



Civil Resolution Tribunal

Date Issued: April 5, 2018

File: SC-2017-002364

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cowan v. Pollard dba Stan's Auto Repair*, 2018 BCCRT 117

B E T W E E N :

Dennis Cowan

APPLICANT

A N D :

Randy Pollard dba Stan's Auto Repair

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a car that kept needing a jump start.
2. The applicant Dennis Cowan says that the respondent Randy Pollard of Stan's Auto Repair told him the vehicle's engine control module (ECM) computer needed to be replaced, when the problem was only a faulty battery.

3. The applicant claims that the misdiagnosis of a computer problem caused him to incur extra expenses associated with his sending the ECM computer to SIA Electronics (SIA), who found it to be working. The applicant seeks a refund for:
 - (a) initial diagnostic work (\$132.15),
 - (b) expenses for sending the ECM computer to SIA (\$288.31),
 - (c) repair of the faulty battery (\$75.00),
 - (d) loss of the use of a vehicle for 2.5 months (\$150), and
 - (e) tribunal fees (\$125)
4. The respondent agrees that his shop examined the car. They identified a problem with the ECM computer. The respondent says he obtained a quote to replace the ECM computer, but that the applicant thought that was too expensive. He asked an auto wrecker to look for the part. He says he did not charge the applicant for the efforts to find a replacement ECM computer.
5. Both parties are self-represented.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (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.
7. 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.

8. 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.
9. Under tribunal rule 121, in resolving this dispute the tribunal may (a) order a party to do or stop doing something, (b) order a party to pay money and/or (c) order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues are:
 - a. Did the respondent fail to adequately assess the problem with the car?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. The applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent needed to explain my decision.
12. The parties agree that, in March 2017, the applicant brought his 2005 Chrysler PT Cruiser to Stan's Auto Repair. They agree that, at the time, the vehicle was not starting or running properly.
13. The respondent kept the car for three days. The applicant returned and the respondent gave him a recommendation that he replace the ECM computer. It is undisputed that the respondent showed the applicant that when they jiggled a wire

connected to the ECM computer, the car stopped running. The respondent did not charge the applicant for any of the work.

14. After the respondent checked the car, the applicant drove for five days without problems. After that, the problem returned.
15. On April 18, 2017, the applicant disconnected the ECM computer and shipped it to SIA for repair. He did not tell the respondent that he was going to take this step.
16. On April 26, 2017, SIA performed a test and wrote that they could not duplicate the issue and that all sensors functioned normally. They charged the applicant \$179.53 for the check and report.
17. On May 12, 2017, Stan's Auto Repair printed an estimate to the applicant for checking and replacing the ECM computer, and reprogramming it, in the total amount of \$975.95. It is not clear why the document was printed out at this point, but it coincides with the applicant returning to the respondent disgruntled about SIA's findings that the ECM computer was working. I find that the print out details the respondent's estimate first delivered, whether verbally or on paper, in March 2017.
18. On May 26, 2017, Minut-Tune and Brake Auto Centre diagnosed the car's stalling problem as related to a battery issue, and replaced the battery under warranty. The battery test performed at that time showed the battery reading slightly over the line to the "replace" side of a scale, just outside the middle range where replacement is not yet recommended. The charge for diagnosis, battery and charging system check and related costs was \$132.15.
19. I find that an appropriate assessment of a vehicle with problems starting or staying running includes testing the battery. The applicant says the respondent did not test the battery, or he would have identified the real problem with the car. I disagree.

20. In his Response Notice, the respondent says his shop checked the battery and charging systems, and noted no problem with them.
21. I find that the respondent checked the battery and charging systems in March 2017 and found no problems. I make this finding because a May 2017 battery test showed that the battery was only borderline for replacement. I find it is likely that, two months earlier, the battery was still operating in normal range. The intermittent nature of the car problem, given that it ran for five days without problems after the respondent checked it, also supports a finding that the battery was not indicating that it required replacement.
22. Where a mechanic conducts an assessment of a car problem, they must meet a reasonable standard. The law does not require them to be perfect or right in figuring out the cause of a vehicle problem.
23. I find that the respondent's diagnosis of a problem with the ECM computer was reasonable, based on the information available in March 2017. The battery and charging system tested as working. The applicant and respondent agree that when the wire connecting the car to the ECM computer was jiggled, the car would shut off.
24. Later, the computer tested well after being removed from the car, but this does not mean that the respondent's assessment was unreasonable. This evidence suggests a problem with the connection, which would not have been observed by SIA when they examined the unconnected unit.
25. I therefore find that the applicant has not met the burden of proving, on a balance of probabilities, that the respondent fell below a reasonable standard in assessing and diagnosing his car problem in March 2017. The applicant is not entitled to reimbursement of the expenses claimed.

26. Given my conclusions above, I do not need to consider the applicant's damages claims. As the applicant was unsuccessful, I also dismiss his claim for reimbursement of tribunal fees, in accordance with the tribunal's rules and general practice.

ORDERS

27. I order that the applicant's dispute is dismissed.

Julie K. Gibson, Tribunal Member