



Civil Resolution Tribunal

Date Issued: November 29, 2018

File: SC-2018-000247

Type: Small Claims

Civil Resolution Tribunal

Indexed as *A.V. Boat Rentals Ltd. v. Van Wyk*, 2018 BCCRT 778

B E T W E E N :

A.V. Boat Rentals Ltd.

APPLICANT

A N D :

Shaun Van Wyk

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mary Childs

INTRODUCTION

1. The respondent, Shaun Van Wyk rented a boat from the applicant, A.V. Boat Rentals Ltd. The boat hit an object while the respondent was fishing and the motor was damaged. Some fishing gear was also lost or damaged. The applicant wants the respondent to pay for the repairs and the replacement of missing items. The

applicant is represented by a staff member, Mike Hudson. The applicant is self-represented.

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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 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

6. The issues in this dispute are:
 - a. Should the respondent reimburse the applicant for the cost of repairs to the outboard motor?
 - b. Should the respondent reimburse the applicant for the costs of replacing the damaged or missing fishing equipment?

EVIDENCE AND ANALYSIS

7. On July 26, 2017 the respondent rented a boat from the applicant. He signed a five page rental agreement which said, among other things, that he was going to pay for any loss or damage resulting from his use of the boat. The respondent says that he discussed insurance coverage for accidents and was assured that in the event of an accident he would be covered by paying the deductible.
8. While the respondent was fishing, the boat hit an object in the water. The lower portion of the outboard motor was damaged. The respondent called the appellant and notified them of the accident. He was told that it was fine to keep fishing.
9. The respondent returned the boat on July 28th, 2017. The parties discussed the damage to the motor. All three propeller blades were damaged and the motor skeg had broken off. The respondent asked whether there was any chance that the applicant's insurance would cover some of the cost.
10. The applicant says that the applicant's insurance policy did not cover the respondent.
11. The applicant had the motor repaired at a cost of \$1,991.81 plus taxes, for a total of \$2,230.83. The applicant charged that amount to the respondent's credit card. The respondent disputed the charge with his credit card company and the charge was reversed.

12. The respondent signed a rental agreement which clearly made him responsible for all costs arising from his use of the boat. Whatever discussions he may have had with the applicant about insurance are not sufficient to contradict the written terms of the rental agreement. I allow this claim and order the respondent to pay \$2,230.83 for the cost of the repairs to the outboard motor.
13. The applicant says some fishing gear was also missing: a fishing rod and reel were lost, as well as and two lead cannon balls. The downriggers were damaged and a mount was lost. The applicant says that the total cost of the missing or damaged gear was \$417.90. The applicant has not provided any evidence of those costs, but the respondent has neither denied that the losses occurred nor disagreed with the amounts given. I therefore accept the applicant's submission and I order the respondent to pay the applicant \$417.90 to replace the damaged and missing items.
14. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The applicant incurred bailiff costs of \$115.50 to serve the dispute notice on the respondent. I find the applicant is entitled to reimbursement of \$125.00 in tribunal fees and \$115.50 in dispute-related expenses.

ORDERS

15. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,928.96, broken down as follows:
 - a. \$2,230.83 as reimbursement for the cost of repairing damage to the outboard motor;
 - b. \$417.90 as reimbursement for the cost of replacing missing or damaged fishing equipment;
 - c. \$39.73 in pre-judgment interest under the *Court Order Interest Act*, calculated from the date the damage occurred, and

d. \$125.00 in tribunal fees and \$115.50 for dispute-related expenses.

16. The applicant is entitled to post-judgment interest, as applicable.
17. 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.
18. 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.

Mary Childs, Tribunal Member