



# Civil Resolution Tribunal

Date Issued: September 17, 2024

Files: SC-2022-006068  
and SC-CC-2023-000490

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *2 Burley Men Moving Ltd. v. Cardinal*, 2024 BCCRT 913

B E T W E E N :

2 BURLEY MEN MOVING LTD.

**APPLICANT**

A N D :

ANTHONY CARDINAL

**RESPONDENT**

A N D :

2 BURLEY MEN MOVING LTD.

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Nav Shukla

## **INTRODUCTION**

1. These 2 linked disputes are about a residential move. I find the disputes are a claim and counterclaim between the same parties. So, I have issued 1 decision for both disputes.
2. Anthony Cardinal hired 2 Burley Men Moving Ltd. (Burley) to complete his residential move. In dispute SC-2022-006068, Burley says Mr. Cardinal has refused to pay it for the move. It claims \$3,238.13 from Mr. Cardinal for the unpaid moving services. Burley is represented by an employee.
3. Mr. Cardinal says Burley did not finish the move, overcharged him, and damaged his belongings during the move. In dispute SC-CC-2023-000490, Mr. Cardinal claims \$4,147.60 from Burley for the cost of repairing or replacing his damaged belongings, the cost of a repair company attending at his home to assess his damaged furniture, and compensation for the time he spent assisting Burley with the move. Mr. Cardinal 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). CRTA section 2 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.
5. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and that an oral hearing is not necessary.

6. CRTA section 42 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.
7. Where permitted by section 118 of the CRTA, in resolving disputes 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**

8. The issues in this dispute are:
  - a. Must Mr. Cardinal pay Burley \$3,238.13, or another amount, for the moving services?
  - b. Must Burley compensate Mr. Cardinal for his damaged belongings, the cost of the repair assessment, and Mr. Cardinal's time spent on the move? If so, how much?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, Burley must prove its claims on a balance of probabilities, meaning more likely than not. Mr. Cardinal must prove his counterclaim to the same standard. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

### ***Burley's claim for unpaid moving services***

10. Mr. Cardinal hired Burley to complete a residential move on August 25, 2022. Mr. Cardinal booked the move by speaking to Burley's booking agent on the phone. He says that based on the information he provided, the booking agent quoted him an hourly rate of \$150 for 2 movers and said that the move would take around 6 hours. Mr. Cardinal says that based on this conversation, he expected the move to take no

longer than 8 hours. Burley says that Mr. Cardinal agreed to an hourly rate of \$175 for 2 movers.

11. There is no written contract in evidence. Burley's evidence includes an appointment confirmation page that notes a \$175 hourly rate for 2 movers, plus 2 hours for travel time and a \$75 fuel fee. Burley says that it sent this appointment confirmation to Mr. Cardinal by email, showing the rate he agreed to. However, it did not provide evidence of this alleged email, which Mr. Cardinal denies receiving. Without evidence that this appointment confirmation was sent, I find it unproven that Burley sent this email to Mr. Cardinal. So, I find the appointment confirmation document does not establish that Mr. Cardinal agreed to the rates and fees set out in it.
12. I note that Burley had initially calculated the total fees for the move based on a \$150 hourly rate. This is apparent on its August 25, 2022 waybill, which is also its invoice. It is undisputed that Burley's mover asked Mr. Cardinal to sign the waybill a few hours into the move, and well before the move was completed. The waybill in evidence shows the \$150 hourly rate crossed out and the \$175 hourly rate inserted. It is unclear whether any rate was written on the waybill at the time Mr. Cardinal signed it. However, I find emails in evidence show that Burley did not change the hourly rates on the waybill until September 1 in any event. So, if there was a rate written on the waybill, I find it more likely than not it was the \$150 hourly rate for 2 movers that Mr. Cardinal says he agreed to.
13. On the evidence before me, I find it more likely than not that the parties agreed to an hourly rate of \$150 for 2 movers and not the \$175 hourly rate that Burley charged. As it is undisputed that the parties agreed on an hourly rate, as opposed to a flat rate for the move, I find it was an implied term of the contract that Burley would complete the move in a timely way.
14. Burley charged Mr. Cardinal for 2 movers at \$175 for 9.5 hours and 3 movers at \$225 an hour for 4 hours. Mr. Cardinal says that Burley not only charged him a higher rate for 2 movers, but it unnecessarily added a third mover without his agreement. He says that the movers were inexperienced and worked inefficiently

throughout the move, causing delay, which resulted in Burley sending the third mover. Mr. Cardinal also says that Burley's movers got lost on the way to his new home from the storage facility that they had stopped at to unload some of his belongings. He says that the drive between the storage facility and his new home is only 2 minutes long, and it took Burley's movers 45 minutes to arrive. Burley does not specifically dispute this, so I accept it is true.

