



Civil Resolution Tribunal

Date Issued: February 25, 2019

File: SC-2018-003650

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lewis v. Lewis*, 2019 BCCRT 225

B E T W E E N :

tyler lewis

APPLICANT

A N D :

Renaë Lewis

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. The applicant, Tyler Lewis, says his sibling, the respondent, Renaë Lewis, damaged his all-terrain vehicle (ATV). The applicant seeks an order for payment of \$4,500 for repair costs. The parties each represent 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* (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 relationships between parties that may 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. I find that I can fairly resolve this dispute by writing based on the documents and written positions before me because 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 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 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

6. Is the applicant entitled to \$4,500 for repair costs?

EVIDENCE AND ANALYSIS

7. 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.

8. The parties agree that the applicant gave his sister, the respondent, permission to drive his ATV on March 18, 2017. It is undisputed that while the respondent and her partner were riding the ATV it was damaged.
9. The parties disagree on the extent of the damage, including the description of how the damage occurred. The respondent told the applicant in a text message that the ATV flipped. Although she later described the event as tipping, I find that the description in the text message is most accurate given it was closest in time to the event and there would be no reason for the respondent to describe the situation as more serious than it was. On immediate inspection the respondent saw that the right handle bar was bent.
10. The parties agree that on March 18, 2017 the applicant inspected the ATV and the respondent agreed to pay for the damage. In an April 4, 2017 text message to the respondent the applicant said, "so my quads all fixed up 240\$."
11. The parties agree that the respondent paid the \$240 repair costs referenced in the April 4, 2017 text. Although the parties disagree on whether an additional \$40 was paid for an oil change, I find nothing turns on whether it was \$240 or \$280 dollars for those repairs.
12. Following that, the parties' versions of events differ. The applicant says that on April 10, 2018 he met the respondent and explained that the damage to the ATV from the accident included replacing front and rear plastics, back rack, hand guards and brackets, hand grips, ignition module, 4x4 module, top headlight bezzel, brake master cylinder and headlight housing. At times over the next two months the applicant requested payment.
13. The respondent says that 8 months after paying for the repair to the handlebars and oil and filter changes, the applicant told the respondent that she owed additional money. The respondent denied that the further damage was caused by her and refused to pay for that damage.

14. Given the evidence, I need not decide whether the respondent caused the alleged additional damage. I find that the applicant has not proved the claim.
15. There is no evidence before me of the alleged further damage found by the repair shop. The applicant provided a series of photos of damage to an ATV but from that I am unable to say that the damage was caused by the respondent. And, no evidence was provided about the cost to repair the alleged damage. In any event, placing significant weight on the text message, I would have found that the damage caused by the respondent cost \$240 to repair. Waiting for 8 months to claim additional repairs was unreasonable. Further, if the respondent had damaged the ATV as alleged, I find the applicant would likely have raised it with the respondent much sooner.
16. As the applicant was unsuccessful, under the Act and rules I also dismiss his claim for reimbursement of tribunal fees and dispute related expenses.

ORDER

17. I find the applicant's claims, and therefore this dispute, must be dismissed.

Megan Volk, Tribunal Member