



Civil Resolution Tribunal

Date Issued: May 15, 2019

File: SC-2018-008362

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Moreno v. Power Tune & Brake Shop*, 2019 BCCRT 584

B E T W E E N :

Gabriela Moreno

APPLICANT

A N D :

Power Tune & Brake Shop

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about vehicle repairs. The applicant, Gabriela Moreno, took her car to the respondent, Power Tune & Brake Shop, for repairs following a collision in 2017.

2. The applicant says the respondent's repairs were faulty. She says her car's transmission leaked and smoke came out from under the hood on October 4, 2018, and that this occurred because the respondent's 2017 repairs were performed incorrectly. The applicant seeks a refund of the respondent's \$1,450 repair bill, plus \$70 for towing and \$252 for additional parts.
3. The respondent denies the applicant's claims. It says the repairs were performed correctly, and the fact that the applicant drove the car for a year proves there were no problems. The respondent also says if there was a problem with its work, the applicant should have brought the car in for assessment.
4. The applicant is self-represented. The respondent is represented by its office manager, KJ.
5. For the reasons set out below, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

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 9.3(2), 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

10. The issue in this dispute is whether the respondent's vehicle repair work was faulty, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

11. 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.
12. Based on the evidence before me, I find the applicant has not met the burden of proving that the respondent's repairs were faulty.
13. The applicant says the respondent repaired her car on October 15, 2017. However, the respondent's invoice shows that the repairs were actually performed on November 27, 2017. Since the respondent provided written documentation showing the repairs, I accept its evidence on this point.
14. The invoice shows that in November 2017, the respondent replaced the radiator, transmission cooler, and alternator in the applicant's car. It also changed the oil and

added transmission oil. The invoice copy provided by the respondent does not show any price for that work.

15. The applicant says her car smoked and leaked oil again in October 2018, which is what it did before the respondent's November 2017 repairs. She says she had it towed to another mechanic, who found that the external cooler line had been blown off causing most of the transmission fluid to leak out. According to the applicant, the mechanic told her to ask the respondent for a refund because the problems could have been avoided if the respondent had installed the oil cooler correctly to begin with.
16. I am not persuaded by these statements by the applicant. While hearsay evidence is admissible in tribunal proceedings, I find the applicant's summary of what the mechanic allegedly said unpersuasive, particularly since she did not explain why she did not provide a written statement from the mechanic. The applicant is not a mechanic, so I place no weight on her opinion on what caused her car problems in October 2018.
17. While the applicant says the mechanic's October 2018 invoice shows that the respondent's November 2017 repairs were faulty, I do not agree. Under "description of the problem", the invoice says the transmission was slipping and fluid was leaking. The mechanic summarized his findings as follows (reproduced as written):

...AFTER CHECKING WE FOUND THAT THE COOLER LINE AT THE EXTERNAL COOLER HAD BEEN BLOWN OFF CAUSING MOSTLY ALL THE TRANSMISSION FLUID TO POUR OUT OF THE VEHICLE. WE COULD NOT HOOK UP THE EXTERNAL COOLER TO THE ONE THAT WAS IN THE VEHICLE DUE TO IT WAS BEATEN UP. SO AFTER WE INSTALL THE COOLER AND LINE WE TOPPED UP THE FLUID AND TEST DROVE THE VEHICLE. AT TIMES THERE IS A SLIP BUMP ON TAKE OFF. THERE ARE NO CODES IN THE SYSTEM. THE CUSTOMER WAS GIVEN BACK THE REPLACED PARTS.

18. The October 2018 invoice does not refer to the previous repairs in November 2017. The fact that the cooler line blew off is not sufficient to establish that the respondent installed the transmission cooler incorrectly, almost a year earlier. Similarly, I find that the mechanic's statement that the cooler was "beaten up" is not sufficient to establish negligence by the respondent. The nature of the cooler damage is not explained, nor is the cause. The fact that the respondent drove the car for 11 months means that there could be other reasons for the hose failure, and for the fact that the cooler was "beaten up". In the absence of a specific explanation from the mechanic connecting the October 2018 repairs to those in November 2017, I am not prepared to make a finding that the respondent's repairs were faulty.
19. The applicant provided several photos showing the interior of her car's engine compartment. She says the photos show that the oil cooler was installed incorrectly, and the bracket and hose clip were damaged. However, I find that without any expert evidence to explain the photos, I cannot conclude that they show faulty work. I cannot tell what the photos show about the oil cooler and its related parts, particularly since there are no comparison photos showing how the parts should look.
20. While I recognize there is no absolute rule requiring expert evidence in a dispute such as this one, I find it is necessary in this case, because the subject matter is technical and outside the knowledge and experience of the ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283).
21. For these reasons, I find the applicant has not established that the respondent's repairs were faulty. Also, I would not order the majority of the requested damages in any event. While the applicant claims a refund of \$1,450 for the respondent's bill, she provided no evidence showing she paid that amount. Also, there is no suggestion that the radiator replacement, alternator replacement, and oil change performed at that time were faulty. The applicant claims \$70 in towing costs, but provided no invoice or receipt.

22. The applicant was unsuccessful in this dispute. In accordance with the Act and the tribunal's rules, I find she is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

23. I order that the applicant's claim, and this dispute, are dismissed.

Kate Campbell, Tribunal Member