



# Civil Resolution Tribunal

Date Issued: November 9, 2018

File: SC-2018-001562

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Levelton v. Choudhry*, 2018 BCCRT 712

BETWEEN:

Michael Levelton

**APPLICANT**

AND:

Faisal Choudhry

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

- 1) This dispute is about liability for a December 12, 2016 motor vehicle collision (MVA). The applicant, Michael Levelton, says the respondent, Faisal Choudhry, backed into the applicant's parked vehicle. The applicant claims \$300 for the

deductible he paid to the Insurance Corporation of British Columbia (ICBC). The applicant also wants ICBC to find him 0% liable and to reverse any premium increase arising from its liability assessment against the applicant. Further, the applicant wants ICBC to “reimburse” him the “net vehicle repairs” that were \$4,574.39.

- 2) ICBC says the applicant drove forward into Mr. Choudhry’s parked vehicle, rather than Mr. Choudhry backing into Mr. Levelton’s car as alleged. ICBC’s conclusion is based on the onus on rear-drivers as set out in section 162 of the *Motor Vehicle Act*.
- 3) The respondent is represented by Jennifer Kwan, an ICBC claims adjuster and the applicant 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) 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**

- 7) The issue in this dispute is whether the applicant is responsible for a December 12, 2016 motor vehicle collision, and if not, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

- 8) 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.
- 9) It is undisputed that the applicant parked his car behind the respondent's already parked truck. It is also undisputed that the applicant's vehicle sustained some damage in the MVA, and the respondent's vehicle did not sustain any. There was snow on the ground and it was dark. While the applicant has provided a photo of the respondent's truck and tire tracks in the snow, I find the tire tracks do not show who caused the MVA.
- 10) The applicant points to the fact that the respondent offered to arrange for parts for the applicant's vehicle's repair. The applicant says this proves the respondent acknowledged liability for the MVA. A December 19, 2016 text from the respondent read "Ok well its gonna cost a fair bit and gotta wait for parts. Just go through icbc for it I suggest. OK?" (reproduced as written). The respondent's representative

submits that the respondent was only referring the applicant to his friend's bodyshop, and the quoted comment above arose when the respondent realized it would be more cost effective to go through ICBC. On balance, I find the applicant has not proved the respondent made an admission of fault for the MVA.

- 11) The applicant also relies on a signed witness statement from RD, dated June 27, 2018, about 1.5 years after the MVA. RD stated that as the applicant pulled up, the respondent was getting into his parked truck that was in front of the applicant's vehicle. Once the applicant parked and turned off his car, RD got out to get her purse and check the parking sign to validate that parking was allowed at that time. She stated that the applicant remained in the parked car. RD stated that at that point the respondent reversed back, as there was another car parked in front of him, and hit the applicant's car. RD described an exchange she had with the respondent, in which he stated that he did not see her. RD took pictures of both cars, which were provided in evidence. RD stated that the respondent said his cousin worked at a bodyshop and suggested the applicant text him pictures of the damage, and that he would fix the applicant's car "no problem since it was his fault".
- 12) The respondent's ICBC representative says ICBC did not put any weight on RD's statement, because she was not an independent witness, as she was in a relationship with the applicant. The applicant does not dispute their personal relationship. I acknowledge the applicant's submission that under the *Evidence Act* RD is not incompetent simply because she may have an interest in the matter. However, RD's competence as a witness does not mean I must give the same weight to her evidence as I would to an uninterested party. Further, there is no explanation before me as to how RD has such specific recollection of the relatively minor MVA that occurred 1.5 years before. Given RD's admitted relationship with the applicant and the passage of time before RD wrote her statement, I find I can place little weight on RD's statement.
- 13) ICBC says it relies on section 162 of the *Motor Vehicle Act*, but provided an excerpt of section 193 instead. Section 193 says a vehicle's driver must not cause the

vehicle to move backwards unless it can be done safely. That section does not apply to the applicant, as there is no suggestion that it was the applicant who backed up. Rather, section 193 applied to the respondent who was the driver that backed up.

- 14) Section 162 of the *Motor Vehicle Act* says a rear-driver must not permit their vehicle to follow another vehicle more closely than is reasonable and prudent, having regard for the speed of vehicles and surrounding traffic. The respondent's representative submits that section 162 means "there is more onus" on the applicant's vehicle since he was the rear driver and had more responsibility to avoid a collision with the respondent's vehicle in front. The applicant says section 162 is not relevant, as he was parked and was therefore not "following" the respondent's vehicle too closely. I find nothing turns on whether the applicant has a 'reverse onus' due to being the rear driver. I say this because, as noted above, the applicant bears the burden of proof in this dispute. I do note that section 169 of the *Motor Vehicle Act* states that a person must not move a parked vehicle unless the movement can be made with reasonable safety.
- 15) Ultimately, I am left with both parties saying the other hit them. I have found I can place little weight on RD's statement in support of the applicant. As noted above, the applicant must show that it is more likely than not that the respondent backed into his vehicle, rather than the applicant driving forward into the respondent's as determined by ICBC. I find the applicant's documentary evidence does not assist him. I therefore find the applicant has not met the burden of proof.
- 16) In any event, I note the applicant's claim for \$4,574.39 is entirely unproven. First, the applicant has not proved he paid anything beyond an insurance deductible, which presumably is the \$300 he claims although no proof was provided of that amount either. Second, the applicant has not provided any receipts relating to his vehicle's repair. For these reasons, I would have dismissed the applicant's damages claims.

**ORDER**

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

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Shelley Lopez, Vice Chair