



# Civil Resolution Tribunal

Date Issued: April 16, 2019

File: SC-2018-006990

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robinson v. Destination Auto Enterprises Inc. dba Destination Toyota Burnaby et al*, 2019 BCCRT 470

B E T W E E N :

Roz Robinson

**APPLICANT**

A N D :

Destination Auto Enterprises Inc. doing business as Destination Toyota Burnaby  
and Toyota Canada Inc.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. The applicant Roz Robinson says she bought a new 2015 Toyota Tacoma (truck) from the respondent Destination Auto Enterprises Inc. doing business as

Destination Toyota Burnaby (Destination). She says the truck's radio system was defective and made an intermittent cracking noise. The applicant says that Destination, and the respondent Toyota Canada Inc. (Toyota Canada), failed to repair the radio, even though the truck was still under warranty. The applicant claims \$2,028.26 as reimbursement for the replacement stereo she had installed.

2. The respondents Destination and Toyota Canada say the warranty applied to the head unit in the stereo of the truck until February 24, 2018. They argue the truck had an aftermarket communications system in it. The respondents say the head unit in the truck is functioning as intended and is reasonably fit. The respondents deny breaching an obligation under the warranty, any implied warranty or any other obligation to the applicant. They ask that the dispute be dismissed.
3. The applicant is self-represented. Destination is represented by principal or employee Lee Harrington. Toyota Canada is represented by principal or employee Jared Smith.

## **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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the

circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

6. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
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 make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether the respondents must pay the \$2,028.26 claimed by the applicant.

## **EVIDENCE AND ANALYSIS**

10. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
11. On February 24, 2015, the applicant bought the truck from Destination.

12. The truck carried a 3 year or 60,000 km warranty.
13. On November 19, 2016, the applicant reported that the truck's audio system was defective. The stereo was making an intermittent but ongoing crackling or popping noise during use.
14. The applicant brought the truck in for service to try to address the radio issue.
15. On one of these visits, Destination installed a radio antenna test kit, which allowed for recordings of the noise to be made. The applicant noted that the sound was occurring on a second radio station as well.
16. The applicant filed the audio recordings that were made in evidence.
17. On one of the service visits, Destination replaced the head unit of the stereo. While the radio was working well for a period of time, the sound then started again.
18. The matter was escalated to Lee Harrington at Destination and James Langdon of Toyota Canada.
19. On July 17, 2017, the complaint was logged in the TCI Vista system as "repeat repair/still unrepaired" issue with "poor radio tuning" in the applicant's vehicle.
20. On July 21, 2017, Mr. Harrington filed an internal report explaining that the applicant was hearing an intermittent noise on one FM station (88.1) and that he observed the same intermittent blip/sound in road testing two other Toyota Tacomas.
21. On August 14, 2017 Mr. Harrington wrote that he had heard the noise described by the applicant in "other Tacomas during extensive road testing". He went on to write that "The only thing that has come to light since the radio was replaced in this vehicle was the fact that there was issues with the refurbishment process from Panasonic with Tacoma radios. I was provided a special champion radio for another case on a 2016 Tacoma, as apparently the original refurbished radio units were having issues." (quoted passage reproduced as written)

