



# Civil Resolution Tribunal

Date of Original Decision: July 18, 2024

Date of Amended Decision: August 29, 2024

Files: SC-2023-001894  
and SC-CC-2023-010628

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Davies v. James Movers Inc.*, 2024 BCCRT 693

BETWEEN:

JOY DAVIES

**APPLICANT**

AND:

JAMES MOVERS INC.

**RESPONDENT**

AND:

JOY DAVIES

**RESPONDENT BY COUNTERCLAIM**

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**AMENDED REASONS FOR DECISION**<sup>i</sup>

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. This is a dispute about damaged furniture. This decision relates to two linked disputes, SC-2023-001894 and SC-CC-2023-010628, that I find are a claim and counterclaim involving the same parties and related issues. So, I have issued one decision for both disputes.
2. Joy Davies hired James Movers Inc. (JMI) to move her belongings from Sooke to Ladysmith. She says JMI overcharged her, and damaged and lost some of her furniture. She claims \$2,100 as a refund for the overcharges, \$550 to replace a broken vase, \$450 to replace a lost antique stand, \$90 as reimbursement for an appraisal fee, and \$554.44 to replace her bed, for a total of \$3,744.44. She also wants JMI to repair her work table, cabinets, and baby grand piano, replace the glass in her hall table, and replace a broken stool.
3. JMI denies overcharging Ms. Davies. It admits that some of her belongings were damaged in the move, but it says she packed her fragile items improperly and her coverage is limited by legislation to \$1 per pound. JMI denies losing Ms. Davies' antique stand and denies that her bed needs replacing.
4. JMI counterclaims \$472.50 for an outstanding invoice. Ms. Davies denies receiving the invoice and denies that she owes JMI anything.
5. Ms. Davies is self-represented, and JMI is represented by an authorized employee or principal.

## **JURISDICTION AND PROCEDURE**

6. 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.

7. 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.
8. 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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. 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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Did JMI overcharge Ms. Davies for its moving services?
  - b. Is JMI responsible for Ms. Davies' damaged and lost furniture?
  - c. Does Ms. Davies owe JMI \$472.50 for its final invoice?

## **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil proceeding, Ms. Davies must prove her claims on a balance of probabilities, which means more likely than not. Likewise, I find JMI must prove its counterclaim to the same standard. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.

***Did JMI overcharge Ms. Davies for its moving services?***

12. At some point in 2021, Ms. Davies called JMI for a quote to move her belongings from Sooke to Parksville. She says JMI verbally quoted her \$2,600 plus tax for the move. JMI says it told her this amount was an estimate based on its hourly rate, not a quote, which is its usual practice. There is no documentary evidence to support either parties' position on this issue.
13. In the fall of 2021 Ms. Davies' plans changed, and she ended up moving to Ladysmith instead of Parksville. Because of the timing of Ms. Davies' sale of her old home and purchase of her new home, in mid-November 2021, JMI moved her belongings into storage for several weeks. Ms. Davies paid JMI \$2,543.63 for this move and \$315 for storage. In early December JMI moved Ms. Davies' belongings to her new home in Ladysmith. This second move out of storage took place over 2 days because JMI could not fit all of Ms. Davies' belongings into the truck it had available at that time. Ms. Davies paid JMI \$2,257.51 for this second part of the move. In total, Ms. Davies paid JMI \$5,116.14 for the 2 moves and storage.
14. Ms. Davies says JMI overcharged her by \$2,100 from the original quote. JMI denies this. It says that when Ms. Davies' plans changed it gave her an updated verbal estimate, and its original estimate no longer applied. JMI does not say the amount of its updated estimate, but Ms. Davies denies receiving it.
15. On balance, I find Ms. Davies has failed to establish that JMI overcharged her. Even if JMI did not provide Ms. Davies with an updated quote or estimate as it alleges, I find it was unreasonable for Ms. Davies to expect to pay JMI the same amount it originally told her after her plans changed and JMI had to move her belongings twice. I note that each of the 2 moves cost less than the \$2,600 plus tax JMI initially told her.
16. Ms. Davies says she sent photos of her belongings to JMI before her move and JMI should have seen the volume of her belongings and updated its quote accordingly. However, I find Ms. Davies has submitted insufficient evidence to establish what,

exactly, JMI's alleged quote was based on. I also find that regardless of the volume of her belongings, Ms. Davies fails to account for the fact that JMI had to move them twice after she changed her plans.

17. Ms. Davies also says JMI parked far from her storage and access doors during the move, causing it to be inefficient and take longer than it should have. However, JMI denies this, and I find there is insufficient evidence to support this allegation.
18. In summary, I find Ms. Davies has failed to establish that JMI overcharged her, and I dismiss this part of her claim.

