



Civil Resolution Tribunal

Date Issued: January 9, 2019

File: SC-2018-002940

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Girard v. Veale*, 2019 BCCRT 31

B E T W E E N :

Sharon Girard

APPLICANT

A N D :

Chris Veale

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. The applicant, Sharon Girard, alleges the respondent, Chris Veale, lay on the hood of her vehicle with another person causing damage. The applicant claims \$668.00 for vehicle repairs. Both parties represented themselves.

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 118 of the *Civil Resolution Tribunal 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 may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Some of the evidence in this dispute amounts to a "she said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence.
4. In the circumstances here, I find that I am 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
5. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether 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 order a party to do or stop doing something or to pay money and may order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issue in this dispute is whether the respondent damaged the applicant's vehicle and, if so, what should be the remedy.

EVIDENCE AND ANALYSIS

8. The applicant bears the burden of proof for the claim on a balance of probabilities. I have reviewed all submissions and evidence provided. I refer only to the relevant evidence necessary to give context to my decision.
9. The applicant and her husband own a well-cared for older model convertible. In winter they keep the convertible covered in a stall of their building parkade.
10. In early March while the applicant and her husband were exiting an elevator, they say they saw their neighbours, the respondent and his girlfriend, laying together on the hood of the covered convertible. The applicant says she yelled twice for the respondent to get off the vehicle but that he did not seem to hear her. The respondent denies being on the convertible.
11. The parties agree that after meeting in the parkade they rode together in a different elevator. There is no evidence of any further discussion at that time about the convertible.
12. Sometime in mid to late April the cover was removed and damage was observed on the hood of the convertible. It is undisputed that there was no damage on the hood when the convertible was prepared for winter storage in late fall. The applicant claims for the estimated repairs, set out in two quotes.

13. The applicant says the respondent caused the damage. While the convertible is covered the applicant leaves a marker to observe disturbances in the cover. It is unclear on the evidence whether the marker is above or below the cover. In any event, the applicant says that the only time she observed a change in the marker was when the respondent was on the convertible. The respondent denies causing the damage.
14. I find that there is insufficient evidence before me to prove that the respondent damaged the convertible. On the applicant's own evidence the respondent's girlfriend could have and was more likely to have caused the alleged damage, as the respondent was allegedly laying on her while she was on the convertible. There is no basis on the applicant's evidence to show whether the alleged damage was caused by the respondent or his girlfriend, and yet the applicant claims against the respondent alone.
15. Relying on the marker, the applicant says she only saw a change once, after the alleged incident involving the respondent. It is unclear when precisely the applicant made that observation because there is no evidence that she went over to the convertible at the time. In any event, the purpose of the marker is to alert the applicant to disturbances. Once alerted to a disturbance, I would have expected the applicant to inspect the vehicle for damage.
16. The applicant admits that she did not inspect for damage at once. Considering the convertible's importance to the applicant I would have expected her to remove the cover and inspect at once. Not inspecting at that time, makes it difficult to connect the damage to any alleged actions of the respondent. Although the applicant regularly checked the convertible before and was vigilant in monitoring the daily after, the damage may have occurred at some other time.
17. Further, on the applicant's own evidence, she was far enough from the respondent to need to yell. And, even then, she did not feel the respondent heard her. Despite the applicant being unsure the respondent heard her, there is no evidence before me that any further discussion happened when the two couples rode in the elevator.

Given the applicant's concern, I would have expected further discussion to occur. I find that the applicant, at the time, did not believe damage likely occurred given the lack of inspection or discussion with the respondent. This supports a conclusion that the applicant has not proved that the respondent in fact caused the damage.

18. The respondent also says that someone laying on the vehicle while covered could not cause the scratches and scrapes. Given my findings above, I need not consider this issue.

19. For the reasons set out above, I dismiss the applicant's claim.

20. As the applicant was unsuccessful, under the Act and rules I also dismiss the claim for reimbursement of tribunal fees.

ORDERS

21. I dismiss the applicant's claim and therefore this dispute.

Megan Volk, Tribunal Member