



Civil Resolution Tribunal

Date Issued: September 9, 2019

File: SC-2019-002835

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Israni v. Durie*, 2019 BCCRT 1064

B E T W E E N :

JAMES ISRANI

APPLICANT

A N D :

CLAYTON DURIE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for moving services provided on March 31, 2019. The applicant, James Israni, claims the respondent, Clayton Durie, only paid him \$300 has failed to pay the \$460 balance as allegedly agreed. The applicant claims the

\$460, plus \$500 for his time spent, frustration, and his expenses dealing with this dispute.

2. The respondent says the move took longer than agreed and the furniture assembly portion was not done. The respondent says they agreed to a cash payment of \$600 at the end of the job, to account for his dissatisfaction with the job. The respondent says he paid the \$600 in cash and was not given a receipt. The respondent says he does not owe the applicant anything.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's

process and found that oral hearings are not necessarily required where credibility is in issue.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the respondent owes the applicant \$460 for moving services, and in particular, whether the respondent has already paid the applicant in full for the job.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant to prove their claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.
10. The parties agree that at the outset of the move the applicant's billable rate was \$95 per hour. The move was from one apartment to another, one block apart. The parties agree that the applicant sent at least 2 movers to the respondent's home. The parties also agree the move took 8 hours. At the billable rate, the job cost \$760 excluding GST.
11. The dispute is about what the parties agreed the job would cost at the end of the move, and, what the respondent paid in cash at the end of the job. As noted, the

applicant says the respondent only paid \$300 in cash, and the respondent says given his concerns about the incomplete work they agreed to cap the job's cost at \$600 and he paid that amount.

12. The applicant did not address the respondent's specific arguments about the job not being properly done as agreed. The respondent says at the end of the move he had \$100 cash on-hand and took \$500 out from a bank machine. His submitted bank records support a \$500 withdrawal on April 1, 2019. I infer the bank record shows April 1 because the March 31 move date was a Sunday. The respondent also notes he never heard from the applicant again, until this dispute was filed.
13. The respondent also provided documentation from his bank showing his branch was one block from his home, and so it does not make sense for him to have told the applicant he would mail him a cheque. The respondent says he would have just taken more money out if a higher price had been their agreement. The respondent further provided a witness statement from his friend KA, who said that on March 31 he and the respondent discussed the respondent's dissatisfaction with the move and that the respondent had explained he had obtained a discount.
14. The applicant's only supporting evidence is a "working sheet/receipt" that has what I infer are the applicant's handwritten notations all over it, including a \$760 total, plus also the amounts the applicant claims in this dispute for his time and "court cost". In one spot, there are initials above "Customer Signature". The respondent says he only initialed a blank document to acknowledge the time the movers arrived. Given the applicant clearly added other notations after the job was done, such as those about "court cost", I find I am unable to place any weight on this document as proof the respondent agreed to pay \$760.
15. The applicant says he contacted the respondent several times after the job to collect the alleged \$460 balance, but the respondent never answered. However, the applicant provided no proof, such as cell phone records or text messages. The applicant also did not provide any witness statements from his movers to support his claim the respondent paid him only \$300 in cash and promised to pay \$460 by

cheque. I find the weight of the evidence does not support the applicant's position, and he bears the burden of proof in this dispute.

16. Even if I had found the respondent responsible for the \$460 claimed, I would not allow the applicant's claim for \$500 for time spent, frustration, and expenses. He provided no supporting evidence for any money he might have spent, and most of his submission on this issue focuses on his allegedly waiting around outside the respondent's home to ask him for money. Mere frustration or inconvenience is generally not compensable. Further, given the self-representation expectation set out in section 20 of the CRTA and the tribunal's practice of generally not awarding reimbursement of legal fees except in extraordinary cases, the tribunal generally does not allow claims for "time spent". I see no reason to deviate from that practice here, and note this was not an extraordinary case. I dismiss the applicant's claims.
17. Under the CRTA and the tribunal's rules, the successful applicant is generally entitled to reimbursement of their tribunal fees and reasonable dispute-related expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. The respondent did not pay any fees and did not claim expenses.

ORDER

18. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair