



# Civil Resolution Tribunal

Date Issued: December 19, 2018

File: SC-2017-007039

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Popoff v. Driscoll*, 2018 BCCRT 880

**B E T W E E N :**

Dianne Popoff

**APPLICANT**

**A N D :**

Kayla Driscoll

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

### INTRODUCTION

1. This dispute is about a private vehicle sale. The applicant, Diane Popoff, says the respondent, Kayla Driscoll, agreed to purchase her Ford Explorer (truck) but refuses to pay the remaining balance of \$700 owed on the \$1,000 purchase price. She seeks payment of \$700.

2. The respondent says she paid a \$300 deposit for the truck, but after she drove it she told the applicant she no longer wanted it. She says the applicant would not take the keys back, and would not refund the deposit.
3. Both parties are 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. 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. 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: 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.

## **ISSUES**

8. The issue in this dispute is whether the respondent owes the applicant \$700 for the truck.

## **EVIDENCE AND ANALYSIS**

9. 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.
10. Based on the evidence before me, I find the applicant has established her claim to \$700 for the truck.
11. The applicant provided a written chronology, which I have summarized as follows:
  - The respondent came to the applicant's home to see the truck on November 23, 2017.
  - The applicant, the respondent, and the applicant's friend D discussed the truck for 30 minutes. The applicant told the respondent everything that she knew was wrong with the truck, including a problem with the brakes.
  - The respondent took the truck for a test drive.
  - The respondent renegotiated the price from \$1,200 to \$1,000, and agreed to buy the truck.
  - The respondent signed a written contract and drove the truck away.
  - About 30 minutes later, D called the applicant and said the respondent had called him "yelling and screaming and demanding her money back."

12. D also provided a written, unsigned statement. D wrote that he told the respondent before the test drive that the truck had a brake fluid leak and needed a brake fluid lid.
13. The respondent agrees that she initially paid \$300 for the truck, with a promise to pay the remaining \$700 later. The respondent says she should not have to pay the \$700 balance for the truck because it was unsafe. She says the applicant and D assured her that the truck was safe to drive, but as soon as she drove it all the dash lights came on and there were no brakes. She says she immediately asked for her money back, but the applicant refused.
14. The respondent provided copies of video footage, which show an interaction with people whom I infer are the applicant and D. In the video, the respondent asked for her money back, and says D never told her about all the problems with the truck and said it was “kid-friendly”.
15. I find the respondent must pay the remaining \$700. The onus is on the applicant to prove her claim, which I find she has done through her evidence, particularly the written contract. The onus is on the respondent to prove her defence that the applicant or D misrepresented the truck, or that the truck had significant mechanical problems that were not disclosed by the applicant before the respondent agreed to buy the truck. I find the respondent has not proven misrepresentation or concealment. While the respondent says the brakes did not work and the dash warning lights came on, she provided no proof. She says the truck was unsafe to drive, but there is no evidence, such as a mechanic’s report, to confirm that statement. There is therefore no evidence to suggest that the respondent breached the implied condition in section 18(c) of the *Sale of Goods Act* that goods be durable for a reasonable period of time. I also note that while the respondent says the truck had only scrap value, she also says she sold the truck, and provided no proof of the sale price.
16. I place significant weight on the written contract signed by the parties on November 23, 2017. That contract says the vehicle was sold “as is” for \$1,000. It is

unreasonable to expect that a vehicle sold for such a low price, and in “as is” condition, will be without problems. Based on the phrase “as is” in the contract, I find the parties waived any implied warranty imposed under the *Sale of Goods Act*.

17. With the exception of the implied warranty about durability under the *Sale of Goods Act*, sales of used vehicles like this one are “buyer beware”. This means that the buyer must assess the condition of the vehicle before purchasing it. This includes an obligation for the buyer to obtain a pre-purchase inspection: *Smith v. Wild Grizzly Transport LTD*, 2018 BCCRT 203.
18. If a seller misrepresents a vehicle prior to sale, the buyer may be entitled to compensation. A misrepresentation is a false statement of fact that would induce a reasonable person to enter into a contract. A seller does not have to tell the buyer about defects that the buyer could discover by reasonably inspecting the vehicle: *Birge v. Lake*, 2018 BCCRT 800.
19. As previously stated, I find that the respondent, who bears the burden of proving her defence, did not prove that the applicant or D misrepresented the truck, or that the truck had significant problems. Also, when the respondent signed the contract agreeing to purchase the truck “as is”, she agreed to buy the truck regardless of its condition.
20. The contract says the respondent agreed to pay the remaining balance of the \$700 owed for the truck in 3 installments, with the last payment due January 5, 2018. Based on this contract, and for the reasons set out above, I find the respondent must pay the applicant \$700 for the truck. The applicant is also entitled to post-judgment interest on that amount under the *Court Order Interest Act* (COIA). I find that the interest is due from December 8, 2017, the date of the first missed payment.
21. There is no claim for tribunal fees or dispute-related expenses, so I order no reimbursement.

## ORDERS

22. I order that within 30 days of the date of this order, the respondent pay the applicant a total of \$704.32, broken down as follows:
  - a. \$700 for the truck, and
  - b. \$4.32 in pre-judgment interest under the COIA.
23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.
25. 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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Kate Campbell, Tribunal Member