



Civil Resolution Tribunal

Date Issued: June 5, 2019

File: SC-2018-008015

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Atterton v. North Island Automotive Ltd. dba Comox Valley Toyota*,
2019 BCCRT 684

BETWEEN:

Paul Atterton

APPLICANT

AND:

North Island Automotive Ltd. DBA Comox Valley Toyota

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a car repair.

2. The applicant, Paul Atterton, says that the respondent, North Island Automotive Ltd. dba Comox Valley Toyota, charged him for service and parts to his vehicle that were unnecessary and that it misdiagnosed an issue.
3. The applicant seeks a refund of:
 - a. \$96.71 for initial diagnostic work by the respondent,
 - b. \$159.03 for repair work by the respondent,
 - c. \$33.60 for repair work by a third party, VSS,
 - d. \$27.82 for repair work by a third party, BCAA, and
 - e. \$129.55 for travel expenses.
4. The respondent agrees that it examined the applicant's vehicle and submits that it took reasonable steps to diagnose and correct the issue with the applicant's vehicle.
5. The applicant is self-represented. The respondent is represented by Michael Marchi, its owner and General Manager.

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*. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an 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 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 the respondent performed unnecessary or faulty work, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

12. It is undisputed that on April 24, 2018, the applicant brought his 2006 Toyota Sienna to the respondent dealership service centre. The applicant asked the respondent to replace his spark plugs, repair a tire “wobble,” and investigate the presence of warning lights on his dashboard.
13. The respondent’s invoice #23642 dated April 24, 2018 indicates that one of its technicians looked at the warning lights issue and stated that everything appeared to be working. The applicant submits he left the shop and, shortly after leaving, the warning lights reappeared, so he returned to the service centre.
14. The applicant advised he spoke to the service advisor and told him the problem was still there. The service manager looked at the vehicle and the warning lights were not lit. The applicant said he was advised to return when the warnings lights were present and to not turn off the vehicle if they reappeared.
15. The applicant again left the service centre and the warning lights reappeared. He returned to the service centre and left his vehicle on for the technicians. He was informed that a diagnostic test would cost \$80 and the applicant approved the respondent to proceed with the test. The applicant was invoiced \$96.71 including taxes and fees for the diagnostic testing.
16. After running the diagnostic test, the respondent’s technician provided a quote to the applicant of two possible fixes for the warning light malfunction: (1) replace the “stop lamp switch” and (2) remove the after-market remote starter. Each option was priced out in a quote provided to the applicant on April 24, 2018.
17. Ultimately the applicant approved the replacement of the stop lamp switch but not removal of the remote starter. The respondent’s technician replaced the stop lamp switch on April 26, 2018 and the applicant was billed \$159.03 for the service, parts and tax. Unfortunately, when the applicant left the service centre that day, the warning lights reappeared.
18. At some point later, the applicant remembered that before the warning light issue started, he had changed the vehicle’s brake lights from incandescent bulbs to LED.

He submits he then tried replacing the new LED bulbs with new incandescent bulbs and the warning light issue was fixed.

19. On October 20, 2018, the applicant attended a third party shop in Courtenay, VSS, to have the remote start brake connection reconnected. The applicant submits this work was to connect the after-market remote starter to the brake light switch installed by the respondent. My understanding is that the remote starter was not removed by the respondent per the applicant's instructions, but was not connected to the new stop lamp switch the respondent installed on April 26, 2018. Even in the event my understanding is incorrect, I find nothing turns on the work done by VSS on October 20, 2018.
20. On October 25, 2018, the applicant attended a third party shop in Nanaimo, BCAA, and they were able to recreate the warning light problem by switching the brake light bulbs between LED and incandescent.
21. The BCAA invoice notes the applicant's complaint of electrical issues and says that upon removing the LED bulbs and installing "OE type" provided by the applicant, electrical function was normal with no warning lights.
22. The applicant says the respondent did not have the technology or expertise to deal with his vehicle's problem and that the respondent engaged in deceptive practices contrary to the *Business Practices and Consumer Protection Act (BPCPA)*.
23. The respondent says when a vehicle has electrical issues there are steps that a technician must take that require labour and technology, and unique tools and software to diagnose the issue. It submits that intermittent problems, such as the applicant's warning lights sometimes being on and sometimes being off, create a bigger challenge and its policy is to proceed step by step to diagnose the issue.
24. I find the applicant's claims cannot succeed. First, I find he has not proved the respondent's service on the vehicle was faulty. The BCAA invoice does not say that the work done by the respondent was faulty and I note the BCAA invoice indicating the fixed warning light issue is nearly 6 months after the respondent did its work.

25. Further, the evidence does not establish that the respondent engaged in any unfair or deceptive practices as contemplated in the BPCPA with respect to the work performed on the vehicle. The evidence is that work was recommended by the respondent and the applicant could approve or not approve the work as he saw fit, which he did. Even if I had found the presence of unfair practices, I find that the tribunal does not have the jurisdiction to address a remedy under the BPCPA.
26. Having found the applicant has not proven the respondent performed unnecessary or faulty work on the applicant's vehicle, it follows he is not entitled to reimbursement for the work done by the respondent, by the third parties, or to his travel expenses. I dismiss the applicant's claims.
27. 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. As the applicant was not successful, I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. The respondent did not pay tribunal fees or claim dispute-related expenses.

ORDER

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

Andrea Ritchie, Vice Chair