



Civil Resolution Tribunal

Date Issued: April 24, 2024

File: SC-2023-003210

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Popov v. Home Depot of Canada Inc.*, 2024 BCCRT 394

BETWEEN:

ARSENIY POPOV

APPLICANT

AND:

HOME DEPOT OF CANADA INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a van rental. Arseniy Popov rented a small cargo van from Home Depot of Canada Inc. to drive from Surrey, British Columbia to Edmonton, Alberta and back. Mr. Popov says on the return to BC, the van got stuck in snow and he was informed the tires were unsafe to continue driving through the mountains. Home Depot eventually collected the van from Alberta. Mr. Popov says it was Home Depot's poor vehicle maintenance that resulted in the van's late return, so he seeks a refund

of \$3,255.30 for rental charges he says Home Depot charged him after the van got stuck. Mr. Popov represents himself.

2. Home Depot says it did not authorize Mr. Popov to take the rental van out of BC. In any event, Home Depot says Mr. Popov breached the parties' agreement to return the van on time, and rightfully charged him for the extended rental period. Home Depot is represented by an employee.

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 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.
4. Section 39 of the CRTA says that 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.
5. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
6. 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.

ISSUE

7. The issue in this dispute is whether Mr. Popov is entitled to a refund for alleged rental overcharges, and if so, how much.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant Mr. Popov must prove his claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
9. Mr. Popov rented a van from Home Depot in Surrey on October 29, 2022. The parties’ agreement required Mr. Popov to return the van by 7:42am on October 31 to the same location. He did not so do. Home Depot says it called Mr. Popov on November 4 to advise him the van rental was overdue, and Mr. Popov undisputedly told them he would return it on November 6.
10. Both parties make some submissions about whether Mr. Popov was eligible to rent the van, given Mr. Popov was not yet 21 years old when he rented the van, and Home Depot’s policy is to not rent to anyone under 21. However, I find there was no term in the parties’ agreement about any minimum age, so I find nothing turns on Mr. Popov’s age during the rental period.
11. Mr. Popov says that on November 5, 2022, while passing through the mountains, the van got stuck in the snow. He says “Alberta Road Services” deemed the tires unsafe for mountain driving, so he drove back to Edmonton. Mr. Popov did not provide any evidence from Alberta Road Services.
12. Home Depot says the van’s tires were “all season” tires, and were compliant with the laws in BC. Mr. Popov does not allege the tires were not “winter tires”, but instead that the tread was too low. Additionally, neither Kal-Tire nor Ford allege the tires were not “winter tires”. So, I find that they were.

13. Section 7.162 of the *Motor Vehicle Act Regulations* says that winter tires must have at least 3.5 mm of tread depth (which is between 4 and 5/32nds).
14. Mr. Popov says he informed Home Depot that the tires were insufficiently maintained and it was unsafe for him to drive the van back to BC. Home Depot says it told Mr. Popov to take the van to a Ford dealership that could assess the tires and replace them if necessary and advised him there were 2 nearby his location. Instead, on November 9, Mr. Popov says he took the van to a local Kal-Tire. A Kal-Tire work order in evidence says the customer had a rental vehicle and the tires were “around 3-4/32nds”, which “should be replaced”. The work order also notes that the customer complained the vehicle was losing control while driving it. The work order contains no further details.
15. I note the spaces on Kal-Tire’s work order for the vehicle’s vehicle identification number (VIN), make, model, license plate, current mileage, or any other defining features of the van were left blank. Only Kal-Tire’s brief description of the tire treads is noted. The technician did not break down the measurements of each tire.
16. In contrast, Home Depot provided the van’s most recent pre-rental maintenance report from Ford, dated September 13, 2022, only 6 weeks before Mr. Popov’s rental. The Ford maintenance report notes the van’s VIN, which matches the VIN on the vehicle inspection report from the company that recovered the van from Edmonton on Home Depot’s behalf. So, I accept Ford’s maintenance report relates to the specific van Mr. Popov rented. The Ford maintenance report notes the tires on that date were 5, 5, 7, and 6/32nds of tread depth. Ford also noted the van’s odometer was 41,584 km, which I find to be relatively low. On balance and relying on Ford’s detailed maintenance report, I find the van’s tire treads were likely compliant with the *Motor Vehicle Act* and its regulations when Mr. Popov rented the van. So, I find Mr. Popov has not proven Home Depot’s van’s tires were unsafe and resulted in his delay returning the van.
17. However, even if Home Depot did breach the parties’ contract by failing to provide adequately treaded tires, Mr. Popov had a duty to mitigate his losses (see: *Red Deer*

College v. Michaels, 1975 CanLII 15 (SCC)). This means he had to act reasonably to prevent avoidable losses resulting from the alleged breach of contract. Here, Home Depot undisputedly told Mr. Popov to take the van to a Ford dealership and, if necessary, the tires would be replaced at no cost to him. Instead, he took the van to Kal-Tire and then effectively abandoned the van. I find Mr. Popov did not act reasonably, or attempt to mitigate his damages of extended rental fees, by having the van properly inspected and the tires replaced, or otherwise attempting to return the van to Home Depot as he was contractually required to.

18. The next question is whether Home Depot was entitled to charge Mr. Popov for the continued van rental. The signed agreement states Mr. Popov agreed to a recurring weekly charge of \$718 if the vehicle was not returned to the same Home Depot location by the date and time due (which was originally October 31, 2022).
19. Around 7 to 10 days after Mr. Popov's missed November 6 return date, Home Depot says it reported the van stolen and began the recovery process. The exact date is not before me. In any event, on November 16, 2022, Home Depot towed the van from near Mr. Popov's Alberta residence, and stored it locally until a vehicle transport company brought it back to its original location, which happened on January 20, 2023. Home Depot says out of goodwill, it only charged Mr. Popov until November 30, instead of until January 20, 2023, as it was permitted to do under the contract.
20. Home Depot charged Mr. Popov a total of \$3,842.44 for October 29 to November 30, 2022. Had Mr. Popov returned the van on November 6, he would have been charged \$866.73. This is a difference of \$2,975.71. In his Dispute Notice, Mr. Popov claimed \$3,255.30 for a full refund of the extra charges and an unspecified amount for credit card interest.
21. In any event, as Mr. Popov has not proven Home Depot breached the parties' agreement by failing to maintain the tires and because Mr. Popov essentially abandoned the van, I find under the terms of the parties' agreement Home Depot was entitled to charge Mr. Popov for his failure to return the van as agreed. I find the

amount Home Depot charged reasonable in the circumstances. Mr. Popov is not entitled to any refund. I dismiss his claim.

22. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Home Depot was successful but did not pay any tribunal fees or claim dispute-related expenses. I dismiss Mr. Popov's claim for reimbursement of tribunal fees.

ORDER

23. Mr. Popov's claims, and this dispute, are dismissed.

Andrea Ritchie, Vice Chair