



Civil Resolution Tribunal

Date Issued: March 22, 2019

File: SC-2018-006464

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brown v. Jim & Julie Enterprises Ltd.*, 2019 BCCRT 362

B E T W E E N :

Donald E. Brown

APPLICANT

A N D :

Jim & Julie Enterprises Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about alleged damage to the applicant's car. The applicant, Donald E. Brown, says he took his 1979 El Camino car to the respondent, Jim & Julie Enterprises Ltd., for service. The applicant says the respondent dented the hood

and chipped the paint, and says this occurred while the respondent was “abusing” his car, although in later submissions he surmises it occurred due the respondent letting the hood fall quickly or onto a clamp. The applicant claims \$563.87 for repairs to the car.

2. The respondent acknowledges the car was damaged with a dent and chipped paint. However, the respondent says this was caused when the alternator belt broke while the respondent was road testing the vehicle. The respondent says this was not their fault and denies liability.
3. The applicant is self-represented. The respondent is represented by Greg Krause, who I infer is either an employee or principal. For the reasons that follow, I dismiss the applicant’s claims.

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. 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.

ISSUE

8. The issue in this dispute is whether the respondent is responsible for the damage to the applicant's car, and if so, what is the appropriate remedy.

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 referenced the evidence and submissions as necessary to give context to my decision.
10. The respondent says during its road test of the car, the alternator broke. It says it informed the applicant, showed him the worn belt and where it had struck the underside of the hood when it broke, making a small dent outwards.
11. The evidence, including photos, shows that during the respondent's road test of the applicant's car an alternator belt broke. The photos show it was splitting along its length with visible cracks and fraying. To the extent he argues it, I find the applicant has not proved the respondent caused the belt to brake. Rather, I find it broke due to age or normal wear and tear. I also accept the respondent's evidence, excerpts from the Commercial Vehicle Safety Authority manual, that if the car had been in for inspection the belt would not have passed due to cracking and fraying cords.
12. Apart from his submissions, the applicant chose to provide no evidence. I find the applicant has not proved his claim that the respondent was "abusing" his car when

they test drove it. He has also not provided any evidence as to how driving a car aggressively could break an alternator belt. Similarly, the applicant's later alternative submission that the respondent must have let the hood drop on a clamp is not proved. I find the applicant is speculating that the respondent was negligent. While the applicant says the fan belt could not have caused the damage, he has provided no evidence to support that position.

13. In any event, I find the applicant has not proved the respondent drove his car aggressively or in an abusive way. The respondent says it road tested the applicant's distinctive car on a busy road in front of its business, and would have no reason to do so aggressively. I find the applicant has not proved otherwise. I say the same about the applicant's later speculation that the hood was dropped either quickly or onto a clamp. Based on the evidence before me, I find the most likely explanation for the car's damage is that the alternator belt broke due to age and hit the underside of the hood. While the applicant asserts this was unlikely if not impossible given the belt was rubber, I find on balance the evidence does not support this assertion. Again, the applicant chose to provide no evidence in support, such as from a qualified mechanic, to say the fan belt could not have damaged the hood. In short, the applicant has not proved the respondent was negligent in its handling of his car.
14. Given my conclusions above, I dismiss the applicant's claims. I note the applicant provided no evidence to support his claim, such as an invoice for the car's repair. I would have dismissed his claim in any event due to the lack of the required proof of damages.
15. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find he is not entitled to reimbursement of the \$125 paid in tribunal fees.

ORDER

16. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair