



# Civil Resolution Tribunal

Date Issued: March 25, 2019

File: SC-2018-006582

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Willoughby v. Zip Courier Inc.*, 2019 BCCRT 368

B E T W E E N :

Denise Gail Willoughby

**APPLICANT**

A N D :

Zip Courier Inc.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. The applicant, Denise Gail Willoughby, says the respondent courier Zip Courier Inc. (Zip or courier) damaged her Jura Z5 espresso maker when it shipped it back to her

after she had them send it to a store for maintenance. The applicant claims \$4,795, which she says is the replacement cost for the machine.

2. Zip says the item was damaged after it delivered it back to the applicant's home, noting it was not notified of the damage for about 3 months after the applicant received the item back. Zip also says it is not responsible because the applicant signed for the box as being in good order.
3. I note the applicant originally also named Blue Heron Courier Inc. as a respondent but later withdrew her claim against them as it was Zip who provided the service in question. I have amended the style of cause accordingly.
4. The applicant is self-represented and Zip is represented by Mike Giordano, who I infer is an employee or principal.

## **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* (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 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.
7. 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.

8. 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

9. The issue in this dispute is whether the respondent courier damaged the applicant's espresso machine while in transit, and if so, what is the appropriate remedy.

## EVIDENCE AND ANALYSIS

10. 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.
11. The applicant lives in Langley. The evidence shows that on October 2, 2017, Zip picked up her espresso machine and delivered it to Espressotec in Vancouver for annual maintenance. It is undisputed that the applicant had packed the machine solidly in a box with Styrofoam, and marked "Fragile" all over the box.
12. When the maintenance was done, Zip picked the machine up and delivered it back to the applicant at her home. Zip says its driver denies dropping the box, though I have no statement from the driver before me in evidence.
13. Once Zip delivered the machine back to her, the applicant says she set it up but it was not working properly. She says it was leaking water badly, something it had never done before. The applicant called Espressotec immediately and the applicant says they told her it was working beautifully, and not leaking, when Zip picked it up after the maintenance. The applicant says Espressotec asked the applicant to return the machine to them, as perhaps a hose had come loose during shipping.
14. However, a "Service Order" from Espressotec dated October 2, 2017, describes the maintenance it performed. A second "Service Order" dated October 3, 2017, notes the applicant called in, "detailed that machine is back at home **and issue persists**, shorts and turns off. Was detailed unfortunately never happened here on site, multiple outlets and breakers. Recommended try new outlet, tried at home in second kitchen and functions no problem, requested she keep in touch with any persisting issues" (my bold emphasis added). In a cover letter, the applicant said this Service Order documented her call to Espressotec the day after Zip returned the machine to her, "about the water leak and electrical problem caused from the

water". Yet, the October 3, 2017 Service Order does not mention water leaking and only that an "issue persists".

15. Almost 2 months later, on November 28, 2017, the applicant asked Zip to pick the machine up again to take it back to Espressotec. The applicant says after examination Espressotec determined that the entire frame and boiler was cracked and had come apart from the frame, and that according to the applicant Espressotec said this could only have resulted from "being dropped above 3 feet, during transport".
16. There is no explanation before me about the 2-month delay between October 3 and November 28, 2017 and whether the applicant used the machine in the interim, and if not, why she did not send it to Espressotec earlier. I find this does not support the applicant's position that the machine's damage must have come from the respondent dropping the box on October 2, 2017.
17. Espressotec sent the applicant a December 1, 2017 email stating that the machine was unrepairable. Espressotec's December 4, 2017 invoice notes the applicant described the machine as "leaking heavily after gotten home". This is different from the October 3, 2017 Service Order. Again, the discrepancy in the applicant's description of the problem causes me to find her evidence unreliable.
18. In evidence are a number of photos of the applicant's sealed box addressed to Espressotec, marked "Fragile" in a few places, and a note "Please keep and return box for return to customer". The applicant admits the box itself was undamaged. The respondent says this shows it is unlikely its driver damaged the machine so severely, as if he had, the box itself would have shown some damage also.
19. The applicant says the driver struggled when he picked up the box and she offered him help. She says this to explain why the machine could be damaged even if the box did not show obvious damage, such as if it had been dropped straight down. However, I find this is speculative and unlikely. The applicant relies on Espressotec's opinion that the machine was working well after the maintenance, and I find it unlikely that Espressotec would not have noticed a broken frame and cracked boiler during its maintenance, particularly as the applicant said as soon as she used the machine after Zip returned it, it was leaking heavily. I find Espressotec would have likely noticed this during its maintenance, instead of saying the machine was working beautifully. When Zip picked up the machine again to return it to Espressotec a second time, the applicant had already discovered the leak she says is a symptom of the broken frame and cracked boiler. This means Zip could not have caused the machine's alleged damage on a pick up from the applicant's home. The only possible timing for Zip's damage is during its pick-up from Espressotec

and delivery to the applicant's home. The applicant does not say the driver was the same person, so it is unclear why she describes the driver's struggles when picking the machine up from her.

20. On balance, I find the applicant has not proved the respondent damaged her espresso machine. I say this given the inconsistencies set out above. The applicant's description of the problem on October 3 was "the issue persists" and did not refer to significant leaking. She returned the machine to Espressotec on November 28, 2017, almost 2 months later, and it was only then the machine was leaking. I am not satisfied that the persisting problem on October 3 was leaking or any new problem that could be Zip's responsibility.
21. Even if I had concluded the respondent was negligent in its handling of the applicant's box, the applicant has not provided sufficient proof of her claimed damages. In particular, she did not provide an invoice or quote for the replacement espresso machine.
22. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find she is not entitled to reimbursement tribunal fees or dispute-related expenses.

## **ORDER**

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

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Shelley Lopez, Vice Chair