



# Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Turcotte v. Happy*, 2024 BCCRT 20

B E T W E E N :

LINDA JANE TURCOTTE

**APPLICANT**

A N D :

EDWARD GEORGE HAPPY

**RESPONDENT**

A N D :

LINDA JANE TURCOTTE

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. Linda Jane Turcotte and Edward George Happy are neighbours who agreed to rebuild a fence along their shared property line. Ms. Turcotte says Mr. Happy's share of the fence costs were \$1,723.30 but he only reimbursed her \$1,000. Ms. Turcotte claims the \$723.30 difference.
2. Mr. Happy says the parties agreed that he and his sons would provide the labour but Ms. Turcotte proceeded to hire a contractor, resulting in an "overinflated" bill. He also takes issue with certain material and other costs.
3. In the counterclaim, Mr. Happy says he has overpaid for the fence and seeks \$300 back from the \$1,000 he paid. He also says Ms. Turcotte removed firewood from his property when disposing of the old fence, for which he claims \$200. In total, he claims \$500. Ms. Turcotte acknowledges removing some scrap wood but says she owes nothing for it. Each party is self-represented.

## 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.
5. 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, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I can assess and weigh the

evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

6. 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 court.

## **ISSUES**

7. The issues in this dispute are:
  - a. Does either party owe the other anything for the fence replacement?
  - b. Must Ms. Turcotte compensate Mr. Happy for firewood she disposed of?

## **EVIDENCE AND ANALYSIS**

8. As the applicant in this civil proceeding, Ms. Turcotte must prove her claims on a balance of probabilities, meaning more likely than not. Mr. Happy must prove his counterclaim to the same standard. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. In spring 2022, Ms. Turcotte and Mr. Happy informally discussed replacing the fence along their backyards' shared property line. The fence ran along Mr. Happy's yard for about 40 feet and then continued between Ms. Turcotte's yard and another neighbour's yard. At that time, Mr. Happy said that he and his son would erect the panels touching his yard, but the parties did not discuss a timeframe. As I explain below, a contractor ended up removing the entire old fence and installing a new one in September 2022. Ms. Turcotte purchased and supplied the cedar panels and posts. She gave Mr. Happy a summary of the costs and asked him to pay \$1,723. He paid \$1,000 by e-transfer but refused to pay any more.

10. In the Dispute Response filed at the outset of this dispute, Mr. Happy raised an argument that he did not elaborate on in submissions. He said if Ms. Turcotte was unhappy with the \$1,000 he paid, she should have refused the e-transfer. In law this is known as “accord and satisfaction”. To rely on that principle, Mr. Happy must show that Ms. Turcotte expressly communicated an intention to accept partial payment as a final settlement. She did not do so. To the contrary, she said in a letter said she was not accepting partial payment as final settlement. So, I find she can claim the balance here.
11. I next consider the parties’ agreement and the specific amounts Ms. Turcotte claims.

### ***Labour***

12. The parties disagree about whether Mr. Happy agreed to pay for the contractor’s labour. Mr. Happy says when Ms. Turcotte told him she had selected a contractor to erect the new fence, he said he was going to assist the contractor with erecting his portion of the fence in lieu of paying for labour. He says he and the contractor could not agree on a date, and the contractor went ahead without him. So, he says he should not have to pay for the contractor’s labour.
13. In contrast, Ms. Turcotte says in August 2022, she had a contractor in her backyard to replace a retaining wall. Mr. Happy, Ms. Turcotte, and the contractor ended up talking about the fence and eventually agreed that the contractor would take down the old fence and install a new fence on September 16-17, the only days the contractor had available. She says Mr. Happy agreed that he would pay his share of the fence and never brought up the idea of assisting with labour, which she says the contractor would not likely have agreed to anyway.
14. Ms. Turcotte’s evidence is supported by a written statement from one of the contractor’s employees, MS. MS said Mr. Happy twice confirmed with MS that the contractor was going to install the fence and that Mr. Happy was going to pay his share. MS said Mr. Happy asked about the labour cost but MS could not provide an exact estimate.

