



# Civil Resolution Tribunal

Date Issued: May 2, 2024

File: AR-2023-003129

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Aurora Roofing LM Ltd. v. ICBC*, 2024 BCCRT 416

Default decision – non-compliance

B E T W E E N :

AURORA ROOFING LM LTD.

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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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, Aurora Roofing LM Ltd., due to its non-compliance with the CRT's mandatory directions, as discussed below.

2. The applicant owned a vehicle that was involved in a motor vehicle accident with one other vehicle on August 29, 2022. The applicant says the respondent insurer, Insurance Corporation of British Columbia, unreasonably and improperly assessed each driver 50% responsible for the accident. I infer the applicant believes it should be held 0% responsible.
3. The respondent says it reasonably investigated the accident and correctly held each driver 50% responsible.
4. The applicant is self-represented. The respondent is represented by an authorized employee.

## **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 March 21, 2023. It provided an email address and telephone number for Justin Fortin, to be used for this dispute.
11. CRT staff provided the following details of the applicant's non-compliance:
  - a. On April 4, 2024, CRT staff emailed the applicant and asked it to pay the \$50 tribunal decision fee by April 11, 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 April 12, 2024, CRT staff emailed the applicant that the fee payment was overdue and extended the due date until April 16, 2024. The email contained the same warning as the April 4, 2024, email.
  - c. On April 17, 2024, CRT staff called the applicant and advised that the fee payment was overdue. The applicant indicated it had not received any emails about the fee, so CRT staff suggested it check their junk mail. CRT staff advised the applicant it had until April 19, 2024, to pay the fee.

- d. In an April 23, 2024, email, CRT staff advised that the fee payment was overdue and again extended the due date to April 25, 2024. CRT staff gave the applicant a final warning that the dispute could be decided by a tribunal member without any further warning if the applicant did not pay the fee.
  - e. On April 26, 2024, CRT staff emailed the respondent and asked it to pay the decision fee by May 3, 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 respondent replied that it would not be paying the decision fee.
  - f. The applicant did not respond to any of the CRT's emails.
  - g. 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 it failed to pay the fee, which was the potential dismissal of its dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondent 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. The successful respondent did not pay any CRT fees or claim expenses.

## **ORDERS**

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

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Kristin Gardner, Vice Chair

