2023 BCCRT 689

B E T W E E N :

BEVERLY BRONSON and KEVIN WELCH

APPLICANTS

A N D :

2 BURLEY MEN MOVING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Megan Stewart

INTRODUCTION

1. This dispute is about moving fees.

2. The applicants, Beverly Bronson and Kevin Welch, hired the respondent, 2 Burley Men Moving Ltd., for a residential move between two BC cities. The applicants say

the respondent estimated $4,000 for the move but they ended up paying $6,701.10 for it. The applicants say that due to the respondent's actions, the move took longer and cost much more than anticipated. Initially, the applicants claimed $3,279.92, made up of a $1,929.37 refund they say the respondent offered them but never processed, and $1,350.55 for half of the $2,701.10 they say the respondent overcharged them. The applicants say they only requested half of the overcharged amount as a compromise. However, in submissions, the applicants say the respondent processed the $1,929.37 refund once they started this dispute, so they reduced their claim to $2,701.10, the amount of the alleged overcharge without any compromise.

3. The respondent denies providing the applicants with a $4,000 estimate. Instead, the respondent says the move's pricing was based on a $350 hourly rate plus travel, fuel and tax. The respondent says that with the $1,929.37 refund they provided the applicants, it owes them nothing further.

4. Beverly Bronson represents the applicants. An employee represents the respondent.

JURISDICTION AND PROCEDURE

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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.

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. 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.

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.

ISSUE

9. The issue in this dispute is whether the respondent overcharged the applicants for their residential move, and if so, are the applicants entitled to the claimed $2,701.10.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument I find is necessary to explain my decision.

11. It is undisputed that on August 15, 2022, the applicants hired the respondent to complete their residential move. The move was scheduled for September 28, 2022 with pickup in the first city, and delivery in the second city on September 29, 2022.

12. The applicants say that on August 15, 2022, Beverly Bronson spoke with the respondent’s employee, R, who “estimated/quoted” $4,000 for the move, which would take place over 2 half days. I note the applicants use both “quote” and “estimate” in the Dispute Notice and in their submissions to refer to the $4,000 figure. However, the applicants generally refer to the cost of the move being “about” $4,000. So, I find they allege the $4,000 was an estimate, rather than a fixed-price quote.

13. The applicants say R calculated this estimate based on a detailed description of the applicants’ belongings, and the fact that the applicants had a larger than double

driveway that could accommodate 2 trucks being loaded at the same time by 4 experienced movers. The applicants also say that when Beverly Bronson spoke with R again on August 16, 2022 to ask for an agreement in writing, she was told that the respondent did not "do a contract like that" but that the cost would be very close to $4,000 "all in". The applicants say they later sold some of their furniture and spoke to R again to see if that changed the cost, but R reiterated the $4,000 all in estimate.

14. The applicants submitted what they say is a contemporaneous handwritten note Beverly Bronson took of her August 16, 2022 conversation with R. The respondent does not specifically challenge the note, which indicates the time of the conversation (10:40) and documents "4,000 overnite inc all in. all confirmed" and "2 full size trucks, 4 men, 2 half days" (reproduced as written).

15. However, the respondent disputes that R provided the applicants with a $4,000 estimate and says the move was booked at a $350 hourly rate. The respondent relies on an appointment confirmation in evidence it says it emailed the applicants on August 15, 2022. The applicants acknowledge receiving an appointment confirmation email from the respondent, but say it did not include an hourly rate. The respondent submitted an "appointment confirmation page" that does not include the rate, and 2 separate "printable appointment confirmations" for September 28 and 29, 2022. Only the confirmation for September 28, 2022 mentions the $350 hourly rate.

16. Notably, the respondent did not submit a copy of the email showing the hourly rate it says it sent the applicants. Parties are told to provide all relevant evidence, and I find such an email would be directly relevant to the applicants' allegation. I note the respondent is a frequent CRT litigant and is familiar with the process. So, I find it is appropriate to draw an adverse inference against the respondent for failing to submit the email detailing the $350 hourly rate they say they sent the applicants. I find the respondent likely sent the applicants the appointment confirmation page without the separate printable appointment confirmations, including the September 28, 2022 appointment confirmation showing the $350 hourly rate.

17. The applicants submitted a December 2, 2022 text message from the respondent's employee, C, that says C spoke with R and R denied giving the applicants a $4,000 estimate. However, the respondent did not provide a statement from R, and did not explain why not. Again, for the reasons above, I draw an adverse inference against the respondent for not providing a statement from R about what they told the applicants, and I accept the applicants' version of the conversations with R.

18. Both parties submitted a copy of the waybill in evidence, which refers to the $350 hourly rate. The applicants say that by the time the trucks were unloaded on September 29, 2022, which they undisputedly helped with, they were tired and just wanted the movers to leave, so they signed the waybill. The applicants also say they believed there must have been a mistake given the total due was more than double the $4,000 estimate, so they got what they thought was Scott Burley's, the respondent's owner, phone number from one of the movers to follow up. The applicants submitted the handwritten phone number in evidence. I also note that the waybill says, "signature of the cosignee for receipt of the goods shall not preclude future claim or loss or damage made within the time limit as described on the reverse" (reproduced as written), though a copy of the reverse side is not in evidence. I find that all of this supports the applicants' position that they paid the amount on the waybill with the intention of disputing it later.

