



Civil Resolution Tribunal

Date Issued: March 28, 2024

Files: SC-2023-003315
and SC-CC-2023-010607

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *2 Burley Men Moving Ltd. v. Stadelman*, 2024 BCCRT 325

B E T W E E N :

2 BURLEY MEN MOVING LTD.

APPLICANT

A N D :

SHANDI STADELMAN

RESPONDENT

A N D :

2 BURLEY MEN MOVING LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. These 2 linked disputes are about a residential move. I find the disputes are a claim and a counterclaim between the same parties. So, I have considered the evidence and submissions in both disputes as a whole and issued 1 decision.
2. Shandi Stadelman¹ hired 2 Burley Men Moving Ltd. (Burley) to complete their residential move. They paid \$5,000 of the \$7,229.25 Burley charged them. In dispute SC-2023-003315, Burley claims \$2,229.25 as the remaining balance owing for its moving services. Burley is represented by an employee.
3. Shandi Stadelman says Burley overcharged them. They say Burley told them it would cost approximately \$2,500 for the move, but due to mistakes Burley made, it took longer than anticipated. So, Shandi Stadelman argues Burley is not entitled to the claimed \$2,229.25.
4. In dispute SC-CC-2023-010607, Shandi Stadelman claims that Burley damaged their furniture and an exterior railing during the move, and that Burley's delays caused them to incur business losses and extra food expenses. Shandi Stadelman says Burley owes them \$5,080 for the furniture damage, \$1,500 for the exterior railing damage, \$6,750 in losses to their business, and \$300 for food expenses. However, they waive their claim to anything over the Civil Resolution Tribunal's (CRT) \$5,000 small claims monetary limit. Shandi Stadelman is self-represented.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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

¹ The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. Shandi Stadelman did not provide their pronouns or title. Because of this, I will use their full name and gender-neutral pronouns to refer to them throughout this decision, intending no disrespect.

accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness.

6. 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 an oral hearing is not necessary.
7. 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.
8. Where permitted by CRTA section 118, in resolving these 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

9. The issues in these disputes are:
 - a. Must Shandi Stadelman pay Burley \$2,229.25, or another amount, for unpaid moving services?
 - b. Did Burley damage Shandi Stadelman's furniture and exterior railing during the move? If so, what are Shandi Stadelman's damages?
 - c. Is Burley responsible for Shandi Stadelman's alleged business losses and extra food expenses? If so, what are Shandi Stadelman's damages?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Burley must prove its claims on a balance of probabilities. Shandi Stadelman must prove their 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. As noted above, I have considered the submissions and evidence submitted by the parties collectively in both disputes in deciding the issues in each dispute.

Burley's claim for unpaid moving fees

11. It is undisputed that Shandi Stadelman hired Burley to complete a residential move scheduled for March 10, 2023. Shandi Stadelman booked the move by speaking to Burley's booking agent on the phone. Shandi Stadelman says the booking agent quoted them approximately \$2,500 for a 12 to 16 hour move on March 10.
12. There is no written contract in evidence. Burley's evidence includes an appointment confirmation page for the move that notes a \$180 hourly rate for 3 movers, plus 30 minutes for each way of travel time and a \$50 fuel fee per day. However, Burley does not say that it sent this confirmation page to Shandi Stadelman, and there is no evidence that it did. Similarly, Shandi Stadelman also did not sign the waybill that Burley submitted in evidence for the move, which is also Burley's invoice.
13. Burley does not dispute that it provided an estimate to Shandi Stadelman for the move. However, it says that the estimate was based on an hourly rate and Shandi Stadelman failed to tell the booking agent about the volume of the move and access issues including 30 stairs that the movers would need to go up and down. Shandi Stadelman disputes this, and says they provided all of this information to the booking agent. Shandi Stadelman further says that they told the booking agent that when they moved to the property about a year prior, the moving company they used at the time did the move in 1 day with 4 movers and 2 trucks. Shandi Stadelman says that the booking agent told them that since this was a shorter distance move (approximately 1.4 kilometers), Burley could do it in 1 day with 3 movers and 1 truck and just make 2 trips instead of one.
14. Based on the evidence before me, I find Burley likely provided Shandi Stadelman with a \$2,500 estimate for their move, instead of a fixed-price quote, and that the move was to be billed by the hour. I say this because in submissions, Shandi Stadelman

essentially acknowledges there are many factors that can determine the time needed for a move, and alleges it was Burley's mistake in sending the wrong number of movers and trucks, and the movers' slow pace that unduly increased the time and cost to complete the move. I further find it was an implied term of the contract that Burley would complete the move in a timely way, since it was a move charged by the hour.

