Civil Resolution Tribunal

Indexed as: *Macdonald v. U-Haul Moving & Storage of Victoria et al*, 2018 BCCRT 440

B E T W E E N :

Michael Macdonald

APPLICANT

A N D :

U-Haul Moving & Storage of Victoria, U-Haul Co. (Canada) Ltd. U-Haul Co. (Canada) Ltee, and U Haul (Canada) Ltd.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about an alleged motor vehicle accident and related vehicle damage. The applicant, Michael Macdonald, says a U-Haul rental truck hit his vehicle and left the scene of the accident, after damaging his vehicle. The

applicant claims $300 for his insurance deductible, and $2,700 for "pain and suffering from this ordeal & cost of doing this claim".

2.   The applicant named the respondents, U-Haul Moving & Storage of Victoria (U-Haul Victoria), U-Haul Co. (Canada) Ltd. U-Haul Co. (Canada) Ltee, and U Haul (Canada) Ltd., on the basis that one or all of them owns the U-Haul truck in question. The respondents all say this proceeding was the first notice they each had of the alleged collision and deny liability. The parties are self-represented.

JURISDICTION AND PROCEDURE

3.   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.

4.   The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these.

5.   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 I can resolve the issues based on the documentation before me and that an oral hearing is not necessary.

6.   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.

7.   Under tribunal rule 126, 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.

ISSUE

8.   The issue in this dispute is whether a vehicle owned by the respondents damaged the applicant's car, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

9.   In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

10.   First, I accept that the proper respondent is U-Haul Co. (Canada) Ltd. U-Haul Co. (Canada) Ltee, which for ease of reference I will refer to as UHCAN. I accept the respondents' submission that U-Haul Moving & Storage of Victoria is merely the name of a UHCAN store and is not a legal entity. For these reasons, I will address the applicant's claims against UHCAN below, and I dismiss his claims against the other 2 respondents.

11.   The applicant says that around 9:30 or 10:00 a.m. on April 22, 2016, a white Ford F250 U-Haul rental truck hit his vehicle, and then left at a high rate of speed. The applicant says this left white embedded paint and scratches on his mirror. The applicant alleges he made complaints about the police investigation and that the Insurance Corporation of British Columbia will not act without a police report.

12.   In the Dispute Notice that started this proceeding, the applicant says he suspects a police cover up. The applicant says he suspects the police are covering for a friend, fellow police officer, or relative. The applicant says he saw "this guy in the truck" leaving the parking lot after he closed a door that set off the applicant's car alarm and scratched his mirror leaving the white paint. The applicant says he got a

partial plate and later that evening saw it on the street and got the other half of the plate letters. The plate later matched a U-Haul rental vehicle.

13. In his submission, the applicant alleges that the police engaged in a "total coverup from the start", together with UHCAN. The applicant alleges that UHCAN lied when it said they never heard of a hit and run and never got a registered letter. The applicant says UHCAN dragged their feet in producing info. I find there is simply no evidence before me to support these submissions.

14. It is true that a vehicle owner is vicariously liable for damage caused by a driver of the vehicle, as set out in section 86 of the *Motor Vehicle Act*. However, UHCAN denies being involved in any sort of conspiracy or cover-up. UHCAN further submits the applicant has not proved that his damages were caused by a vehicle owned by UHCAN. Based on the evidence before me, I agree.

15. The applicant reported to the police that he saw a U-Haul rental truck parked next to his vehicle. Later that morning, he heard his car alarm, and looked out his window and saw a U-Haul rental truck departing quickly. After finding the white paint transfer on his mirror, the applicant concluded that the U-Haul rental truck parked earlier was responsible. However, the key point from the applicant's police report is that he did not witness the U-Haul rental truck strike his car. On balance, I find the applicant's assumption that the U-Haul truck caused the damage is speculative and does not prove it caused the damage.

16. In his reply submission, the applicant changed his account and said that he saw the UHCAN truck damage his mirror. I find the inconsistency in the applicant's evidence leads to the conclusion that his evidence overall is less reliable.

17. Further, UHCAN says it did its due diligence in finding rental trucks that may have been in the vicinity and it was unable to corroborate the applicant's account of damage.

18. The fact that ICBC refused to waive the applicant's $300 deductible is not probative of anything. The fact that there was some miscommunication or

confusion in the police investigation also does not prove the applicant's claim and does not establish any cover-up. I note the applicant signed an agreement on September 22, 2016 that he would not use the Victoria Police Department "Consent to Informal Resolution" in any civil proceedings or disclose their contents and yet the applicant has done so in this proceeding. In any event, there is simply no evidence before me on which I could conclude UHCAN engaged in any sort of cover-up. The fundamental point is that the applicant has not proved a truck owned by UHCAN caused damage to his mirror.

19. Given my conclusion above, I find I do not need to address the applicant's requested remedies. I dismiss the applicant's claims against UHCAN, and therefore against all respondents. I do note that while the applicant provided a doctor's note that the applicant suffered from anxiety and panic attacks, that note is not sufficient evidence to support a $2,700 claim for "pain & suffering for this ordeal". Further, the tribunal typically does not grant awards for time spent on a dispute, and I see no reason to deviate from that practice here.

20. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find he is not entitled to reimbursement of tribunal fees. The applicant did not claim dispute-related expenses (although he referenced wanted to do so), but again, as he was unsuccessful in this dispute I find he would not be entitled to reimbursement.

ORDER

21. I order the applicant's claims, and therefore this dispute, are dismissed.

                            Shelley Lopez, Vice Chair