



Civil Resolution Tribunal

Date Issued: April 2, 2019

File: SC-2018-002011

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fitzgibbon v. Devon Transport Ltd.*, 2019 BCCRT 415

B E T W E E N :

Keith Fitzgibbon

APPLICANT

A N D :

Devon Transport Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about charges for damage to a rented vehicle.
2. On December 10, 2017, the applicant, Keith Fitzgibbon, rented a pickup truck from the respondent, Devon Transport Ltd., which was operating as a licensee of Budget

Car and Truck Rental. The applicant says the respondent made an unauthorized charge of \$1,091.10 for alleged vehicle damage. The applicant denies damaging the truck, and says the charge was not permitted under the rental agreement. He seeks a refund of the \$1,091.10.

3. The respondent says the charge was for vehicle damage that occurred during the rental period, which was allowed under the rental agreement the applicant signed.
4. The applicant is self-represented. The respondent is represented by Gary Seepman, 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 applicant is entitled to a refund of \$1,091.10 in vehicle damage charges.

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 addressed the evidence and arguments to the extent necessary to explain my decision.
11. The documents in evidence show that the applicant rented the truck on December 10, 2017 and returned it on December 11, 2017. He paid \$113.75 for the rental using his debit card, on December 11, 2017.
12. On January 9, 2018, the respondent charged \$1,091.10 to the applicant's visa card, for alleged vehicle damage.
13. The rental agreement signed by the applicant states that the renter declined to purchase a "loss/damage waiver" and accepted financial responsibility for all loss or damage to the rented vehicle regardless of fault. The applicant initialed next to this clause. Based on this term, I find the applicant is liable for any vehicle damage sustained during the rental period.
14. However, I find the evidence before me supports the conclusion that the applicant did not damage the vehicle to the extent claimed by the respondent.

15. The applicant and the respondent's employee signed an inspection report when the applicant picked up the truck on December 10. The report states that there were pre-existing "light scratches" on the truck. The report shows diagrams of the truck from various angles, which indicate scrapes/scratches on the bottom right side of the tailgate and on the driver's side of the pickup box.
16. Mr. Seepman, on behalf of the respondent, says that when the applicant returned to the truck, it had new damage in the form of 2 scratches that were "down to the bare metal". I find there is no evidence before me to support that assertion.
17. The photos provided by the applicant show what appear to be very small superficial scratches or black rub marks on the truck, including on the passenger side of the pickup box. The respondent also provided 2 photos, which I find do not show scratches down to bare metal. Both of the respondent's photos are of the truck's tailgate, and show scratches on the surface of the tailgate handle, and a black rub mark or scratch on the paint around the tailgate handle.
18. The respondent provided a copy of a "claims incident report" signed by the applicant and the respondent's employee CW on December 11, 2017. This report says there were "minor surface scratches" on the truck, and states that the renter agreed there were minor surface scratches present at the time of the rental. There is no indication or specific description of new damage.
19. CW signed a "CSR claims report" form on December 13, 2017. It said that when the applicant brought the truck back, there was new damage. The damage was described as a 2-inch scratch on the tailgate and a 1-inch scratch on the passenger side of the box. CW wrote that these "go down to bare metal".
20. Based on the photos provided by the applicant, and the other documents in evidence, I accept that the truck sustained some new scratches during the rental period, including a scratch on the passenger side of the pickup box and in the area of the tailgate handle. These scratches are visible in the applicant's photos and are

not noted on the pre-rental inspection diagrams. However, I find this damage is not consistent with the \$1,091.10 charged by the respondent.

21. The applicant, rather than the respondent, bears the burden of proving his claims. However, the respondent provided no invoice or accounting record showing how it arrived at the \$1,091.10 charge. The repair invoice the respondent provided shows repair charges of \$756.53 plus GST by C Collision on January 4, 2018. However, I agree with the applicant that some of the work set out in the invoice is not reasonably related to the 2 scratches that occurred during the rental period. Specifically, there are charges for repairing the right stone guard, the right tail-lamp lens, and the bedside panel decal. The respondent provided no photos, inspection reports, or other evidence linking these repairs to the 2 scratches that occurred during the applicant's rental period. For that reason, I find the applicant is not responsible to pay them. The C Collision invoice does not separate these costs from the other repairs. Therefore, on a judgment basis, I find the applicant is responsible for half of the C Collision repair invoice, or \$378.27.
22. It is not clear what the remainder of the \$1,091.10 credit card charge was for, although presumably some of this amount was for loss of rental income while the truck was in the shop, plus administration fees. Since there is no record of these amounts and how they were calculated, and since additional repairs were performed while the truck was in the shop, I find the applicant is not responsible to pay these unknown fees.
23. For all of these reasons, I find the respondent must refund \$712.83 to the applicant. The applicant is also entitled to pre-judgment interest on this amount, under the *Court Order Interest Act* (COIA), from January 9, 2018.
24. 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. As the applicant was partially successful in this dispute, I find he is entitled to a refund of half his \$125 in tribunal fees, in the amount of \$62.50.

25. While the applicant claims \$200 in dispute-related expenses, he provided no respondent receipts, invoices, or particulars of those expenses, so I order no reimbursement.

ORDERS

26. I order that within 30 days of the date of this decision, the respondent pay the applicant a total of \$788.01, broken down as follows:

- a. \$712.83 as a refund of credit card charges,
- b. \$12.68 in pre-judgment interest under the COIA, and
- c. \$62.50 for tribunal fees.

27. The applicant is entitled to post-judgment interest, as applicable.

28. 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.

29. 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