15. On balance, I find Mr. Happy knew and accepted that the contractor was going to install the new fence without Mr. Happy's help and that Mr. Happy agreed to pay half the labour cost.
16. That labour cost was set out in an invoice from the contractor to Ms. Turcotte. The cost was \$1,500 for 30 hours of labour for 5.5 fence panels (the sixth fence panel overlaps Mr. Happy's yard and the other neighbour's yard). The contractor undisputedly did this work in one day (with 4 workers) and completed the remaining portion of the fence on another day, invoiced separately.
17. Mr. Happy says 6 hours per panel is exorbitant. However, the work did not involve simply hanging panels but removing old panels and posts cemented into the ground, and installing new posts with new concrete. I do not consider 30 hours obviously unreasonable and there is no independent evidence from someone with fence installation experience to suggest otherwise. So, I find Mr. Happy must pay \$750 for half the labour cost.
18. Mr. Happy says his neighbour did not have to pay for their half of the portion of the fence between their and Ms. Turcotte's yard. However, Mr. Happy's obligation to pay is based on his agreement with Ms. Turcotte and is not affected by her arrangements with other neighbours.
19. I acknowledge Mr. Happy's argument that if Ms. Turcotte had told him how much the project would cost, he would not have agreed to pay for half the replacement cost. However, as I explain below, I find the parties did not discuss a price limit. It was open to Mr. Happy to insist that the parties obtain firm estimates on labour and materials before agreeing to split the cost, but he did not. I find it was an implied term that Mr. Happy would pay half the reasonable costs of replacing the fence with a similar fence.

### ***Fence panels and posts***

20. The new fence panels were \$200 each, plus taxes. Mr. Happy says Ms. Turcotte did not consult him on the fence panels and their cost. Mr. Happy submitted a Home Depot screenshot showing 6-foot cedar fence panels with a lattice top for \$148.

21. The old fence was undisputedly a 6-foot fence, the top foot of which was a lattice. The new fence is a solid 6-foot fence with no lattice. Mr. Happy says the new fence matches Ms. Turcotte's existing fence on the other sides of her yards. Photos show that the new fence is different from Ms. Turcotte's existing fence, but I take Mr. Happy's point to be that cheaper fence panels would have sufficed for him. He points out that in his yard, the fence is largely obscured by cedars and a shed. In Ms. Turcotte's yard, the fence is highly visible. Mr. Happy says he should not have to pay for the upgraded fence.
22. Ms. Turcotte's position is that she had little time to find and arrange delivery of the fence panels, and Mr. Happy did not offer to help. She said she looked at Home Depot and Lowes but they could not deliver on time and their panels were \$198 per panel. It is not clear whether she looked for latticed panels or only solid panels. Overall, I am not satisfied that only solid panels were available. I find Ms. Turcotte decided to upgrade the fence. Since Mr. Happy did not agree to pay for an upgraded fence, I find he is not responsible for the increased panel cost. I find Mr. Happy owes half the cost of replacing like-with-like panels. The best evidence of that cost is the \$148 Home Depot panels.
23. Mr. Happy argues that the sixth fence panel only overlaps his yard by 16 inches (Ms. Turcotte says 24 inches) and he should pay by the inch. I disagree because fence panels are sold in whole units and not by the inch. It would have been reasonable for Ms. Turcotte to insist on splitting the 6<sup>th</sup> panel equally, but she only asked Mr. Happy to pay his half-share of half the panel. I adopt that approach.
24. I find Mr. Happy owes \$455.84 for the panels (half of \$148 plus taxes x 5.5 panels). I find Mr. Happy owes \$61.60 for the posts (half of \$110 plus taxes for 5 posts). He also owes \$18.75 for his half-share of half the delivery charge (since 10 panels and 11 posts were delivered). The total is \$536.19.

