



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *I Love Moving Ltd. v. Aziz*, 2024 BCCRT 470

BETWEEN:

I LOVE MOVING LTD.

APPLICANT

AND:

SHAIKA AZIZ

RESPONDENT

AND:

I LOVE MOVING LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Shaika Aziz hired I Love Moving Ltd. (ILM) for an April 30, 2022 residential move. Ms. Aziz has paid \$800 towards ILM's \$1,086.75 invoice. ILM claims the remaining \$286.75, plus a \$150 late fee. Ms. Aziz says ILM overcharged her and that \$800 is an overpayment. So, she asks me to dismiss ILM's claim for further payment. She also counterclaims for \$260: \$50 to refund the alleged overpayment and \$210 for carpet damage she says one of ILM's movers caused. ILM denies causing the carpet damage and, even if it did, says its contract with Ms. Aziz protects it from liability.
2. ILM is represented by its president, Carlos Gutierrez, who says they were present the day of the move. Ms. Aziz represents herself.

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 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
4. CRTA section 39 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 of this dispute question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I am properly able to assess and weigh the evidence and submissions before me and make the necessary credibility findings. Also, the low value of the claims would make an oral hearing disproportionate and contrary to the CRT's mandate. I therefore decided to hear this dispute through written submissions.
5. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

ISSUES

The issues in this dispute are:

- a. Did ILM overcharge Ms. Aziz? If so, by how much?
- b. Did an ILM mover damage a carpet? If so, does the parties' contract say ILM is not liable for the damage?

EVIDENCE AND ANALYSIS

6. In a civil claim such as this, ILM and Ms. Aziz must each prove their claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
7. Ms. Aziz hired ILM over the phone. ILM sent her a confirmation email on April 16, 2022, for an April 30 move. The confirmation email says that the rate was \$65 per mover per hour, plus an hour of travel time.
8. The confirmation email in evidence shows there was a PDF attached called "Terms and Conditions", which the email said referred to "the legal stuff". Ms. Aziz says she never saw or read those Terms and Conditions, but I find they are binding on her. This is because ILM took reasonable steps to bring them to her attention by attaching them to its confirmation email. It does not matter whether Ms. Aziz read the attachment at the time.¹ I note that Ms. Aziz provided a different set of contractual terms that she calls "Fake Terms and Conditions", but ILM does not rely on that document so I have disregarded it. The contractual terms that apply are the ones in the confirmation email and attachment. I address these terms where relevant below.

¹ *Century 21 Canada Limited Partnership v. Rogers Communications Inc.*, 2011 BCSC 1196, and *Yang v. Li*, 2024 BCSC 613, at paragraph 71.

9. The move took place the afternoon of April 30. ILM sent Ms. Aziz its invoice on May 5. The \$1,086.75 invoice was broken down as \$20 in supplies, \$40 in fuel, and \$975 in labour, plus GST. The \$975 in labour charge was for “truck + 3 workers” for five hours (four moving hours and one travel hour). Ms. Aziz did not dispute the charges for travel time, supplies, or fuel, but said she only agreed to two movers. She paid \$750 towards the invoice on May 8, deducting the charge for the third mover, rounding up from \$745.50.
10. On October 3, 2022, Ms. Aziz paid a further \$50 via e-transfer. She says this was to try to get ILM to stop bothering her about the invoice while she went on a lengthy trip.
11. Ms. Aziz disputes two aspects of the invoice. She says that there were only two movers and that they took less than four hours to complete the move. However, she does not claim a refund for the fourth hour, so I find it unnecessary to address this issue.
12. Ms. Aziz admits that three movers showed up at first, but says one of them only stayed for a few minutes. She says only two movers were involved in the move.
13. She provided a statement from her friend, MG, who says he was present throughout the move. MG says that he asked one of the movers why there were three movers instead of two, which is what Ms. Aziz had expected. MG says that the mover told him the previous move had required three movers. He says the third mover left after 10 or 15 minutes, and did not do any work.
14. Ms. Aziz also provided an email statement from her new property manager, who says that they saw two movers arrive at the building. The property manager says he told the movers to unload the truck into the lobby until after the property manager completed a move-in inspection with Ms. Aziz, which the movers did.
15. ILM says that three movers worked on her move, but provided no supporting evidence such as employment or business records. I also find Mr. Gutierrez’s evidence about the day of the move is contradictory in a way that is self-serving. When responding to Ms. Aziz’s argument about the third mover, Mr. Gutierrez says that they were

wrapping furniture inside Ms. Aziz's old apartment while the other two movers loaded the truck, which would explain why she and MG only observed two movers. But later, when responding to Ms. Aziz's claim about the carpet damage, Mr. Gutierrez says that ILM did not wrap any furniture because Ms. Aziz asked them not to. So, I find Mr. Gutierrez's evidence about the number of movers is not credible. I also find the property manager's email persuasive because they are neutral in this dispute. I find that there were only two movers.

