



# Civil Resolution Tribunal

Date Issued: December 13, 2018

File: SC-2018-000688

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robert Fraser (Doing Business As TNB Pilot car services) v. Smith Chevrolet Cadillac Ltd.*, 2018 BCCRT 846

B E T W E E N :

Robert Fraser (Doing Business As TNB Pilot car services.)

**APPLICANT**

A N D :

Smith Chevrolet Cadillac Ltd.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This is a dispute about the replacement of a vehicle part. The applicant, Robert Fraser (Doing Business As TNB Pilot car services.), seeks reimbursement of \$753.36 as he says the respondent needlessly replaced an actuator on his vehicle.

The respondent, Smith Chevrolet Cadillac Ltd., disagrees with the applicant's position.

2. The applicant is self-represented. The respondent is represented by an employee, James Dusange.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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.

## **ISSUE**

7. The issue in this dispute is whether the applicant is entitled to \$753.36 from the respondent as reimbursement for the part and labour costs.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to give context to my decision.
9. The applicant says the respondent needlessly replaced a part on his vehicle, and would not take the part back for a refund. He seeks reimbursement of \$753.36, being the cost of the part and the associated labour costs. The respondent denies that it is responsible for any of the applicant's claims or expenses.
10. In December of 2017, the applicant's vehicle was undergoing repairs to the "transfer case assembly" at a third party facility. The applicant contacted the respondent to ask if it could "relearn" his transfer case encoder motor. The applicant brought his vehicle to the respondent for this service on December 27, 2017.
11. The respondent provided a copy of its service workorder number 125986 dated December 27, 2017, which contains the notation "please program tcase encoder motor as customer has replaced tcase". I infer that "tcase" means transfer case. A service invoice from that same date says "[i]nspected for condition, re-programmed transfer case control module with latest calibration, attempted encoder motor learn procedure, learn failed, possible encoder motor issue, further diagnosis refused by customer at this time". The invoice also indicates that the respondent replaced the actuator, which cost \$663.36, plus labour. The applicant's signature appears both on the workorder and the invoice, and he notes in his submissions that he agreed to the installation of the new actuator.

12. The applicant says that, after he left the respondent's service department, his vehicle was not shifting gears properly. He brought the vehicle back to the respondent. Service workorder number 126007 notes that "customer states trans will not shift out of 4<sup>th</sup> gear since encoder motor replaced", and "determined trans will not shift above 4<sup>th</sup> gear due to tcase locked in 4whl low gear. Actuator was replaced on same visit by tech 4665 and has since defaulted to low gear". The workorder also states that the applicant had the vehicle towed "to take back to the company that rebuilt tcase". There was no charge for this visit.
13. The applicant says that the third party facility assessed his old actuator and determined that there was nothing wrong with it, but instead there was an internal problem with the encoder motor. The applicant advises that the old actuator was re-installed in his vehicle, and he continues to use it. There is no evidence from the third party facility or elsewhere commenting on the problem with the applicant's vehicle, the status of the old actuator, or the need to replace it.
14. When assessing problems with a vehicle, a mechanic must meet a reasonable standard. There is no requirement in law for perfect identification of a problem. In this case, the respondent says that it performed work as directed by the applicant. The respondent says that it is unable to accept the return of parts after they have had their packaging opened or been installed in a vehicle. The applicant did not provide a response to this statement.
15. Although a subsequent assessment by the third party suggested that the actuator did not require replacement, the applicant authorized the work to be performed and the part to be replaced. The applicant does not dispute that he consented to this work, and he does not dispute that he declined further diagnostic testing which may have helped to clarify the problem. I am not satisfied that the evidence establishes that the respondent fell below the standard in care in replacing the actuator, given the other problems with the vehicle.
16. I find that the applicant has not met the burden of proving, on a balance of probabilities, that the respondent fell below a reasonable standard in assessing the

problem with his vehicle or in performing part replacement that he authorized. Therefore, the applicant is not entitled to reimbursement for the cost of the part and associated labour.

17. 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. I dismiss the applicant's claim for tribunal fees and dispute-related expenses. It does not appear that the respondent incurred or claimed fees or expenses, and I make no order in this regard.

## **ORDER**

18. I dismiss the applicant's claims and this dispute.

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Lynn Scrivener, Tribunal Member