



# Civil Resolution Tribunal

Date Issued: March 26, 2018

File: SC-2017-003657

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Harrison et al. v. DLF Construction Ltd.*, 2018 BCCRT 95

**B E T W E E N :**

Nicholas Harrison and Jessica Harrison

**APPLICANTS**

**A N D :**

DLF Construction Ltd.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. The applicants, Nicholas Harrison and Jessica Harrison, seek payment of \$3,208.04 for damage caused to their car when metal construction fencing fell on it.
2. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
5. 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.
6. Under tribunal rule 121, in resolving this dispute the tribunal may: 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.

## **ISSUES**

7. The issue in this dispute is whether the respondent must pay \$3,208.04 for damage to the applicants' car.

## **POSITIONS OF THE PARTIES**

8. On the morning of March 1, 2017, the applicants discovered that a portion of metal fencing surrounding a construction site had fallen on their car. The car was parked along a public road, parallel to the construction fence. Photographs show that the fencing ran between the perimeter of the property under construction and the road, with the fencing on the inside of the curb. The photographs show that two large fence panels fell or blew over and landed fully on top of the car.
9. The applicants obtained a written estimate from a repair shop for \$3,208.04 in repair costs. The applicants say the respondent was negligent in not properly securing the fence, and is therefore liable for the car repairs.
10. The parties agree that the property under construction is owned by the respondent. The respondent agrees that the fence struck the applicants' car and caused damage. It says it is not responsible for the damage because the fence was installed by another company, ACME Septic Tank Service Ltd (ACME). An invoice provided by the respondent shows that it paid fence delivery, installation, and rental fees to ACME in November 2016. The respondent says that because ACME was hired to install the fence, ACME is solely liable for any damage flowing from it.

## **EVIDENCE AND ANALYSIS**

11. An applicant bears the burden of proving a negligence claim on a balance of probabilities. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard

could cause the applicant's damages, and the failure did cause the claimed damages.

12. In this case, the respondent was in physical possession of the premises upon which the fence was constructed and it had responsibility for, and control over, the condition of the premises and the activities conducted there. ACME installed the fence at the respondent's request, and the fence was on the respondent's property and within the respondent's control. Accordingly, I find that the respondent had a duty of care with respect to the fence. While the respondent may have a claim against ACME, that matter is not before me in this dispute, and ACME has not been named as a co-respondent or as a third party.
13. In this dispute, I find that that taking care to ensure that the fence did not fall and damage cars legally parked on the public street was a reasonable standard of care. The photographs provided in evidence show that the fence was not secured to the ground, and the respondent has not provided evidence that it made any attempt to ensure that the fence was secure. Both of the parties provided evidence about the weather and wind speed at the time the fence fell, but I find that these factors were not so unusual that it was unforeseeable that the fence could fall and damage a parked car. I find the respondent is responsible for the damage caused by the fence on its property. This conclusion is consistent with the obligations set out in section 3 of the Occupier's Liability Act".
14. The respondent does not dispute the amount of \$3,208.04 as being reasonably necessary to repair the applicants' car. It says that amount should be covered by comprehensive insurance, but such coverage is optional in British Columbia. Accordingly, I find that the respondent is liable for \$3,208.04 in car repairs.

## CONCLUSION

15. For these reasons, and because the parties have agreed that the fence caused the claimed damage to the car, I find that the respondent was negligent and is liable for the damage to the applicants' car. I order the respondent to pay the applicants \$3,208.04 for car repairs.
16. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was successful in this dispute, I order that the respondent pay the applicant \$175 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.
17. As the evidence does not establish that the applicants' have already paid for car repairs, I find they are not entitled to pre-judgment or post-judgment interest under the *Court Order Interest Act*.

## ORDERS

18. I order that within 30 days of this decision, the respondent pay the applicant a total of \$3,383.04, broken down as:
  - a. \$3,208.04 for car repairs, and
  - b. \$175 as reimbursement of tribunal fees.
19. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
20. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has

been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Kate Campbell, Tribunal Member