16. This means that Ms. Aziz only owed ILM \$745.50 under the contract. Ms. Aziz paid \$800, so ILM is not entitled to the unpaid balance of its invoice. As for the late fee, clause 16 of the Terms and Conditions says that ILM may charge a \$150 late payment charge if the customer does not pay "when required". That clause also says that the customer must pay before the movers begin unloading, but ILM did not ask for payment on the day of the move. It is unclear how the clause applies when ILM delivers an invoice later. Ms. Aziz's paid the first \$750 three days after receiving the invoice, which I find reasonably prompt especially given the invoice overcharged her. I find ILM is not entitled to a late fee. I dismiss ILM's claims. I also order ILM to pay Ms. Aziz \$50 for her claimed overpayment.
17. That leaves the carpet damage claim. Ms. Aziz says that a mover dropped a bookshelf in her new apartment. She says the bookshelf landed on its back, and the mover yanked it up, snagging a nail on the carpet. MG's statement says essentially the same thing. Ms. Aziz provided two closeup photos of her carpet, which show damage I find consistent with the carpeting getting snagged.
18. ILM provided no evidence to support its assertion that no damage occurred, such as a statement from a mover. Instead, ILM argues that Ms. Aziz's conduct is generally inconsistent with her claim, saying she was a happy customer until ILM provided its invoice. ILM says she is just trying to get out of paying. I do not find this persuasive, especially given my concerns about Mr. Gutierrez's credibility. On balance, I find that the mover caused the carpet damage as Ms. Aziz alleges. I find this was negligent, as it is clearly below the standard of a reasonable mover.

19. ILM relies on its Terms and Conditions. Clause 13 says “The Client is responsible for all building and property damage resulting from the services provided to them, and as such it is their responsibility to obtain adequate insurance”. ILM essentially argues that this clause protects it from any liability for property damage, including when its movers are negligent. However, when an exclusion clause does not specifically mention negligence, it will only exclude liability for negligence if the words are broad enough and there is no other way to reasonably interpret it.² Here, I find that there are plenty of ways for property to be damaged during a move that does not involve mover negligence. This means there is a reasonable interpretation of the clause that does not exclude liability for negligence. I find that the exclusion clause does not apply. I find that ILM is liable for the carpet damage.
20. ILM disputes that \$210 carpet repair invoice, saying it is “inconsistent” with Ms. Aziz’s account of what happened. ILM does not explain what that means. Ms. Aziz provided an email exchange confirming she told her property manager about the damage on May 5, 2022, and asked about having it repaired. It took some time to arrange the repairs, but property manager eventually sent Ms. Aziz the carpet repairer’s \$210 invoice, which she paid. I find that ILM must pay for the \$210 in carpet damage.
21. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Aziz is entitled to pre-judgment interest on the \$50 overpayment and \$210 repair to the date of this decision. This equals \$8.02.
22. Under CRTA section 49 and CRT rules, Ms. Aziz is entitled to \$125 in paid CRT fees because she was successful. I dismiss ILM’s claim for CRT fees because it was unsuccessful. Neither party claimed any dispute-related expenses.

² *Punto e Pasta Manufacturing Inc. v. Henderson Development (Canada) Ltd.*, 2009 BCSC 37, at paragraph 165.

ORDERS

23. Within 30 days of this decision, I order ILM to pay Ms. Aziz a total of \$403.02, broken down as follows:
- a. \$260 in damages,
 - b. \$18.02 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
24. Ms. Aziz is entitled to post-judgment interest, as applicable.
25. I dismiss ILM's claims.
26. This is a validated decision and order. Under CRTA section 58.1, 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.

Eric Regehr, Vice Chair