



Civil Resolution Tribunal

Date Issued: November 14, 2018

File: SC-2018-001810

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chang v. Bryan Auto Trading Company Ltd.*, 2018 BCCRT 724

B E T W E E N :

John Chang

APPLICANT

A N D :

Bryan Auto Trading Company Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about \$1,000 that the respondent, Bryan Auto Trading Company Ltd., charged to the applicant, John Chang, for damage to a rental vehicle, a 2016 Nissan Versa. The applicant says at most there were minor scratches and yet the

respondent charged the entire \$1,000 insurance deductible to his credit card and has refused any reimbursement. The applicant is self-represented. The respondent is represented by Bryan Li, its principal.

JURISDICTION AND PROCEDURE

2. 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.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.
4. 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.

5. 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

6. The issue in this dispute is whether the applicant is entitled to a refund of the \$1,000 charged to him by the respondent for damage to a rental car.

EVIDENCE AND ANALYSIS

7. 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.
8. The applicant rented the car from the respondent on January 15, 2018. The applicant acknowledges that when he returned the car the next day on January 16, Mr. Li found “minor scratches” on the car’s body, above the rear left wheel. None of this is disputed.
9. The applicant filed a claim with the Insurance Corporation of British Columbia (ICBC). It is undisputed that the respondent charged \$1,000 against the applicant’s credit card on January 27, 2018, on the basis this was the amount of the insurance deductible payable on the rental car’s insurance policy. However, the respondent never submitted any repair estimate to ICBC.
10. The respondent says it offered 2 options to the applicant: that he fix the car himself or that he pay the respondent to fix it. Because the applicant refused those options (wanting to proceed with an ICBC claim instead), the respondent says it was entitled to charge the \$1,000 insurance deductible. In submissions for this decision, the respondent says it charged \$1,000 “because we could not determine how much

exactly the damage would cost". The respondent says the applicant has no right to insist the repairs be done through an ICBC claim. Yet, as discussed below, the respondent never did anything about the vehicle's repair other than get a quote on May 1, 2018, after the applicant started this tribunal proceeding on March 11, 2018. The respondent continues to argue it should be able to keep the applicant's \$1,000.

11. I find I do not need to resolve whether the applicant was entitled to have the car repaired through ICBC, though I do note it is inconsistent for the respondent to argue he is not and yet also rely on the \$1,000 insurance deductible amount as the appropriate charge to the applicant. That said, the respondent's position that it was entitled to keep the \$1,000 deductible indefinitely is unreasonable. There is no indication in the evidence before me that by agreeing to that deductible the applicant agreed to forfeit that sum regardless of the amount of damage caused to the vehicle. I find that what matters in this dispute is what damage was caused by the applicant and how much is that damage worth.
12. Upon my inquiry, the respondent has advised it has still not yet repaired the vehicle. As referenced above, the respondent provided a May 1, 2018 quote for \$784, over 4 months after the applicant returned the vehicle. The respondent says because the damage did not affect the car's safety, they continued to rent it out and have no immediate plans to have it fixed. The respondent also says it cannot locate the photos of the car's damage at the time the applicant returned it. There is no explanation for why the respondent has not refunded the difference between the \$1,000 deductible and the \$784 quote.
13. The applicant's photos of the damage to the vehicle, which is the best evidence before me, show only very minor marks. I accept these photos as accurate. I place significant weight on the passage of time between the applicant's return of the vehicle on January 16, 2018 and the May 1, 2018 estimate, and the fact that it was rented out to various drivers in the interim. This leads me to conclude the applicant cannot fairly be held responsible for the \$784 estimate.

14. Nonetheless, the applicant acknowledges that he did return the vehicle with some minor damage. Based on the applicant's photos, on a judgment basis I find the applicant should be held responsible for \$200 in damages for the scratches on the vehicle. This means the respondent must refund the applicant \$800. The applicant is entitled to pre-judgment interest on the \$800 under the *Court Order Interest Act* (COIA), from January 27, 2018.
15. The applicant was substantially successful. In accordance with the Act and the tribunal's rules, I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$10.50 in dispute-related expenses for serving the Dispute Notice on the respondent by registered mail.

ORDERS

16. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$943.93 broken down as follows:
 - a. \$800 as a refund of the \$1,000 credit card charge,
 - b. \$8.43 in pre-judgment interest under the COIA, and
 - c. \$135.50, with \$125 in tribunal fees and \$10.50 in dispute-related expenses.
17. The applicant is entitled to post-judgment interest, as applicable.
18. 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.
19. 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.

Shelley Lopez, Vice Chair