15. Burley appears to assert that any alleged delays were due to Mr. Cardinal not providing the booking agent with important information about the move. It says that Mr. Cardinal never informed it at the time of booking that the movers would need to stop at the storage facility. Burley says that it provided Mr. Cardinal with an estimate, which I infer is the 6-hour estimate Mr. Cardinal refers to, based on the information he gave at the time of the booking. It says that since its movers were moving a 2-bedroom, 800 square foot residence with an elevator and stopping at the storage facility along the way, the move took longer than estimated.
16. Burley provided no witness statement from its booking agent to support its assertion that Mr. Cardinal failed to inform it that some items would need to be dropped off at a storage facility on the way to his new home. When a party fails to provide relevant evidence with no explanation, the CRT may draw an adverse inference. An adverse inference is when the CRT assumes that a party did not provide relevant evidence because it would have been damaging to their case.
17. I find that an adverse inference is appropriate here. I note Burley is an experienced litigant that has participated in dozens of CRT disputes on their merits, so it should be aware of the importance of providing evidence to support disputed invoices. So, based on this adverse inference, I find Mr. Cardinal likely mentioned the stop at the storage facility at the time he booked the move, and the booking agent included this stop when providing the 6-hour time estimate.
18. Mr. Cardinal also says that B, one of the movers, told him that he was new to the company and that the other mover, T, would not let him do anything during the move, which resulted in some of the delays. Mr. Cardinal also says that T blamed B

for the delays, saying B was slow and inexperienced. Notably Burley did not provide any witness statements from its movers to refute Mr. Cardinal's allegations. I find Burley is in the best position to provide this evidence. Given its absence, I find it appropriate to draw an adverse inference against Burley on this point as well.

Based on this adverse inference, I find it likely that Burley's movers were inefficient during the move. I find these inefficiencies resulted in the move taking much longer than anticipated. I find there was an additional delay of approximately 40 minutes due to the movers getting lost on the way from the storage facility to Mr. Cardinal's new home.

19. It is difficult to determine exactly how long the move should have taken. However, given the size of the move, the distance between Mr. Cardinal's former home and the 2 drop off locations, and Burley's original 6-hour time estimate, I find that Burley likely could have completed the move in 10 hours with 2 movers. So, I find that Burley is entitled to \$1,500 plus GST for the move, based on the \$150 hourly rate.
20. Burley also charged Mr. Cardinal 2 hours for travel time. Mr. Cardinal says that Burley's agent never mentioned anything about travel time when he booked the move. Even so, I find it was an implied term that Mr. Cardinal would pay for Burley's reasonable travel time. I find the 2 hours Burley charged for travel time reasonable here. So, I find Burley is entitled to \$300 plus GST for the 2 hours of travel time. However, I do not accept that Mr. Cardinal agreed to a fuel fee because there is no evidence showing that he did. So, I find Burley is not entitled to charge anything for fuel.
21. In total, I find Mr. Cardinal owes Burley \$1,800 plus GST for the move. This equals \$1,890.

### ***Counterclaim***

22. I turn now to Mr. Cardinal's counterclaim, starting first with his allegation that Burley damaged his furniture during the move.
23. I find photographs in evidence show the following damage:

- a. Scratches and chips on Mr. Cardinal's bed frame, dining table, side chair's wood frame and legs, side table, tv stand and underbed storage,
  - b. Edges or corners damaged on Mr. Cardinal's dresser, laptop table, nightstand, and shoe storage,
  - c. A cast iron kettlebell's handle broken off and in 2 pieces,
  - d. The side of Mr. Cardinal's metal storage table dented in, and
  - e. The upholstery on Mr. Cardinal's sofa ripped away from the staples on one side, and multiple areas on the sofa where the fabric looks worn down due to being dragged on the floor.
24. Prior CRT decisions have found that in moving disputes, the mover has the burden of disproving negligence (see, for example, *2 Burley Men Moving Ltd. v. Fraser*, 2022 BCCRT 468 and *2 Burley Men Moving Ltd. v. Jenner*, 2022 BCCRT 1088). While previous CRT decisions are not binding, I agree with the reasoning in these decisions. So, I find Burley has the burden of proving that it did not damage Mr. Cardinal's belongings as alleged.
25. Since Burley has provided no evidence to show otherwise, I accept that it damaged the items listed above during the move. The question then is what amount, if any, does Burley owe Mr. Cardinal for the damaged items?
26. Burley argues that under its terms and conditions, Mr. Cardinal was required to report any alleged damage within 14 days of the move. Burley also appears to argue that its protection plan only covers \$0.60 per pound. Burley's evidence includes a copy of its terms and conditions from its website, which mentions its protection plan and notes all claims must be submitted in writing within 14 days of move completion. However, Burley does not say how it brought these terms to Mr. Cardinal's attention. So, I find it unproven that Mr. Cardinal agreed to and is bound by Burley's terms and conditions on its website.

