Civil Resolution Tribunal

Date Issued: August 29, 2018

File: SC-2017-005428

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Barker v. KUSTOM TOWING (2009) LTD.*, 2018 BCCRT 486

B E T W E E N :

John Barker

**APPLICANT**

A N D :

KUSTOM TOWING (2009) LTD.

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member: Kate Campbell

## INTRODUCTION

1. This is a dispute about storage fees on a towed vehicle. The applicant, John Barker, says that after the respondent, KUSTOM TOWING (2009) LTD. (Kustom Towing) towed his vehicle, he told them he would not retrieve it and wanted it to be crushed. The applicant says he was led to believe he would only have to pay the $95 towing fee, but later he was charged an $800 storage fee, which he paid.

2. The applicant seeks a refund of the $800 storage fee.

3. The respondent says its employee told the applicant he would have to come to their premises and sign a document before the vehicle could be disposed of. It says the applicant did not do this, although he was reminded and warned of the storage fee.

4. Both parties are self-represented.

## JURISDICTION AND PROCEDURE

5. 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.

6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario as to what the parties said about the vehicle's disposal. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on

its harmony with the rest of the evidence. In the circumstances here, and noting that neither party asked for an oral hearing, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

7. 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.

8. 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.

## ISSUES

9. The issue in this dispute is whether the respondent must refund the $800 vehicle storage fee.

## EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. The parties agree that the respondent towed the applicant's vehicle to its premises on March 6, 2017. The respondent says the vehicle was towed at the request of local police because it was parked on the street with no insurance. The applicant

does not dispute this, and does not dispute the respondent's authority to tow and impound the vehicle.

12. The respondent's principal, Gary Parker, provided a written statement dated May 1, 2018. He says that two days after the respondent's vehicle was towed and not claimed, he called the applicant. He says he knew the applicant, so he called as a courtesy. Mr. Parker says the applicant told him he did not want the vehicle, so he told the applicant he had to come in and pay for the tow and sign it over so they could get rid of it.

13. Cheryl Parker, who also works in the respondent business, also provided a written statement. She says that around March 12, 2017, she called the applicant to ask when he was coming in to pay and sign the vehicle over so they could get rid of it. According to Ms. Parker, the applicant said Gary Parker told him he did not have to pay for it. Ms. Parker says she then explained that he had to come in and pay the bill, and in response the applicant swore at her.

14. The applicant agrees that the respondent called him, but he says he was told they did not need the vehicle to be transferred in order to dispose of it. He says he was not told about a storage fee, but was led to believe he would only have to pay the $95 towing charge. He did not explain why he did not pay the $95 towing charge until September 2017.

15. On March 15, 2017, the respondent sent the applicant a letter setting out the towing details. The letter said that as registered owner of the vehicle, he was responsible for all towing and storage charges from the time the vehicle entered their lot. The letter said the storage rate was $25 per day. The letter explained how to reclaim the vehicle, and said that if the vehicle was not dealt with within 20 days of the letter, the vehicle would be disposed of, with accrued towing and storage charges being the owner's responsibility.

16. Documents provided by the respondent show that the applicant paid the storage and towing fees, including $800 in storage fees, on September 20, 2017. The applicant says he paid the fees because his other vehicle had been towed, and the respondent would not release it until he paid the outstanding bill.

17. Under the BC *Motor Vehicle Act* (MVA), the owner of an impounded vehicle is liable for towing and storage costs, regardless of whether the vehicle is eventually destroyed. Under section 255(7) of the MVA, in order to destroy an unclaimed vehicle, the towing company must either get the vehicle owner's written consent, or must get approval from the Superintendent of Motor Vehicles (Superintendent).

18. The parties agree that the applicant never provided written consent for disposal, and the respondent has not established that they obtained approval from the Superintendent. However, the onus of proof in this case lies with the applicant, not the respondent. Significantly, the applicant has not argued that the respondent did not have authority to destroy the vehicle, rather he says he did not owe the storage fee.

19. I find that under the provisions of the MVA, the applicant was responsible to pay for storage after towing, which is the issue in this dispute. However, I find the invoices and other evidence provided by the respondent indicate that the storage fee should have been $750 rather than $800. The storage charge was $25 per day. The vehicle was towed on March 6, 2017. The respondent's March 15, 2017 letter said the vehicle would be disposed of if it was not "dealt with" within 20 days of the letter, and the "accrued" towing and storage charges would be the owner's responsibility.

20. Thus, the respondent said the vehicle would be disposed of 20 days after March 15, 2017, which is April 4, 2017. The respondent has not actually said when the applicant's vehicle was cut open, and thus destroyed. However, the respondent had no legal justification for charging the applicant for storage after the 20 day period they set out in their letter, since the decision to keep the vehicle longer than that was voluntary. Thus, I find the respondent was entitled to charge $25 per day

for storage from March 6, 2017 to April 4, 2017, which is 30 days. This equals $750 in storage, not the $800 charged by the respondent.

21. For all of these reasons, I find the applicant is entitled to a $50 refund for storage fees charged.

22. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was only partly successful so I order a refund of half of his tribunal fees, which is $62.50. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

## ORDERS

23. I order that within 30 days of this decision, the respondent pay the applicant a total of $113.01, broken down as:

    a. $50 as a refund for vehicle storage fees,

    b. $0.51 in pre-judgment interest under the *Court Order Interest Act* (COIA), and

    c. $62.50 as reimbursement of tribunal fees.

24. The applicant is entitled to post-judgment interest under the COIA.

25. 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.

26. 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.

Kate Campbell, Tribunal Member