



# Civil Resolution Tribunal

Date Issued: July 11, 2019

File: SC-2018-008798

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kurik v. Terrace Chrysler Ltd.*, 2019 BCCRT 837

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

Duane Kurik

**APPLICANT**

**A N D :**

Terrace Chrysler Ltd.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. The applicant, Duane Kurik, had a service contract for his pickup truck that included oil and filter service. He says the respondent, Terrace Chrysler Ltd., did not provide some of the oil and filter services for which it invoiced under the service contract. He seeks damages of \$3,150 for breach of contract, and a written apology from several

of the respondent's employees. The applicant is self-represented. The respondent is represented by Robert Onstein, whom I infer is an employee or principal.

## **JURISDICTION AND PROCEDURE**

2. 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.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
4. 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.
5. 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.

## **ISSUES**

6. The issues in this dispute are:
  - a. Did the applicant have a contract with the respondent?
  - b. If so, did the respondent breach the contract, and what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

7. In a civil claim such as this, the applicant must prove their claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
8. The applicant submits that the respondent broke a service contract with him. The respondent says it did not enter into a contract with the applicant. It says he purchased an extended warranty through a different dealership and the respondent simply provided services covered by that warranty on behalf of FCA, which I infer means Fiat Chrysler Automobiles. I infer that the respondent argues that the applicant's contract is with either a different dealership or with FCA. The respondent also says it completed all the work requested.
9. The applicant did not dispute the respondent's suggestion that his contract was with a different party. Neither party provided a copy of any written contract. Given the nature of the industry and the alleged value of the contract (\$3,150), I find it unlikely that the applicant entered into a verbal service contract. It is more likely that a written agreement exists between the applicant and whomever he contracted with. This evidence should have been available to the applicant, and the respondent's submission that the parties did not have a contract should have made it apparent that he needed to provide the written agreement to prove his claim. He did not do so, and he did not explain why. Accordingly, I find that the applicant has not met the burden of establishing a contractual relationship with the respondent.

10. From the invoices, I gather that the applicant's pickup is a 2013 Dodge Ram 1500 and that the warranty expired on July 31, 2018. The respondent says the applicant was unhappy with the service plan, which included oil and filter services. It says as the warranty expiration approached, the applicant had oil and filter services left on the contract, so he insisted that the services be completed, even though they were well beyond the recommended or required level of service. The respondent says after confirming with its warranty administrator that it would be paid, it performed the services. It says it completed the work as shown in the invoices. It is undisputed that the applicant was not required to, and did not, pay the respondent for any services.
11. The applicant says he marked his filter to determine if the respondent was changing the filter as invoiced in July 2018 and determined that it was not. He submitted photos in support. I was unable to determine anything from the photos. I cannot conclude that the respondent failed to perform the services described.
12. In summary, the applicant has not established that he had a contract with the respondent or that the respondent caused him to suffer any loss. I dismiss his claim for compensation and for an apology from the respondent's employees.
13. 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. The applicant was not successful, so I do not order reimbursement of tribunal fees and expenses.

## **ORDER**

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

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Micah Carmody, Tribunal Member