



# Civil Resolution Tribunal

Date Issued: April 12, 2019

File: SC-2018-007763

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Amato v. Fortin*, 2019 BCCRT 459

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

Frank Amato

**APPLICANT**

**A N D :**

Dayton Fortin

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. This is a dispute about a damaged truck. The applicant, Frank Amato, lent his work truck to the respondent, Dayton Fortin. The applicant says the respondent damaged the truck in a collision for which he was at fault, and he wants the respondent to reimburse him \$1,191.88 for the cost of repairing the truck.

2. The respondent says he agreed to drive the applicant's work truck as a favour, and he never would have agreed to drive it had he known the truck was not properly insured.
3. Both parties are 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*. 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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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.

## **ISSUES**

8. The issue in this dispute is whether the respondent is required to reimburse the applicant \$1,191.88 for the cost of repairing his work truck.

## EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. The respondent filed a Dispute Notice and made submissions but chose not to provide evidence, despite having the opportunity to do so.
11. It is undisputed that in September 2018 the respondent was renting a room from the applicant. On September 6, 2018, the applicant asked the respondent to drive the applicant's work truck so that the applicant could pick up another truck. The respondent did so without incident. The respondent says the applicant asked him about his driving history and he told him he he did not have 10 years' driving experience.
12. The respondent says a week later another tenant was planning to move into the shared house. The respondent says that tenant asked if the applicant or the respondent could drive the applicant's truck to help move some of his belongings into the house. The respondent says he was asked if he would be able to drive the applicant's truck, to which the respondent agreed. The applicant says the respondent asked to borrow the truck to help his colleague move. There is a text message in evidence in which the respondent tells the applicant that the new tenant had asked him to borrow the applicant's truck to help him move.
13. On September 12, 2018, the applicant loaned his work truck to the respondent. The respondent says he initially agreed to drive the applicant's personal truck, but when the time came the respondent says the applicant changed his mind and lent the respondent his work truck. The applicant's employer leases the truck and the applicant says he is named as the principal operator on the truck's insurance. The respondent says he only agreed to borrow the applicant's work truck as a favour,

and he would never have agreed to do so if he had known the applicant did not have insurance coverage for other drivers to drive the truck.

14. The applicant says when he gave the respondent the keys to the truck he told him to “not be an idiot” because the logo of the applicant’s employer was on the side of the truck. He says the respondent replied, “don’t worry, I drive like a grandpa.”
15. The applicant says that shortly after borrowing the truck the respondent was involved in a 3-vehicle collision for which he was at fault, causing significant damage to the truck.
16. The applicant says the respondent hit the vehicle in front of him, which pushed that vehicle into another vehicle in front of it. He says the only way the collision could have occurred is if the respondent was texting and not paying attention, speeding, following too close, or a combination of these factors. The applicant submitted a letter from ICBC dated November 19, 2018 stating that his employer, the lessee of the truck, was found 100 percent liable for the collision because the respondent, who was driving the truck at the time, was responsible for the collision. However, aside from the applicant’s speculation, there is no evidence or details of how the accident occurred, even though I would expect such evidence exists, including witness statements and documentation from ICBC.
17. The applicant says that after the collision the respondent apologized to him and his employer, said he would take care of it “whatever it takes,” and offered to take over the lease on the truck if insurance did not cover the damage. He submitted an undated text message from the respondent which supports this claim. However, the respondent’s apology after the collision is not an admission of liability. The text message in evidence in which the respondent offers to take over the lease on the truck is posed in the form of a question, and it appears the parties did not know the extent of the damage to the truck at that time. I find this text message exchange, in which the parties are discussing and suggesting potential options of what to do with the truck, does not constitute an enforceable agreement between the parties.

18. The applicant says ICBC informed him that the other 2 drivers involved in the collision have filed injury claims with ICBC, that the total cost of damage to the 3 vehicles involved in the collision was \$33,763.90, and that the damage to the truck exceeded \$14,000. However, there is no documentary evidence of any of these assertions. If these assertions are true, I would expect there to be available evidence about the details and circumstances of the collision.
19. When the applicant lent his truck to the respondent this created a legal relationship of bailment, which is the temporary transfer of property from the “bailor” (in this case, the applicant), to the “bailee” (in this case, the respondent). When the bailment is solely for the benefit of the bailor, it is said to be a gratuitous bailment, in which case a bailee is only liable for gross negligence. Where the bailment is for reward, a bailee will be liable for straight negligence. See *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273.
20. It is unclear from the evidence whether the applicant gained any benefit from the bailment. The applicant says the respondent borrowed his truck to help a colleague move, which seems to be of no benefit to the applicant. However, based on the parties’ description of the circumstances, it seems that colleague would be paying the applicant rent for a room once he moved, so the applicant would have benefitted from the colleague moving into the house.
21. However, I find it is unnecessary to determine the bailment issue, as I find the applicant has not proven the monetary aspect of his claim. The applicant says he paid \$500 for the insurance deductible and \$691.88 in GST to repair the truck. He submitted an email dated October 17, 2018 from an autobody shop supporting these amounts. However, there is no documentary evidence proving the applicant paid these amounts such as a cheque, e-transfer, or bank records, even though I would expect such records exist. Parties are advised during the facilitation process to provide all relevant evidence to the tribunal. Since the applicant’s employer leases the truck, I am not satisfied from this email alone that the applicant personally paid these amounts. For these reasons, I dismiss the applicant’s claims.

22. The respondent says that days after the collision the applicant contacted the respondent's employer and said the respondent should not be allowed on his job site because he was "untrustworthy and a danger to others," and the applicant threatened to phone the police if the respondent entered the work site. The respondent says that because of this he missed work and lost wages, and that he could make a counterclaim. However, there is no counterclaim before me, and the respondent has not submitted evidence of lost wages or specified which days he missed work. For these reasons, I make no findings about the respondent's assertions.
23. Under section 49 of the Act, and tribunal rules, as the applicant was unsuccessful he is not entitled to reimbursement of his tribunal fees, and he has not claimed any dispute-related expenses.

## **ORDER**

24. I dismiss the applicant's claims and this dispute.

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Sarah Orr, Tribunal Member