



# Civil Resolution Tribunal

Date Issued: April 26, 2019

File: SC-2018-006069

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Laustsen v. Bahman Zargarian, dba Millennium Auto Repair Center,*  
2019 BCCRT 503

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

Gail Laustsen

**APPLICANT**

**A N D :**

Bahman Zargarian, doing business as Millennium Auto Repair Center

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about a new radiator that the applicant, Gail Laustsen, bought from and had installed by the respondent, Bahman Zargarian, doing business as Millennium Auto Repair Center.
2. The applicant says the radiator was faulty and her car kept overheating. The applicant claims a total of \$1,528.95, as a refund for the radiator, towing charges, repair bills, and time lost from work.
3. The respondent denies the radiator was overheating, as he tested it on the 3 occasions the applicant brought the car back. The respondent denies liability.
4. The applicant is represented by a family member, and the respondent is self-represented. For the reasons that follow, I find the applicant's claims must be dismissed.

## **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 is whether the respondent installed a faulty radiator in the applicant's car, or its installation work was faulty, 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 parties agree the respondent installed a new radiator in the applicant's car on October 23, 2017, for \$447.45. The parties also agree the applicant returned with her car 3 subsequent times, saying on each occasion that it was overheating. The applicant had her car towed back to the respondent on the first 2 subsequent visits. The parties agree the respondent did not charge the applicant for the 3 subsequent visits.
12. The applicant says within a week of the respondent installing the new radiator her car overheated. The 3 subsequent visits to the respondent occurred over the next week or so, and on each occasion the applicant says the respondent topped the

radiator up with water. The applicant says after the 3<sup>rd</sup> time, the respondent told her to take her car elsewhere to be fixed.

13. The respondent denies telling the applicant to take the car somewhere else. Instead, the respondent says because he did not diagnose any problem with the radiator or overheating, he told the applicant she could obtain a second opinion. The respondent says he filled her radiator with anti-freeze, not water.
14. The applicant says on each of her 3 subsequent visits to the respondent, he was unable to diagnose any issue with the radiator. The respondent says on the first occasion there was sign of coolant at the top of the engine, which he said appeared to be caused by opening the radiator cap when the cooling system was still under pressure, which the applicant denies. The respondent says on each of the applicant's next 2 subsequent visits he or his staff again pressure tested the cooling system and there was no sign of leaking at all. On the first subsequent visit, the coolant was low around half a liter, and he topped it up with coolant. He says however there is no way the car would overheat with a half-liter of coolant. The respondent also says he test drove the car on each of the 3 subsequent visits, and it had no problems with overheating.
15. The respondent says overheating can be caused from a variety of things: faulty thermostat, water pump, head gasket, cracked block, wrong coolant type, or a blockage. The respondent says his original radiator installation was not done to fix overheating. I accept this evidence, which is not disputed.
16. Despite the respondent's advice to get a second opinion, as he could not diagnose a problem related to overheating, the applicant continued to drive the car. The applicant says for 6 months she was filling her radiator every day, which impacted her ability to work as when the car overheated she had to pull over and "wait it out". In particular, the applicant requires a vehicle to do her job and says her employer cut back on her hours because she was late numerous times. The applicant claims \$400 for 2 days' lost work, plus \$200 for 1 day "missed employment for court".

17. Ultimately, the applicant had the radiator fixed by Laird Wheaton on March 3, 2018, and its invoice shows she paid \$673.18. The Laird Wheaton invoice is dated almost 6 months after the respondent installed the radiator in the applicant's car. The applicant's representative says the applicant waited so long to fix the radiator because she could not afford to fix it sooner. I note this Laird Wheaton invoice was not initially provided but the applicant did so at my request through the tribunal facilitator and the respondent had no objection.
18. In this dispute, the applicant claims \$306.50, which she says is the difference between Laird Wheaton's invoice and the \$447.45 she paid to the respondent. My calculations do not match the applicant's. The applicant also claims a refund of the \$447.45 she paid the respondent, \$175 for 2 towing bills, \$400 for 2 days missed work and \$200 missed work "for court", which I infer refers to time she has spent on this dispute.
19. The Laird Wheaton invoice notes the applicant's complaint of overheating, and says that on pressure testing it found leaking at the upper radiator seam and upper radiator hose connection to a metal hose. The invoice states, "suspect corrosion build up on metal portion of hose. Radiator replacement [required.]" It also states, "cause not defined" with respect to problem with the upper 'rad hose connection to metal hose".
20. The applicant then left the respondent's radiator in a box in her garage until her representative found it and this dispute began in August 2018.
21. I find the applicant's claims cannot succeed for two reasons. First, I find she has not proved the respondent's radiator or its installation work was faulty. The Laird Wheaton invoice does not say this and that invoice as noted is 6 months after the respondent did the work. Instead, it says the cause is unknown and refers to problems with a metal hose connection as well as the radiator. If the problem was corrosion built-up on the hose, that does not explain how the respondent's installation of a new radiator could be at fault.

22. While I acknowledge the applicant's financial circumstances, the fact remains that she continued to drive the car and when the radiator was replaced Laird Wheaton did not identify the respondent's work as being the problem. The passage of time is too great for me to conclude the problem was the respondent's work, given the respondent was unable to find a problem with overheating at the time and the applicant continued to drive the car for about 6 months.
23. Second, even if I did accept the applicant's position that the respondent installed a faulty radiator, she has not proven most of her claims in that she has not provided any supporting documentation such as towing receipts or proof of income loss.
24. The applicant was unsuccessful in this dispute. In accordance with the Act and the tribunal's rules I find it is not entitled to reimbursement of tribunal fees.

## **ORDER**

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

---

Shelley Lopez, Vice Chair