



Civil Resolution Tribunal

Date Issued: March 13, 2024

File: SC-2023-005864

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Flood v. Transource Freightways Ltd.*, 2024 BCCRT 258

BETWEEN:

CARLY FLOOD

APPLICANT

AND:

TRANSOURCE FREIGHTWAYS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Carly Flood says Transource Freightways Ltd. (Transource) damaged her home's door, fireplace, and walls when delivering a sectional sofa. Ms. Flood also says

Transource damaged the sofa itself. She claims \$3,000 for the damage and mental distress, without providing a breakdown. Ms. Flood represents herself.

2. Transource denies that any damage occurred, except minor sofa damage. It says I should dismiss the claim. Transource is represented by an employee or principal.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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. 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 am able to 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.
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 court.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Did Transource's workers damage Ms. Flood's property?
 - b. If so, what compensation is Ms. Flood entitled to?

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Ms. Flood must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. Ms. Flood bought a sectional sofa from Costco. She was unhappy with it and Costco agreed to replace it. While the evidence is not entirely clear, it appears that Costco hired Transource to deliver the replacement sofa to Ms. Flood's home and take away the original sofa. That happened on May 9, 2023. The new sofa came in several boxes. Transource unboxed the pieces outside and brought them into Ms. Flood's home, up a set of stairs, and into her living room before assembling the sofa. None of this is disputed.
10. The parties disagree about whether Transource's workers damaged anything while transporting the sofa pieces inside. Ms. Flood says she watched the workers closely. She says workers dragged the old and new sofa pieces along her walls and furniture, damaging her property and the new sofa in the process. I address the alleged damage below. Ms. Flood says when she mentioned the damage to the workers, they told her to take photos and send them to Costco, and that Costco would deal with it.
11. Ms. Flood says she took photos immediately and emailed them to Costco. This is supported by photos and an email to Costco in evidence. I note that Ms. Flood says Costco only advised that it would in turn advise Transource about the damage. Transource does not argue here that it is not liable for its workers' damage. Transource only argues that its workers did not damage Ms. Flood's property.

12. Ms. Flood undisputedly did not sign a damage waiver form. Transource says this means its workers considered her home to present little risk of damage. The inference Transource apparently wants me to make is that this means it is unlikely that damage occurred during delivery. I disagree, as there are several other possible reasons Transource may not have a signed damage waiver form. In any event, Ms. Flood says she was asked to sign the waiver but refused.
13. Ms. Flood did sign a delivery slip. The delivery slip asked, "Was there any damage to your residence caused by delivery team?" The box for "no" was ticked. However, there is a hand-written note next to the question, and another hand-written note in the "customer comments" section. These notes are largely illegible, but appear to contain the words "small scratch". Neither party says who made the notes or who ticked the boxes. Transource says the notes do not mention property damage apart from "the one on the sofa."
14. There is no direct evidence from either delivery worker who was present, such as a statement or internal email. Transource does not explain why it could not provide that kind of evidence. On balance, given that Ms. Flood's contemporaneous email to Costco mentioned fireplace and sofa damage and attached several photos, I accept Ms. Flood's evidence about what happened.
15. I turn the damage. As noted, Ms. Flood claims \$3,000 without providing a breakdown. I will consider each item Ms. Flood says Transource damaged, noting that Ms. Flood must prove her claimed damages.
16. The electric fireplace is housed in a large cabinet. Photos show a chip or scrape in the top panel, approximately 2 inches by ½-inch, and second, smaller chip. The chips are along the front edge, so they are noticeable. The top has a dark wood-grain finish, but it appears to be particle board underneath. Ms. Flood says the chips cannot be fixed with a "touch up pen" but she did not address whether the top panel could be replaced or recoated. She said the fireplace was "fairly new". She provided advertisements for fireplaces of the same approximate size showing prices around \$1,900. Absent evidence that the top panel cannot be replaced or refinished, I find

Ms. Flood has not proven that the entire fireplace must be replaced. On a judgment basis, I award \$300 in damages for the fireplace.

17. The new sofa has a small chip or scratch in one corner of a square leg. I find this damage likely can be minimized with a touchup pen, since Ms. Flood does not say otherwise. Even if it cannot, it is not highly noticeable. Ms. Flood alleges grease stains, but photos show they are on a panel on the sofa's back support piece. The piece has a zipper to attach a cushion. I find the panel and stains are not visible when the sofa is used normally, with its back cushions. I award \$50 in nominal damages for the sofa.
18. As for the walls, I find the photos show only dark scuffs on the walls. Flood does not say that she has unsuccessfully tried to remove the scuffs by scrubbing. There is no evidence of dents or paint chips, except minor ones on the landing half-wall top. A photo of a door shows a scuff mark and a very small paint chip. I award \$75 for these things.
19. Ms. Flood referred to "emotional damage" and "stress" in the Dispute Notice filed at the outset of this dispute, but she did not provide further submissions or evidence, so I decline to award emotional damages. I find Ms. Flood is entitled to \$425 for property damage.
20. The *Court Order Interest Act* applies to the CRT. However, there is no evidence Ms. Flood has paid any money to repair her damaged property to date, so I order no interest.
21. 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. Ms. Flood was partially successful, so I order Transource to reimburse \$62.50 for half her \$125 in paid CRT fees. Neither party claims dispute-related expenses.

ORDERS

22. Within 21 days of the date of this order, I order Transource to pay Ms. Flood a total of \$487.50, broken down as \$425 in damages and \$62.50 in CRT fees.
23. Ms. Flood is entitled to post-judgment interest, as applicable.
24. This is a validated decision and order. 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.

Micah Carmody, Tribunal Member