



# Civil Resolution Tribunal

Date Issued: March 12, 2019

File: SC-2018-006252

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hamilton v. Wadge*, 2019 BCCRT 301

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

Ona Hamilton

**APPLICANT**

**A N D :**

William Wadge<sup>1</sup>

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. On November 20, 2017, the applicant Ona Hamilton was involved in a motor vehicle collision with the respondent William Wadge. The applicant says the respondent

---

<sup>1</sup> In the Dispute Notice the respondent's first name was spelled William. In the Dispute Response, he spelled it William, which I accept is the correct spelling. I have amended the style of cause accordingly.

made lane a change without ensuring the lane was clear, colliding with her car just as she had pulled out of a parking spot. In contrast, the respondent says he had completed his lane change and was driving forward when the applicant moved her parked car into the lane, hitting his car.

2. The applicant seeks \$1,500 in damages.
3. The respondent asks that the dispute be dismissed, and that the applicant make any claim for vehicle repairs under her own policy, subject to the deductible.
4. The applicant is self-represented. The respondent is represented by Insurance Corporation of British Columbia (ICBC) adjuster Carol Clarke.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
7. 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

8. 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.
9. 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**

10. The issue in this dispute is whether the respondent is responsible for the motor vehicle accident and, if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

11. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, generally speaking, the applicant bears the burden of proof on a balance of probabilities.
12. On November 20, 2017 the applicant was parked against the curb on West Broadway in Vancouver, facing east, near the intersection of Stephens Street.
13. West Broadway has two eastbound travel lanes at that point, with one parking lane to the right.

14. The applicant describes that she was parked in the third parking stall from the corner with one car parked in front of her and two cars parked behind. She says a bus was stopped behind her vehicle, in the travel lane to her immediate left.
15. The bus stopped to pick up passengers. At that point, the applicant says the lane to her left was clear to enter. She says she turned on her left turn signal and checked for traffic. She then pulled out of the parking space.
16. At that point, she says the respondent's car drove past the bus and two other cars, crossed into the right lane and hit the driver side of her front bumper with the rear passenger side of his bumper.
17. The applicant says the damage to her bumper is to the side, not the front.
18. She says the damage is minimal.
19. The respondent says he was driving eastbound on West Broadway and passed a stopped bus. After he passed the bus, he says he moved back into the right lane. At that point, he heard a crunch noise at the right rear side of his car, where a car that had been parallel parked pulled into the lane and collided with his car.
20. AJ, a witness who did not know ICBC or either party, provided verbal statements on November 22, 2017 and October 11, 2018. His evidence is that the respondent's car was fully established in the right lane of travel, driving forward, when the left front corner of the applicant's parked car moved into the lane, though he did not see the collision itself.
21. The applicant says the respondent is responsible for the collision. She says he changed lanes into the right-hand travel lane without ensuring it was clear, resulting in the collision. She says she had already pulled into the travel lane, and was going forward, slowly, at the time.
22. The applicant says the eye-witness account is of limited assistance because AJ did not see the accident, and he missed important details such as the stopped bus. I find AJ's statement credible, as he admits that he did not observe all aspects of the

incident. The fact that he does not recall seeing the bus suggests that the respondent had already passed the bus, and was travelling in the right-hand lane, when AJ noticed it. I see no reason for AJ to convey something other than what he observed. AJ's verbal and written statements are consistent on these two key points, which I accept:

- a. He saw the respondent's car travelling in the right lane, not changing lanes, near in time to the collision, and
- b. He observed that, after the collision, the applicant's car was "...still parked at the curb but the driver side was just slightly pulled into the right lane" with only its left front tire over into the travelling lane.

23. In describing her actions, the applicant says she had her left turn signal on and "checked for traffic." She does not describe doing a shoulder check. The applicant says the lane was clear of vehicles and "blocked by the bus", so she moved out of the parking space.
24. The applicant says the location of the vehicle damage supports her version of events. I disagree. The applicant says the damage was to the side of her car. In looking at the photographs the applicant filed in evidence, I find the damage was on the left side of her front bumper, ahead of her front wheel. I find the location of the damage most consistent with the respondent's version of events.
25. Based on AJ's statements I find that the applicant was moving out of her parking space at the time of the collision. That is, she was moving her car from a parked position, rather than having already pulled into the lane of traffic to travel eastbound.
26. Given my findings, section 169 of the *Motor Vehicle Act* applies. Section 169 says that a person must not move a parked vehicle unless "the movement can be made with reasonable safety and he or she first gives the appropriate signal..."
27. Section 169 places the responsibility on the parked vehicle to ensure it has a clear lane to move into. As well, in this dispute the applicant here bears the onus of

proving the respondent caused the accident. I find that she has not met that burden. I find that she did not ensure that movement of her parked car could be made with “reasonable safety” before she proceeded.

28. I dismiss the applicant’s dispute. In submissions, ICBC asked the applicant to claim for any vehicle repairs sustained during the collision under her own policy, subject to the collision deductible and any changes in her claims rated scale. I leave that to the applicant to address as she considers appropriate.

29. 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. As the applicant was unsuccessful, I find she is not entitled to reimbursement for tribunal fees.

## **ORDER**

30. I dismiss the applicant’s claims and the dispute.

---

Julie K. Gibson, Tribunal Member