19. Based on the evidence before me, I find the parties did not agree to an hourly rate. Instead, I find R gave the applicants a $4,000 estimate for their move, based on 4 movers using 2 full-size trucks over 2 half days. I find the applicants were not told of the $350 hourly rate until it was presented to them on the waybill.

20. So, did the respondent overcharge the applicants by requiring them to pay more than the $4,000 estimate? By its nature, an estimate is imprecise. It is a best guess at the amount it will cost to complete the work, and not a guaranteed price. That does not mean that an estimate is not binding. Rather, it means that in considering an estimate, I must decide if it was made in circumstances that give it contractual effect and if so,

whether a margin of error may limit the extent to which it is binding (see *Dunn v. Vicars*, 2007 BCSC 1598, appealed on other grounds).

21. Here, I find the $4,000 estimate was given contractual effect. I find R based the estimate on the discussions they had with Beverly Bronson on August 15 and 16, 2022, which included reviewing the applicants' list of belongings and logistics like having 4 movers load 2 trucks simultaneously. The respondent does not deny that R discussed these matters with Beverly Bronson. I find that as a professional moving company, it is reasonable to expect the respondent would have accurately estimated the move's cost. So, I find the applicants agreed to hire the respondent for the move based on the reasonable $4,000 estimate R provided, which formed a binding contract between the parties.

22. That leaves the question of whether there were considerations giving rise to a margin of error that allowed the respondent to charge the respondent more than $4,000. In *Roberts & Muir v. Price*, 1987 CanLII 2505 (BC CA), the court found that a lawyer may not be bound by an estimate where work is done outside of the estimate at the client's request, a client increases the amount of work, or there are unforeseen circumstances that add an unexpected dimension to the work. The court concluded that none of the factors applied, and instead, the law firm had significantly underestimated the work needed to take their client's case to trial. While the subject-matter in that case is different, I find the approach to the margin of error analysis equally applicable here.

23. In this dispute, the applicants say that on September 28, 2022 the movers arrived with 1 full-size truck and 1 smaller truck. They also say the movers told them they had been advised the smaller truck was not mechanically sound enough to make the trip to the new city and to try and fit everything into the full-size truck. In addition, the applicants allege 2 of 4 movers were inexperienced, which meant the 2 inexperienced movers brought things out of the house under the supervision of one of the other movers, while the other experienced mover worked to fit everything into the full-size

truck. All of this resulted in a much longer process than the half day the applicants say was discussed with R, and the unloading process was similar.

24. The respondent agrees the applicants requested 2 full size trucks and a 4-person crew, but says it sent 1 full-size truck and 1 oversize truck, which was bigger than what the applicants had requested. The respondent also says that all its movers are professional and experienced.

25. I find that whether the movers were experienced or whether the two trucks were both full-size do not matter for the purposes of this dispute. I say this because I find there are other reasons that the respondent was not entitled to charge more than the $4,000 estimate. Specifically, the respondent does not dispute that it had instructed the movers to try and fit everything into 1 truck because the other truck was mechanically unsound as the applicants described, which extended the move time. Also, the respondent does not say the applicants asked the movers to work outside the scope of the estimate, that the applicants did anything to increase the crew's work, or that there were unforeseen circumstances that slowed things down. I find that a mechanical issue with a truck, particularly a known issue as was undisputedly the case here, is not an unforeseen circumstance that would be the applicants' responsibility to bear as an increased cost, given the reasonable expectation that the respondent would provide trucks in good working order.

26. In these circumstances, I find there is no reason that the respondent should not be held to its $4,000 estimate. The undisputed evidence shows it was the respondent's decision to provide a mechanically compromised truck that delayed the move and nothing the applicants did, causing it to take longer than the time contemplated in the estimate. So, I conclude the respondent overcharged the respondents by $2,701.10 and I find the applicants are entitled to reimbursement of that amount.

INTEREST, CRT FEES, AND DISPUTE-RELATED EXPENSES

27. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgment interest on the $2,701.10 damages award from September 29, 2022, the date of the waybill, to the date of this decision. This equals $88.65.

28. 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 find the applicants are entitled to reimbursement of $175 in paid CRT fees. The applicants did not claim dispute-related expenses.

ORDERS

29. Within 14 days of the date of this order, I order the respondent, 2 Burley Men Moving Ltd., to pay the applicants, Beverly Bronson and Kevin Welch, a total of $2,964.75 broken down as follows:

    a. $2,701.10 in damages for overcharging the applicants for their residential move,

    b. $88.65 in pre-judgment interest under the COIA, and

    c. $175 in paid CRT fees.

30. The applicants are entitled to post-judgment interest, as applicable.

31. 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.

Megan Stewart, Tribunal Member