### ***Underboards***

25. The land slopes down from Mr. Happy's yard to Ms. Turcotte's yard. The contractor installed underboards under the fence. Ms. Turcotte says this was necessary to hold back Mr. Happy's higher ground. Mr. Happy says the panels were not necessary and the old fence did not have them. On review of the photos, I agree with Mr. Happy that the old fence did not have underboards. It also appears that Ms. Turcotte dug down in front of the fence line to make the land level with her retaining wall. In any event, I find Mr. Happy did not explicitly or implicitly agree to pay for underboards, so he is not required to pay anything for them.

### ***Other materials***

26. Ms. Turcotte says it took 2 bags of quick-set concrete for each fence post. Mr. Happy says 2 bags of concrete per post is excessive. He also says only 50 screws would be required to hang the 5 panels, not half of a 10 pound bin that Ms. Turcotte's contractor purchased. I find expert evidence would be required to show that 2 bags of concrete per post and half a bucket of screws was excessive. I acknowledge that Mr. Happy has experience building a fence, but parties cannot generally provide expert evidence because they are not impartial. I find Mr. Happy owes his half-share of half the \$59.99 plus taxes for the screws, which is \$16.80. It appears the contractor lost the receipt for the concrete and charged Ms. Turcotte a flat \$10 per bag rate, so I find Mr. Happy owes \$50 for half the cost of 10 bags used on the 5 posts between the parties' yards. The total Mr. Happy owes for other materials is \$66.80.

### ***Dumping costs***

27. Ms. Turcotte used her vehicle and trailer to dispose of the old fence panels. It took her 3 trips and she incurred \$189.95 in disposal fees. She says Mr. Happy should pay  $\frac{1}{4}$  of that cost, representing his half of half the fence panels. I find this is reasonable. Although Mr. Happy says he could have disposed of the old panels in 1 trip using his son's truck, he undisputedly did not offer to do so. I find he is responsible for his share of the disposal fees, which is \$47.49.

28. Ms. Turcotte also wants \$50 for her time spent and fuel costs. I find there was no agreement about reimbursement for time spent but I allow \$20 on a judgment basis for Mr. Happy's share of fuel costs. The total is \$67.49.

### ***Scrap wood disposed***

29. Mr. Happy says Ms. Turcotte inadvertently removed "firewood" from his yard and dumped it with the old fence panels. From the parties' submissions I find this was scrap lumber Mr. Happy had stacked near the fence that Ms. Turcotte advertently removed with the old fence.
30. Mr. Happy does not state how much wood there was, where it came from, or what kind of wood it was. Ms. Turcotte describes it as rotting waste wood. Overall, I find Mr. Happy has not proved that the scrap wood had any compensable value, so I dismiss his claim.

### ***Summary, interest and expenses***

31. I have found that Mr. Happy owes Ms. Turcotte the following amounts under their agreement about the fence: \$750 for labour, \$536.19 for panels and posts, \$66.80 for screws and concrete, and \$67.49 for dumping fees and fuel. The total is \$1,420.48. Accounting for the \$1,000 Mr. Happy paid, he owes Ms. Turcotte \$420.48.
32. The *Court Order Interest Act* applies to the CRT. Ms. Turcotte is entitled to pre-judgment interest on the \$420.48 from September 23, 2022, when she asked him to pay the balance, to the date of this decision. This equals \$22.27.
33. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Happy paid \$75 in CRT fees for the counterclaim, which was unsuccessful, so I order no reimbursement. Ms. Turcotte paid \$125 in CRT fees for her claim, which was partly successful, so I order Mr. Happy to reimburse her \$62.50 for half her CRT fees. Neither party claims dispute-related expenses.



## ORDERS

34. Within 21 days of the date of this order, I order Mr. Happy to pay Ms. Turcotte a total of \$505.25, broken down as follows:
- a. \$420.48 in debt,
  - b. \$22.27 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 in CRT fees.
35. Ms. Turcotte is entitled to post-judgment interest, as applicable.
36. I dismiss Mr. Happy's counterclaims.
37. 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.

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Micah Carmody, Tribunal Member