15. It is undisputed that Burley did not complete the move until March 13. It is also undisputed that upon Burley's 3 movers arriving at Shandi Stadelman's residence on March 10, the movers saw the volume of items needing to be moved as well as the access issues, and informed Shandi Stadelman that to finish the move in 1 day, Burley would need another truck and 1 to 2 additional movers.
16. The evidence shows Burley charged Shandi Stadelman for a total of 20.5 hours for 3 movers (at \$180 an hour) between March 10 and March 13 and 16 hours for 2 movers (at \$130 an hour), plus travel time and fuel costs, together totaling \$7,229.25 including tax. Although I find Burley has not shown that Shandi Stadelman specifically agreed to its rates of \$180 an hour for 3 movers and 1 truck, and \$130 an hour for the additional 2 movers and second truck, I find these rates reasonable. However, for the reasons that follow, I find Burley ultimately overcharged Shandi Stadelman.
17. First, Burley provided no witness statement from its booking agent to support its allegation that Shandi Stadelman failed to inform Burley about the access issues, number of stairs, and volume of the move at the time of booking. 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. 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 Shandi Stadelman likely mentioned the access issues

and volume of items to Burley before the move, but that Burley did not appreciate the impact this would have on its movers until the movers arrived on March 10.

18. I find that once Shandi Stadelman told Burley about the access issues and volume of the move, it was for Burley, as a professional moving company, to ensure it had the necessary number of movers and trucks to complete the move in a timely manner. There is no evidence Burley took any steps to determine in advance how many movers and trucks it would need to complete the move prior to March 10 given the access issues and number of stairs. Further, the evidence shows that once Burley's movers arrived on March 10 and realized they would not be able to complete the move in 1 day with their 3-person crew, Burley did not add more movers to the job until the afternoon of March 11. Burley does not say that it could not have arranged for additional movers to attend on March 10 to help expedite the move that day. So, I find that Burley did not take all reasonable steps to complete the move expeditiously.
19. Further, the evidence shows that as a result of not having enough movers on March 10, Burley's 3 movers became easily fatigued, which I find resulted in delays and inefficiencies. The evidence also shows that Burley's movers did not have the necessary tools to disassemble Shandi Stadelman's bed on March 10, which I find resulted in additional delays.
20. Burley alleges that Shandi Stadelman also contributed to delays in the move by failing to properly pack items. Based on photographs in evidence, I accept that some inefficiencies likely resulted during the move due to the number of loose and improperly packed items. However, I find most of the delays were due to Burley underestimating the number of movers required for the move.
21. On balance, I find that had Burley provided 5 movers and 2 trucks from the start of the move on March 10, as it suggests it needed, it could have completed the move more efficiently. It is difficult to determine exactly how long the move would have taken with the correct number of movers. However, on the evidence before me and on a judgment basis, I find with 5 movers and 2 trucks from the start, Burley likely could have completed the move in 15 hours. I also find that it was an implied term

that Shandi Stadelman would pay for Burley's reasonable travel time, which Shandi Stadelman does not specifically dispute. I find 1 hour for travel time reasonable here. However, I do not accept Shandi Stadelman ever agreed to a fuel fee, because there is no evidence before me that they did. So, I find Burley is not entitled to charge anything for fuel. For the 15 hours of moving time, plus 1 hour of travel time, using Burley's \$180 and \$130 hourly rates mentioned above, I find Burley was entitled to charge Shandi Stadelman \$4,960 plus tax, which equals \$5,208. Since Shani Stadelman paid Burley \$5,000, I find they still owe Burley \$208 for moving fees.

Counterclaim

22. I turn now to Shandi Stadelman's counterclaim, starting first with their allegation that Burley damaged some of their belongings during the move. Burley says that Shandi Stadelman's belongings were not "compromised" at any time. 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 Shandi Stadelman's belongings as alleged.