***Is JMI responsible for Ms. Davies' damaged and lost furniture?***

19. As noted above, Ms. Davies says JMI damaged some of her belongings and lost an antique stand. I address each aspect of her claim below.
20. First, Ms. Davies claims \$550 to replace a broken vase. She submitted before and after photos showing the vase broke during the move, and JMI does not deny breaking it. JMI says Ms. Davies failed to properly pack her fragile belongings, but I find there is insufficient evidence to support this allegation. JMI also says it is only liable for loss or damage up to \$1 per pound, as set out in the *Motor Vehicle Act Regulation*, Division 37, Schedule 3, Articles 9 and 10. However, I find that is not accurate. Article 9 says the amount of damage for which a carrier is liable is computed based on the value of the damaged items at the time and place of shipment. Article 10 says that a carrier's maximum liability cannot exceed \$4.41 per kilogram, or \$2 per pound, computed on the total weight of the shipment, unless a higher value is declared on the bill of lading.
21. JMI says the parties did not agree to a higher value, so Article 10 applies. I agree. The problem is that there is no evidence of the total weight of Ms. Davies' belongings. However, Ms. Davies claims a total of \$1,554.44 for loss or damage to her belongings, which, on the calculation in Article 10, works out to just over 350 kilograms. On the evidence before me, I find it likely that the total weight of Ms.

Davie's belongings exceeded 350 kilograms. I say this because Ms. Davies' photos show many large pieces of furniture and a storage container full of many large boxes that required moving. It is also undisputed that the total weight of Ms. Davies' belongings exceeded JMI's truck capacity for the second part of the move, which is why JMI took 2 separate days to move her belongings out of storage. So, I find Ms. Davies' claim for lost or damaged items in this dispute is not limited by Article 10.

22. Ms. Davies submitted an appraisal report from Luis Porretta, of Luis Porretta Fine Arts in Nanaimo, which says the broken vase is damaged beyond repair and its replacement value is \$550. The report does not indicate Luis Porretta's qualifications, so I find it does not meet the requirement for expert evidence in CRT rule 8.3(2). However, I find it is the best evidence of the vase's replacement value. JMI does not dispute that the vase is damaged beyond repair, nor does it expressly dispute the appraiser's replacement value. It submitted photos of vases for sale online ranging in price from \$10 to \$175 for a pair, but I find none of the vases in these advertisements appear to be similar to Ms. Davies' vase. So, I find JMI must pay Ms. Davies \$550 to replace her broken vase.
23. Ms. Davies also claims \$440 as the replacement value of a lost antique stand, based on the same appraisal report. However, JMI denies seeing this antique stand during the move. I find Ms. Davies has failed to establish on the evidence before me that JMI lost the antique stand, so I find she is not entitled to compensation for it.
24. Ms. Davies also claims \$90 as reimbursement for the cost of the appraisal report but she failed to submit a receipt or invoice supporting the amount claimed. So, I find Ms. Davies is not entitled to reimbursement for the report.
25. Ms. Davies claims \$554.44 for the cost of replacing her bed. She submitted before and after photos that she says show JMI damaged the bed during the move and lost one of its drawers. However, I find the before pictures are not sufficiently detailed to determine when the damage to the bed occurred or whether JMI lost the drawer. JMI denies that the bed needs replacing. It says all the parts of the bed are with Ms.

Davies, it simply needs to be reassembled. Without more, I find Ms. Davies has failed to establish that she is entitled to compensation for her bed.

26. Ms. Davies also wants JMI to repair her work table, cabinet, and baby grand piano, replace the glass in her hall table, and replace a broken stool. However, an order for someone to do something or to stop doing something is known as injunctive relief. With certain limited exceptions that I find do not apply here, CRTA section 118 does not give the CRT jurisdiction to grant injunctive relief. Although I cannot order the injunctive relief Ms. Davies seeks, I considered whether she is entitled to compensation for the allegedly damaged items. In her submissions, Ms. Davies expressly says she is not seeking compensation for damage to her piano. I also find she has failed to establish that JMI damaged her cabinet. JMI admits that it damaged her work table and stool, and that it broke the glass in her hall table. I find Ms. Davies is entitled to compensation for this damage, but she did not provide evidence of the cost of repairing or replacing these items. On a judgment basis, I find Ms. Davies is entitled to \$350 for the damage to her work table, stool, and hall table.
27. In conclusion, I find JMI must pay Ms. Davies a total of \$900 for the damage it caused to her vase, work table, stool, and hall table.

***Does Ms. Davies owe JMI \$472.50 for its final invoice?***

28. JMI says that after delivering the second load of Ms. Davies' belongings from storage to her new home in Ladysmith, it invoiced her "upwards of \$472.50", which she has not paid. However, JMI did not submit this invoice as evidence, and Ms. Davies denies receiving it. Without more, I find JMI has failed to prove its counterclaim, and I dismiss it.
29. The *Court Order Interest Act* applies to the CRT. Ms. Davies is entitled to pre-judgment interest on the \$900 owing calculated from December 7, 2021, which is the second date of the second move, to the date of this decision. This equals \$77.85.

30. 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 see no reason in this case not to follow that general rule. Ms. Davies was partly successful, but she did not pay any CRT fees. Since JMI was unsuccessful in its counterclaim, I find it is not entitled to reimbursement of its CRT fees. Neither party claimed any dispute-related expenses.

## ORDER

31. Within 14 days of the date of this order, I order JMI to pay Ms. Davies a total of \$977.22, broken down as follows:

- a. \$900 in damages, and
- b. \$77.85 in pre-judgment interest under the *Court Order Interest Act*.

32. Ms. Davies is entitled to post-judgment interest, as applicable.

33. I dismiss JMI's counterclaim.

34. 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.

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Sarah Orr, Tribunal Member

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<sup>i</sup> Under the authority of the CRTA section 64, I have amended paragraphs 12 and 13 to correct inadvertent typographical errors stating the year of the applicant's move as 2023, instead of 2021. The corrected errors are marked in underlined text.