



# Civil Resolution Tribunal

Date Issued: October 5, 2018

File: SC-2018-001024

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Apna Professional Driving School LTD v. Singh*, 2018 BCCRT 593

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

Apna Professional Driving School LTD

**APPLICANT**

**A N D :**

Mandeep Singh

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. The applicant, Apna Professional Driving School LTD, says the respondent failed to pay for driving lessons. The applicant seeks payment of \$800.

2. The respondent, Mandeep Singh, says the applicant sold him more lessons than he needed, and failed to book his road test. He says he overpaid for the services received.
3. The applicant is represented by its principal, Harminder Sidhu. The respondent is self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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. 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, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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 make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issue in this dispute is whether the respondent must pay the applicant \$800 for driving lessons.

## **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 addressed the evidence and arguments to the extent necessary to explain my decision.
10. The parties agree that the applicant gave the respondent driving lessons to prepare him for a class 1 professional driving license. The lessons were provided in December 2017 and January 2018.
11. The applicant says the respondent had 11 lessons at 1.5 hours each, and also failed to attend a 12<sup>th</sup> lesson with no notice. The applicant said the respondent owed a total of \$1,800 for these lessons, including the cancelled lesson. The applicant says the respondent paid \$1,000, but still owes the outstanding balance of \$800.

12. I find the evidence before me only partially supports the applicant's claim. The respondent signed a November 27, 2017 contract agreeing to pay \$99 per hour for lessons. 12 lessons at 1.5 hours per lesson equals 18 hours of lessons. 18 hours at \$99 per hour equals \$1,782. I note that the records provided by the applicant indicate that taxes were not charged or collected, so the maximum outstanding balance is \$782.
13. The applicant provided a copy of his business card, which says on the back that a "nominal charge will be made" unless 24 hours notice of cancellation is given. I find that the phrase "nominal charge" is vague, especially combined with the fact that the November 27, 2017 contract between the parties does not provide for any cancellation fees whatsoever. Also, there is no evidence before me to establish that the respondent ever received a copy of the business card. For these reasons, I find the applicant is not entitled to any cancellation fee for the 12<sup>th</sup> lesson.
14. The respondent says Mr. Sidhu promised him that each lesson would be \$99, not that each hour of instruction would be \$99. He also says the lessons he received were only 1 hour long, not 1.5 hours.
15. Based on the evidence before me, I am not persuaded by these assertions. First, the November 27, 2017 contract, which the respondent signed, specifically says the lessons are \$99 per hour. Second, the applicant's lesson log sheets, which the respondent initialled after each lesson, show that each lesson was 1.5 hours long, with a cost of \$150 (which I infer was rounded up from \$148).
16. The respondent says Mr. Sidhu promised to give him 7 lessons and a road test for \$1,200, but after the 7<sup>th</sup> lesson Mr. Sidhu did not book the road test and instead kept telling the respondent he should take more lessons. The respondent says Mr. Sidhu did this just to make more money. The respondent says he already has a professional driving license from Australia, so he did not need extra lessons.
17. Mr. Sidhu did not respond to the respondent's assertion that he promised to book the road test after 7 lessons and failed to do so despite the respondent's request.

However, there is nothing in the written contract between the parties that sets out this agreement, or any obligation to provide a road test. The contract also has no guarantee that students would obtain a class 1 driving license.

18. The written contract says the respondent must pay \$99 per hour for lessons. I accept the evidence set out in the log sheets, which shows he took 11 lessons at 1.5 hours each. Since he took the lessons, he is contractually obligated to pay for them. This means the respondent owed a total of \$1,633.50 for lessons. Since he paid \$1,000, he owes the applicant the outstanding balance of \$633.50.
19. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA), as set out in my order below.
20. In accordance with the Act and the tribunal's rules, as the applicant was successful in this dispute it is entitled to reimbursement of \$125 in tribunal fees. Neither party claimed dispute-related expenses.

## **ORDERS**

21. I order that within 30 days of the date of this decision, respondent pay the applicant a total of \$764.37, broken down as follows:
  - a. \$633.50 for driving lessons,
  - b. \$5.87 in pre-judgment interest under the COIA, and
  - c. \$125 for tribunal fees.
22. The applicant is also entitled to post-judgment interest under the COIA.
23. 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.

24. 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