22. In August 2018, the respondents acknowledged that a “barely audible” noise was detected, on 88.1 FM only, occurring very rarely, using a radio test kit. The respondents say this is not a warrantable condition.
23. The respondent Toyota Canada suggested that the problem was not covered under the truck’s warranty. The applicant says she does not see anything in the warranty that excludes it.
24. On December 19, 2017, the applicant says she spoke with Destination’s general manager, James McInnes, who told her to go and have an aftermarket stereo installed. She says he seemed confident in his ability to get her reimbursed.
25. Based on the audio recordings filed in evidence, I find that the applicant has proven that the radio in her truck makes an intermittent pop sound when tuned to FM 88.1, that she has also observed when tuned to one other FM station.
26. The Toyota New Vehicle Warranty does not cover “Conditions related to normal noise, wear, vibration, deterioration, discoloration, distortion, deformation and fading”.
27. The 2015 Tacoma Audio System Description document says, in part, that “In addition to static, other problems such as “phasing”, “multipath” and “fade out” exist. These problems are not caused by electrical noise, but by the radio signal propagation method itself.”
28. The warranty also specifies that “radio performance and particularly FM reception may be affected by factors such as natural terrain, man-made obstacles and your distance from the radio station’s transmitter.” However, the warranty also says Toyota’s original equipment radio and sound system components are covered under it.
29. In 2017, Destination replaced the radio’s head unit and performed a software update to try to address the noise. At that time, a note was made that an aftermarket CB radio system had been installed in the truck.

30. While I have considered the aspects of the audio system the warranty does not cover, including FM radio reception issues, there is evidence, in Toyota Technical Service bulletin T-SB-0035-16, that some 2015 model year Tacomas equipped with the Entune Audio Head Unit may require a software update. While the problems listed for 2015 models do not include intermittent clicking, the problems listed for 2014 models include a “pop noise from AM radio”.
31. I find that the applicant has demonstrated a pop noise occurring in the FM radio of her Entune Audio Head Unit. I find that this is a warrantable defect, because the applicant met the burden on her to prove the noise and her evidence establishes it was occurring for reasons other than poor reception. Of note, when the applicant drove her husband’s vehicle on the same route, the problem did not occur. husband would drive the same route with a different vehicle and not experience the problem.
32. Although the respondents argued that the noise might be due to cell phones making calls nearby, or large physical obstructions of the FM signal, they did not address the audio recordings, some made in a parking lot, where the popping noise is clearly heard. Rather, Mr. Harrington’s correspondence shows he was aware of the same issue in at least two other Tacomas. Mr. Harrington also acknowledged that “the original refurbished radio units” were having issues on a 2016 Tacoma, and he arranged a “special champion radio”.
33. Toyota Canada says the issues with some of the 2016 or 2014 Tacoma radios are not translatable to the truck, which is a 2015 model. However, I rely on Mr. Harrington’s evidence and the Technical Service Bulletin, because they each describe the same phenomenon that the applicant has proven in the recordings.
34. With respect to the suggestion that aftermarket communications installed in the truck voided the warranty with respect to the radio, I accept the applicant’s uncontested evidence that it was not a CB radio system that was installed, but a UHF radio system that remains off unless in use and does not interfere with the FM radio function.

35. Based on the whole of the evidence, I find that there was a defect in the Toyota-supplied radio, whether with the head or otherwise, of the applicant's truck. I find it is a warrantable defect.
36. In summer 2018, the applicant obtained a quote of \$2,028.26 to have a new radio installed. She refers to having paid for this replacement and I infer that she has done so. I find that the radio was replaced by November 1, 2018 and will calculate prejudgment interest from that date.
37. Toyota Canada argued that the aftermarket radio replacement for \$2,028.26 would constitute a betterment to the applicant. However, it did not propose an alternate remedy if the defect was found to be warrantable.
38. Because the applicant has provided the only evidence of the cost to fix the defect, which she says she had quoted at the behest of an employee at Destination, I find that this is an appropriate remedy.
39. I find that the respondent owes the applicant the claimed \$2,028.26 for the radio replacement.
40. 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 and \$103.32 for corporate searches and registered mail dispute-related expenses, which I find reasonable.

## **ORDERS**

41. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$2,272.79, broken down as follows:
  - a. \$2,028.26 for installation of a replacement radio,

- b. \$16.21 in pre-judgment interest under the *Court Order Interest Act* from November 1, 2018 to the date of this decision, and
- c. \$228.32 for \$125 for tribunal fees and \$103.32 for dispute-related expenses.

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

43. 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.

44. 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.

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Julie K. Gibson, Tribunal Member