



Civil Resolution Tribunal

Date Issued: March 19, 2019

File: SC-2018-006981

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *SPECTRA POWER SPORTS LTD v. MULLER*, 2019 BCCRT 341

B E T W E E N :

SPECTRA POWER SPORTS LTD

APPLICANT

A N D :

MICHAEL MULLER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The respondent, MICHAEL MULLER, rented an all-terrain vehicle (ATV) from the applicant, SPECTRA POWER SPORTS LTD. The applicant says the respondent damaged the ATV during the rental period, and claims \$2,548.28 in damages.

2. The respondent denies the applicant's claims. He says the ATV's throttle lever was defective, and broke in his hand. He says the other damage claimed by the applicant could have occurred after he dropped the ATV off at the applicant's owner's property. The respondent also says the amount of damages claimed by the applicant is excessive.
3. The applicant is represented by employee or principal Scott Fraser. The respondent is 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 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 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. Some of the evidence in this dispute amounts to a "he 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. 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. 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: 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.

ISSUE

7. The issue in this dispute is whether the respondent is liable for damage to the applicant's ATV, and if so, in what amount.

EVIDENCE AND ANALYSIS

8. 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.
9. For the reasons set out below, I find the respondent is liable for the ATV damage claimed by the applicant.
10. The parties agree that the respondent rented the ATV from the respondent in July 2018. The applicant says the ATV was in new condition when the respondent rented it. This is confirmed by the rental inspection form, which notes the ATV's new condition, and was signed by both parties at the time of the initial rental.
11. The respondent says the ATV was substantially damaged when he returned it. The applicant says there was extensive damage to the machine's right side, including a broken storage box lid, gouges in the plastic near the front storage box lid, a broken rear rack, gouges in the cab plastic near the rear rack, and a broken throttle lever. The applicant says the respondent was the only customer to have used the ATV, so he must pay for the repairs.

12. The respondent says he is not liable, in part because the applicant did not do a proper post-rental inspection in his presence, as required under the contract. Page 2 of the contract says the equipment would be inspected by the applicant upon return by the customer. The contract says the customer would be given the opportunity to be present for the inspection, but in the event the customer chose not to be present the customer waives his right to dispute the results of the inspection.
13. The parties agree that the respondent returned the ATV to the personal residence of the applicant's owner, HS, on July 30, 2018. The applicant says this was 1 day late, and I agree, as the rental deposit form completed on July 11, 2018 says the rental dates were July 22 to 29, 2018.
14. Mr. Fraser, on behalf of the applicant, says the parties agreed in advance that the respondent would return the ATV to HS's home, as the applicant's store would be closed on the return date. The respondent says he tried to return the ATV to the store, but no one was there to accept or inspect it, so he had to return it to HS's home. Based on the body of evidence before me, I find that the parties had agreed in advance that the ATV would be returned to HS's home. First, this is consistent with what Mr. Fraser wrote in his August 23, 2018 email to the respondent. As this email was written less than a month after the events in question, I find it persuasive. Also, the respondent has not explained how he found HS's home if he had not arranged the drop-off there in advance.
15. HS provided a signed statement. HS says he was not expecting the respondent when he arrived with the ATV on a deck on the back of his truck, as he had expected him the previous day. HS says he unloaded the ATV with his skidsteer, and noticed a lot of damage. HS says he asked the respondent what happened, and the respondent said he crashed it. HS says he told the respondent he was not qualified to do the post-rental inspection, and it would be completed by the service department when the ATV was returned to the applicant's shop. According to HS, the respondent agreed and did not request to be present at the shop inspection.

16. Based on this evidence from Mr. Fraser and HS, I find the respondent waived his right to be present for the post-rental inspection when he returned the ATV to HS's home, rather than to the applicant's shop. Thus, I find he cannot rely on that provision to limit his liability for damage to the ATV.
17. The rental contract, which the respondent signed on July 22, 2018, says the renter understood that he was solely responsible for rental item damage. The respondent initialed next to this clause. A second page of the contract, with the respondent also signed, says that the customer accepted full responsibility and cost to replace the equipment rented in the case of fire, theft, or accident. It also says, "Damage occurring to the rental unit(s) or equipment is the full responsibility of the customer". It says the customer would pay a damage deposit, and the customer agreed to pay any additional monies required to cover repairs.
18. Based on the terms of this contract, I find the respondent is liable for the damage to the ATV.
19. The respondent says the damage claimed by the applicant is unsubstantiated. I disagree. The respondent provided a copy of the post-inspection report and detailed repair invoice, which set out the specific damage to the ATV. This is supported by the applicant's photos, which show the damage to the claimed areas, which mostly consists of cracked and gouged plastic, as well as the broken throttle lever. Finally, I find the ATV damage is confirmed by the written statements of HS and Mr. Fraser, and Mr. Fraser's August 1, 2018 email to the respondent, which says:

Just finishing up on the inspection of the ATV that you rented from us. What happened? Did you wipe out into a fence or roll it? Hopefully you are ok.

20. I place significant weight on the respondent's reply to that email. He did not deny the damage, but said he was OK, but his hand was cut. He wrote that he was riding hard into a corner and the accelerator lever snapped off in his hand causing him to lose temporary control of the ATV into a gravel shoulder.

21. I find that this email is an acknowledgement of the ATV damage. While the respondent later submitted to the tribunal that the damage could have occurred after he dropped off the ATV at HS's home, I find this is not consistent with his August 1 email to Mr. Fraser. Also, I find the photos of right-sided ATV damage are generally consistent with skidding into a gravel shoulder, which is the incident described by the respondent.
22. Similarly, I find the respondent again acknowledged the ATV damage in his August 4 email to Mr. Fraser. The respondent wrote that the applicant was "grossly exaggerating the extent of the damages" to the ATV. He wrote that \$2,000 in damages was excessive, and was too much for him to pay, but he would let the applicant retain the \$500 damage deposit. I find that if the respondent had not damaged the ATV, he would have said that in these emails, and would not have agreed to forfeit the damage deposit. Rather, he admitted the damage, but disputed the repair costs.
23. I also note that in these emails, the respondent did not assert that the throttle lever was defective. He has provided no subsequent evidence to support his submission that it was defective, so I find his liability for repairs is not limited on that basis.
24. For all of these reasons, I find the respondent is liable for the ATV repairs.

Amount of Damages

25. The rental contract says that repairs on damaged rental equipment would be completed by the applicant at the rate of \$99 per hour, plus the cost of parts and shipping and any other incurred expenses. The applicant provided an invoice showing total repair costs of \$3,048.29. Minus the \$500 damage deposit already paid by the respondent, this equals the \$2,548.29 claimed in this dispute.
26. The invoice sets out charges of \$2,305.89 for parts, \$19.80 for shop supplies, and \$396 labour, plus \$136.08 for GST and \$190.52 for PST. The applicant did not provide receipts for the claimed parts, but I find the overall charges are reasonable

based on the extent of damage shown in the photos. The invoice is specific about the work performed and the parts used.

27. For all of these reasons, I find the applicant has established its claim to \$2,548.29 for ATV repairs. I order the respondent to pay that amount. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA), from August 1, 2018.
28. 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 find the applicant is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

29. I order that within 30 days of the date of this decision, the respondent pay the applicant a total of \$2,699.62, broken down as follows:
 - a. \$2,548.29 for ATV repairs
 - b. \$26.33 in pre-judgment interest under the COIA, and
 - c. \$125 for tribunal fees.
30. The applicant is entitled to post-judgment interest, as applicable.
31. 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.

32. 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.

Kate Campbell, Tribunal Member