27. The waybill in evidence has Mr. Cardinal's signature on it and says that by signing, he agreed to the terms and conditions detailed on the reverse. However, Burley did not include the waybill's reverse side in evidence. So, I find the evidence does not show that Mr. Cardinal agreed to any terms requiring him to report damage within a certain period or that limit the amount that Burley may be liable for.
28. In any event, I note that to limit or exclude liability in a contract, a business must do so in clear and unambiguous terms (see *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, 1997 CanLII 307 (SCC)) at paragraph 28). Although not binding, several other CRT decisions have found that Burley's \$0.60 per pound coverage does not limit Burley's liability for damaged items, which I find persuasive (see *2 Burley Men Moving Ltd. v. Delmage*, 2020 BCCRT 498 at paragraph 26 and *Wilson v. 2 Burley Men Ltd.*, 2021 BCCRT 1133 at paragraphs 27 to 28).
29. So, even if Mr. Cardinal had agreed to the terms of Burley's protection plan, I find that Burley did not clearly indicate its "coverage" limited its responsibility for any damaged items to \$0.60 per pound. As a result, I find Burley is responsible for Mr. Cardinal's proven damages.
30. Mr. Cardinal provided a quote from a furniture repair company that assessed the damaged furniture. The repair company quoted Mr. Cardinal \$1,505 in total for all of the furniture repairs, other than the fabric sofa and the metal storage table which the company said are not repairable. The quote includes a breakdown for the repair cost of each item, which I have reviewed and find it unnecessary to detail here. Burley says that it has calculated a payout for the "minor damage" at \$231. It is unclear how Burley arrived at this number.
31. Burley also presented no evidence to suggest that the repair quote Mr. Cardinal received is inflated. I find the repair company's estimate for the repair cost for each item is reasonable. So, I find Mr. Cardinal is entitled to \$1,505 in damages for the quoted repair costs for the damaged furniture items listed above other than the sofa and the metal storage table.



32. I turn now to the remaining items. While I accept that the dent in the metal table cannot be fixed, the damage is mostly aesthetic. I find it likely that Mr. Cardinal can still use the table, as there is nothing in the evidence to suggest that its structural integrity has been comprised. Under the circumstances, I find it appropriate to award Mr. Cardinal \$115 for the dent in the metal table. This is approximately half the amount Mr. Cardinal paid for the table in October 2020.
33. As for the sofa, I find it unclear why the repair company said the sofa cannot be repaired. While I accept that the fabric may not be repairable, I find it likely that the sofa can be reupholstered and is still useable in any event. So, on a judgment basis, I award Mr. Cardinal \$500 for the sofa damage.
34. Finally, Mr. Cardinal did not provide any evidence about the cost to replace the kettlebell, which I accept is damaged beyond repair. On a judgment basis, I award him \$20 for this damage. So, in total, I find Burley owes Mr. Cardinal \$2,140 for the damaged items.
35. Mr. Cardinal also seeks compensation for the time he spent helping Burley with the move. He says that he worked all day, and that his hourly rate in his job is \$80 per hour. I find Mr. Cardinal is not entitled to any compensation for the following reasons.
36. First, there is no evidence that Mr. Cardinal would otherwise have been working at his job that day and missed out on employment income because of Burley's inefficiencies during the move. I find that a person who has hired professional movers would likely expect to be occupied with and spending time on their move for the day.
37. Further, while I accept that Burley had initially offered to pay Mr. Cardinal for some of this time, there is no evidence before me that Mr. Cardinal agreed to this offer or any specific amount. Under the circumstances, I find there was no binding agreement between the parties about compensating Mr. Cardinal for his time. For these reasons, I dismiss this part of Mr. Cardinal's counterclaim.

38. Mr. Cardinal also seeks reimbursement for the \$85 he paid the repair company to attend at his home and assess the furniture damage. I find this is a claim for dispute-related expenses, which I address further below.

### ***Conclusion***

39. Above I have found Mr. Cardinal owes Burley \$1,890 for the moving services. Burley owes Mr. Cardinal \$2,140 for the damaged furniture. The net result is that Burley owes Mr. Cardinal \$250 in damages.

### ***Interest, CRT fees, and expenses***

40. The *Court Order Interest Act* applies to the CRT. However, there is no evidence that Mr. Cardinal has incurred any expense to repair or replace any of the items that Burley damaged. So, I order no pre-judgment interest.

41. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, the results were mixed as both parties had some success in their respective disputes, but each was ultimately awarded less than their claimed amount. Under the circumstances, I find it appropriate for the parties to bear the cost of their own CRT fees and any dispute-related expenses. This includes the \$85 expense Mr. Cardinal paid the repair company to assess the furniture damage.

### **ORDERS**

42. Within 14 days of the date of this decision, I order Burley to pay Mr. Cardinal a total of \$250 in damages.

43. Mr. Cardinal is entitled to post-judgment interest, as applicable.

44. I dismiss the parties' remaining claims.

45. 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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Nav Shukla, Tribunal Member