



Civil Resolution Tribunal

Date Issued: April 18, 2024

File: VI-2022-005784

Type: Accident Claims

Category: Liability & Damages

Civil Resolution Tribunal

Indexed as: *Kraus v. Nikolic*, 2024 BCCRT 371

Default decision – non-compliance

B E T W E E N :

EDWARD BRIAN KRAUS

APPLICANT

A N D :

DRAGANA NIKOLIC and UBER CANADA INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner, Vice Chair

INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the applicant, Edward Brian Kraus, due to their non-compliance with the CRT's mandatory directions, as discussed below.

2. The applicant says they were injured in a motor vehicle accident that occurred on August 18, 2020. I infer that the respondent, Dragana Nikolic, was driving the other vehicle involved in the accident, and that the corporate respondent, Uber Canada Inc., employed Dragana Nikolic. The applicant asks the CRT to determine fault for the accident and claims \$8,627 in damages for their injuries, including \$5,627 in non-pecuniary (pain and suffering) damages, \$1,000 for past income loss, and \$2,000 for out-of-pocket expenses.
3. The respondents say the applicant is fully responsible for the accident, and so the applicant is not entitled to any damages. The respondents also say the applicant has not provided any proof of their alleged income loss and out-of-pocket expenses.
4. The applicant is represented by a lawyer, Ronald Eichler. The respondents are represented by an authorized employee of their insurer, Insurance Corporation of British Columbia.

JURISDICTION AND PROCEDURE

5. Section 36 of the CRTA applies if a party to a dispute fails to comply with the CRTA, its regulations, the CRT rules about case management, or a CRT order made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for resolution and the CRT member may:
 - a. Hear the dispute,
 - b. Dismiss the non-compliant party's claims, or
 - c. Refuse to resolve the non-compliant party's claims.
6. A CRT case manager referred the applicant's non-compliance with the CRT's rules to me for a decision.
7. For the reasons that follow, I dismiss the applicant's claim.

ISSUES

8. The issues are:
 - a. Is the applicant non-compliant with the CRTA and the CRT's rules?
 - b. If so, should I dismiss or refuse to resolve this dispute without the applicant's further participation?

EVIDENCE AND ANALYSIS

Non-compliance

9. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to participate in the case management phase and pay the tribunal decision fee, as required under sections 25 and 32 of the CRTA, and CRT rules 1.3(1) and 5.1 to 5.4. This is despite multiple attempts by the CRT to contact the applicant with a request for a reply.
10. The applicant applied for dispute resolution on August 17, 2022. The applicant included their lawyer's email address and telephone number to be used to contact the applicant for this dispute.
11. CRT staff provided the following details of the applicant's non-compliance:
 - a. On January 31, 2024 CRT staff emailed the applicant and asked them to pay the \$50 tribunal decision fee by February 6, 2024 in order for the dispute to proceed through the tribunal decision process for a final decision. The email included a warning that, if the applicant did not pay the fee, the CRT would give the other party the option to pay. However, if no party paid the fee, the CRT could dismiss or refuse to resolve the dispute.
 - b. On February 5, 2024 CRT staff emailed the applicant a reminder that the fee payment was due the next day. The email contained the same warning as the January 31, 2024 email.

- c. On February 27, 2024, CRT staff emailed the applicant a request to pay the \$50 fee by March 5, 2024. This email also included the warning that the CRT could dismiss or refuse to resolve the dispute if the fee was not paid.
 - d. On March 7, 2024, CRT staff called the applicant and left them a voice mail advising that the decision fee was overdue.
 - e. In a March 8, 2024 email, CRT staff made a third request that the applicant pay the decision fee and provided a March 14, 2024 deadline.
 - f. In a March 26, 2024 email, CRT staff gave the applicant a final warning that if they failed to pay the decision fee by April 1, 2024, the CRT could dismiss, refuse to resolve, or decide the dispute without the applicant's further participation. The email also suggested the applicant may wish to consider withdrawing their dispute.
 - g. On April 5, 2024, CRT staff emailed the respondents and asked them to pay the decision fee by April 12, 2024, if they wished to proceed to adjudication. The email included a warning that, if no party paid the decision fee, the CRT could choose to dismiss or refuse to resolve the dispute. The respondents replied that they would not be paying the decision fee.
 - h. The applicant did not respond to any of the CRT's emails or the voice message.
 - i. Neither party has paid the \$50 decision fee.
12. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for failing to pay the tribunal decision fee. As noted above, the applicant was warned, in writing, about the risks of their failure to pay the tribunal decision fee or respond to the CRT staff's communications. Under CRT rule 5.4(3), where neither party pays the tribunal decision fee, the CRT can refuse to resolve the dispute, proceed to hear it, or dismiss it.

Should the CRT hear the dispute without the applicant's further participation?

13. As noted above, the applicant initiated this CRT dispute but has refused to pay the tribunal decision fee. I find CRT staff provided the applicant with a reasonable number of opportunities to pay the fee, through both the email address and phone number that the applicant provided. I find the applicant knew about the outstanding tribunal decision fee but refused to pay it.
14. Rule 1.4(2) states that if a party is non-compliant, the CRT may:
 - a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
 - b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
 - c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
 - d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.
15. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:
 - a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
 - b. The stage in the facilitation process at which the non-compliance occurs,
 - c. The nature and extent of the non-compliance,

- d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
 - e. The effect of the non-compliance on the CRT's resources and mandate.
16. Based on the evidence described above, I find that the applicant had proper notice of the outstanding tribunal decision fee. I further find the applicant knew the consequences if they failed to pay the fee, which was the potential dismissal of their dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondents in making an order dismissing the applicant's dispute.
17. On the other hand, if I were to refuse to resolve the claim, there would be no finality to this dispute. This is because it would be open to the applicant to make a further request for CRT resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicant for failing to participate, which would be unfair to the respondents.
18. The applicant's non-compliance here also occurred early in the tribunal decision process, and the parties have not provided any evidence or submissions.
19. The CRT's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where, through a failure to respond as required, the applicant shows they do not want the CRT's assistance in resolving their claim.
20. Although not binding on me, I agree with and apply the former CRT chair's reasoning in *Grand-Clement v. The Owners, Strata Plan KAS 2467*, 2017 BCCRT 45, that it is problematic to force an unwilling applicant to pursue a dispute with the CRT. I agree that to do so would go against the CRT's mandate and impair the fairness of the process by creating an imbalance of the CRT's fact finding and decision-making functions.

21. In weighing all the factors, I find the applicant's claims should be dismissed.
22. Under its rules, the CRT can make orders about payment of fees or reasonable dispute-related expenses in the case of a withdrawal or dismissal. Given the applicant's non-compliance, I find they are not entitled to a refund of paid CRT fees. However, I find the respondents are each entitled to reimbursement of their \$25 response filing fee.

ORDERS

23. Within 30 days of the date of this decision, I order the applicant, Edward Brian Kraus, to pay the respondents, Dragana Nikolic and Uber Canada Inc., \$25 each for reimbursement of tribunal fees.
24. The respondents are also each entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
25. I dismiss the applicant's claims.
26. This is a validated decision and order. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia, if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Kristin Gardner, Vice Chair