



Civil Resolution Tribunal

Date Issued: April 23, 2019

File: SC-2018-000574

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bhardwaj v. Bahd*, 2019 BCCRT 494

B E T W E E N :

Jatinder Bhardwaj

APPLICANT

A N D :

Amrik Bahd

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Jatinder Bhardwaj says he drove a taxi leased from the respondent Mr. Bahd. The taxi was part of Black Top Cabs Ltd. (Black Top). The applicant says that when he left the lease, the respondent should have paid him the balance under a lease agreement, but the respondent has failed to pay. The applicant claims

\$1,200 for repairs and upgrades to the taxi, and monies he says are owing to him under the lease.

2. The respondent says he did not have a lease agreement with the applicant, though he knew the applicant was driving the taxi. The respondent says that in February 2017 he discovered that the applicant was driving another taxi during the day, so he informed him that he would take the taxi over as of June 1, 2017. He says he paid all monies owing to the actual lessee, Mr. M. The respondent says he does not owe anything further. The respondent asks that the dispute be dismissed.
3. The Dispute Notice spelled the respondent's surname Bahad. However, in his Dispute Response he spelled his surname Bahd. I have amended the style of cause to reflect his spelling, which I infer is correct
4. The parties are each self-represented.

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*. 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 some respects, this dispute amounts to a "he said, he 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.

7. 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.
8. 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.
9. 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

10. The issue in this dispute is whether Mr. Bahd must pay the \$1,200 claimed by the applicant.

EVIDENCE AND ANALYSIS

11. 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.
12. The taxi at the centre of this dispute (BT#91) is owned by Black Top.

13. The applicant leased BT#91 from a Mr. G, to drive the night shift.
14. At the same time, Mr. M leased BT#91, from the respondent, to drive the day shift.
15. The taxi lease agreement (lease) signed between the respondent and Mr. M on December 30, 2014, with effective dates from January 1, 2015 to December 31, 2017, for \$1050 per month was for the day shift only.
16. In the lease, Mr. M agreed to pay 40% of any repairs and maintenance on the taxi cab. The lease does not say who pays the other 60%, though presumably it is the respondent as he is the only other party to the lease.
17. No one filed in evidence a copy of the lease between the applicant and Mr. G, for the night shift.
18. The applicant says that he and Mr. M agreed to switch shifts. The applicant then started driving the day shift and, he says, assumed the lease with the respondent.
19. There was no lease document filed in evidence proving the assignment of the daytime lease that the applicant says occurred, and in particular nothing that shows the respondent agreed to a lease assignment
20. The respondent contests this assignment of the lease. He says that although the applicant and Mr. M decided to switch shifts, his lease remained with Mr. M. Given the lack of documentary evidence, I find that the applicant has not proved a lease agreement between himself and the respondent.
21. The evidence is unclear about what happened next. The applicant said he gave the respondent one month's notice to leave the day shift of BT#91, on April 30, 2017. The applicant says the respondent "accepted" the one month's notice and took over BT#91 on June 1, 2017.
22. I find that a lease between the applicant and respondent has not been proven. I say this because no written document was filed in evidence, although the applicant says a lease "change agreement" was completed in the presence of "General Manager

Mr. SAIF” and signed by both owners and both lease holders. The respondent contests the existence of this change agreement.

23. Mr. M and the applicant submitted a joint email in which they describe giving notice to leave the day shift in April 2017, but say that three months’ notice was required, so that they left the lease on June 30, 2017. For his part, the respondent says that he and Mr. M mutually terminated their lease on May 31, 2017. Given my other conclusions, I find it unnecessary to resolve the discrepancy in dates as to when BT#91 went back to the respondent.
24. In their joint statement, either Mr. M or the applicant say that, during June 2017, the respondent called and asked them to pay for a weather strip, a water pump and a window switch needing to be fixed. They say that by the time they had to hand BT#91 over to the respondent it was “up to date”.
25. The applicant says he was supposed to receive a pay out from the respondent for money spent on the taxi to install an internet router and camera, and for the balance of what he had paid to the company for the lease, which the respondent had now assumed. Specifically, the applicant says Mr. Bahd was supposed to pay them \$3,297 under the lease and \$732 for installation of the camera and internet router.
26. As well the applicant says the respondent deducted \$500 for taxi repairs but provided no invoice to show what those repairs were and whether the applicant was responsible for them.
27. On June 9, 2017, BT#91 needed a check of its door and work on its front left power window switch. The respondent paid \$316.18 for these repairs.
28. On June 16, 2017, BT#91 needed a left rear wheel bearing and hub assembly, a window mirror and a check of its left rear door. The respondent paid \$435.80 for these repairs.

29. There is no documentation in evidence before me to show that \$3,297 was owing to Mr. M, nor what portion of that, if any, was owed to the applicant, nor what payment was made.
30. There was a lease between the respondent and Mr. M, but Mr. M is not a party to this dispute. Nothing in this decision prevents Mr. M from pursuing a claim of breach of his lease, should he decide it is appropriate.
31. As such, I cannot find any breach of agreement by the respondent with the applicant. As well, the applicant did not prove the damages he said were caused by the breach. He did not file records of what he expected to be paid out under the alleged lease, nor what was paid to him after deductions. Some details of maintenance costs were filed in evidence, but without any explanation of how they relate to the applicant's claim for monetary damages.
32. On the whole of the evidence, I find the applicant has not met the burden of proving that the respondent breached an agreement with him to pay a certain amount upon termination of a lease. I make this finding because there was no documentary evidence of a lease between the parties, Mr. M is a non-party, and the damages were not proven.
33. 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 successful respondent paid no tribunal fees, I make no order in this regard.

ORDER

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

Julie K. Gibson, Tribunal Member