23. I find photographs in evidence show the following damage:

- a. Minor scuffs or scratches on 3 dining chair legs,
- b. A small brown stain near the back leg of a fabric sofa,
- c. A white table with some chipped paint or scratches along an edge,
- d. A white cocktail table with what appears to be dirt or grease marks,
- e. Scratch marks on the edges of a white sofa table, as well as a dirty handprint on same,
- f. 3 or 4 scratch marks on a dining chair's leather seat,

- g. A dented lampshade that has come apart at the seam, and
 - h. A chunk of missing particle board from the frame around an electric fireplace.
24. Since Burley has provided no evidence to show otherwise, I accept that it damaged the items listed above during the move. Shandi Stadelman also argues their wine fridge, 2 tall mirrors, bed frame, and glass tabletop were damaged by Burley. However, I find such damage unproven on the evidence before me. The question then is what amount, if any, does Burley owe Shandi Stadelman for the damaged items?
25. Burley argues that Shandi Stadelman did not inform it of any alleged damage until these CRT disputes, contrary to its terms and conditions which require customers to report damage within 14 days. 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 which mentions its protection plan and notes all claims must be submitted in writing within 14 days of move completion. However, the copy before me is not signed by Shandi Stadelman, and there is no other evidence to suggest they agreed to these terms. So, I find it unproven that Shandi Stadelman agreed to report any damage in writing within 14 days of Burley completing the move.
26. Further, 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 and *Wilson v. 2 Burley Men Ltd.*, 2021 BCCRT 1133 at paragraphs 27 to 28). So, even if Shandi Stadelman 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 Shandi Stadelman's proven damages.

27. In their counterclaim Dispute Notice, Shandi Stadelman estimates \$5,080 for the items they allege Burley damaged. However, they did not provide any documentary evidence in support of this amount, which I note includes items that I have found the evidence does not show were damaged. Having reviewed the photographs, I note much of the damage Shandi Stadelman complains about is minor, and mostly aesthetic. I find the items with the most significant damage are the lampshade, which is no longer usable, the fireplace that is missing a chunk of particle board, and the dining room chair with scratches on the leather seat, which I find although minor, will likely be difficult to repair without re-upholstering the seat. On a judgment basis, I find Shandi Stadelman is entitled to \$400 in damages for the cost of replacing the lampshade with a similar, used lampshade, and for the cost of repairing the fireplace's frame and the chair's leather seat.
28. I find it likely that the dirt or grease marks on the white cocktail table as well as the handprint on the sofa table can be wiped clean, and that the small stain on the sofa can be cleaned with an upholstery cleaning brush. I also find the scratches on the brown dining chair legs, white table, and sofa table can likely be fixed with a touch-up pen. So, on a judgment basis, I find Shandi Stadelman is entitled to \$150 in total for the minor damage to the dining chair legs, sofa and tables. Altogether, I find Shandi Stadelman is entitled to \$550 for the damaged items.
29. Shandi Stadelman also alleges that Burley damaged their exterior railing while trying to hoist their mattress over the balcony railing. However, I find the videos and photographs in evidence do not show any damage to the railing, so I find this allegation unproven. Similarly, Shandi Stadelman provided no documentary evidence in support of their claim for business losses, or extra food expenses incurred because of Burley's moving delays. So, I find these allegations unproven as well.

Conclusion

30. Above I have found that Shandi Stadelman still owes Burley \$208 in moving fees. Deducting this amount from the \$550 I find Burley owes Shandi Stadelman for the damaged items, I order Burley to pay Shandi Stadelman \$342.

31. The *Court Order Interest Act* applies to the CRT. However, in their counterclaim Dispute Notice, Shandi Stadelman expressly waives any claim for pre-judgment interest, so I make no order for it.
32. 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. Here, both parties were minimally successful with their respective claims. So, I find it appropriate for the parties to bear the cost of their own CRT fees. The parties do not claim any dispute-related expenses, so I award none.

ORDERS

33. Within 14 days of the date of this decision, I order Burley to pay Shandi Stadelman \$342 in damages.
34. Shandi Stadelman is entitled to post-judgment interest, as applicable.
35. I dismiss Burley's claims.
36. 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.

Nav Shukla, Tribunal Member