

Date Issued: November 21, 2018

File: SC-2017-007281

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Prodor v. Ensign Bros. Enterprises Ltd.*, 2018 BCCRT 757

B E T W E E N :

Brian Prodor

**APPLICANT**

A N D :

Ensign Bros. Enterprises Ltd.

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member:

Maureen E. Baird, QC

**INTRODUCTION**

1. The applicant, Brian Prodor, seeks compensation for damages to his windshield caused by rocks or other debris, which had escaped and fell from a loaded truck owned by the respondent, Ensign Bros. Enterprises Ltd. Mr. Prodor seeks \$1,002.45 being the estimated cost of windshield repair.
2. The respondent says that the applicant has not proved that any damage to his windshield was caused by debris or rock falling from its truck and denies any liability.

3. The applicant is self-represented. The respondent is represented by Christopher Ensign, a principal.

## **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. I decided to hear this dispute through parties' written submissions and supporting documents as I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 issues in this dispute are:
  - a. Is Mr. Prodor entitled to payment of \$1,002.45 for glass replacement?
  - b. If Mr. Prodor is not entitled to \$1,002.45, what amount, if any is he entitled to?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. This means that Mr. Prodor must prove his claim. I have only addressed the evidence and arguments presented to the extent necessary to explain my decision.
10. On October 23, 2017, the applicant was driving northward on Highway 97. He was following a large truck. As he was driving, rocks were being ejected from the truck which hit the windshield hood and the roof of his car. The applicant, whose car is equipped with a dashboard camera, pulled alongside the truck to get out of the way of the falling debris and to photograph the logo and any ownership details on the truck's door.
11. Later on October 23, 2017, the applicant telephoned and emailed the respondent. The applicant's email to the respondent sets out the details of the incident and the damage sustained and notes that he had not yet made a claim with the Insurance Corporation of British Columbia (ICBC) because he wanted to give the respondent an opportunity to notify its liability insurer. No response was received by the applicant to either the telephone call or the email.
12. The respondent denies any responsibility. It says that the evidence presented by the applicant does not show rocks coming from its vehicle or damage to the applicant's windshield, and therefore the claim is not proved. It suggests that the debris causing any damage to the windshield could have originated from the road. No evidence was presented by the respondent. It does not deny that it owns the

truck identified by the applicant or that the truck was the one shown in the photographic evidence submitted by the applicant.

13. The applicant submitted an estimate for replacement of the windshield from a windshield repair shop. The total estimate for the required work and materials is \$1,002.45. The estimate shows the applicant has comprehensive insurance with a deductible of \$200.00.
14. The applicant confirms that the damage to his car is limited to the windshield.
15. Through the tribunal administrator, I requested additional information from the applicant. I wanted to confirm the amount of the insurance deductible and also to determine if the repair work had been done since no invoice had been provided. The applicant responded by producing his certificate of insurance and advising that he had not had the repair work done. The certificate of insurance confirms that the applicant has comprehensive insurance with a deductible for windshield replacement of \$200.00. He said that the claim for \$1,002.45 was based on his intention to repay ICBC so that the incident would not have any impact on his future insurance rates.
16. The applicant's position is that the respondent had a duty to secure cargo on its truck so that it could not fall or be ejected out of the truck. He refers to section 35.04 of the *Motor Vehicle Act Regulations*, B.C. Reg. 26/58 as support for this position.
17. The respondent made no submission beyond its bare denial of liability based on its view that the applicant had failed to prove that there was any damage caused by debris or rock escaping from its truck.
18. Based on the applicant's evidence, I find on a balance of probabilities that the windscreen of his car was damaged by debris which was ejected from the respondent's truck. This is consistent with the applicant's actions immediately following the incident, taking a photographic record, immediately contacting the respondent with the details and the repair estimate submitted. Although the applicant originally thought that there could be damage to the roof and hood of his

car this is not claimed, the estimate from the windshield repair facility is limited to windshield repair.

19. The respondent has a duty to ensure that cargo being transported by its vehicles are secured in a manner so as to prevent objects being ejected or falling out. This duty is set out in the *Motor Vehicle Act Regulations*. In my view, it is also a common law duty, to take care to avoid foreseeable harm to others. It should be obvious to a truck owner that if a load is not properly secured that it can fall out or be ejected causing harm, damage or injury to others. Not doing so is negligent and I find, on the evidence in this case, that the respondent was negligent in failing to secure or to adequately secure its cargo to prevent its escape.
20. The applicant has not yet had the repairs done to his windshield and therefore he has not spent any money. He has however suffered damage in the form of a windshield that needs replacement. Replacement will require him to pay a \$200.00 deductible. The remaining issue is the amount of compensation to which he is entitled in these circumstances.
21. In these circumstances, in my view, the appropriate compensation is \$200.00, the amount of the applicant's insurance deductible. By paying this amount he will have the damage to his car fully repaired.
22. I have considered the applicant's claim for \$1,002.45. The Insurance Corporation of British Columbia website states that comprehensive claims including windshield claims, do not affect the safe driving discount level of an insured person. Therefore, by awarding the applicant \$200.00 he can repair the windshield and not incur increased insurance premiums.
23. The applicant has requested reimbursement for \$13.33 for mailing costs for service. I accept that service by registered mail was a reasonable option for the applicant in light of the respondent's failure to reply to his communications on the day of the incident. Therefore, I am prepared to order reimbursement of this amount.
24. Under section 49 of the Act and the tribunal's rules, an unsuccessful party generally reimburses the successful party's tribunal fees. I see no reason not to follow that

general rule in this case. I order the respondent to reimburse the applicant for his tribunal fees totaling \$125.00.

## **ORDERS**

25. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$338.13, broken down as follows:
  - a. \$200.00 as reimbursement for the applicant's insurance deductibles;
  - b. \$13.13 for service mailing costs; and
  - c. \$125.00 in tribunal fees.
26. The applicant is entitled to post-judgment interest, as applicable.
27. 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.
28. 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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Maureen E. Baird, QC, Tribunal; Member