



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gutierrez v. All Tech. Transport Ltd. dba Busters Towing et al.*,
2019 BCCRT 978

B E T W E E N :

MIGUEL ANGEL MONTANO GUTIERREZ

APPLICANT

A N D :

ALL TECH. TRANSPORT LTD. dba. BUSTERS TOWING and
CITY OF VANCOUVER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about damages arising from a car towing incident. The applicant, Miguel Angel Montano Gutierrez, claims for towing fees, storage fees, vehicle

damage, and damages for being unable to access his vehicle. As Mr. Gutierrez did not specify who should pay for which claims, I interpret his claims as being against both the respondents, the City of Vancouver (City), and All Tech. Transport Ltd. dba. Busters Towing (Busters Towing).

2. Over the course of providing submissions Mr. Gutierrez revised his claims by clarifying that the vehicle damage claims were against Busters Towing for engine mount repairs. Mr. Gutierrez also added claims against the City for remedies related to a parking bylaw notice.
3. The City disagrees that it is liable for any claimed losses and says it issued a valid parking bylaw violation notice, which later led to the applicant's car being towed. Busters Towing disagrees with Mr. Gutierrez's claims and says that all fee issues were settled after this claim was filed.
4. Mr. Gutierrez is self-represented. The City is represented by its in-house lawyer, Joelle Michaud. Busters Towing is represented by Robert Clemis, whom I infer is an employee or principal.

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* (CRTA). 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. 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.

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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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.
9. As noted above, the Mr. Gutierrez was issued a parking bylaw notice by the City. He says that the City must cancel the notice and cease collection on it. However, the tribunal's small claims jurisdiction does not include providing declaratory or injunctive relief. Moreover, I find the tribunal is not the appropriate venue to dispute bylaw notices. The City has established an adjudicative system for bylaw notice disputes under section 8 of the *Local Government Bylaw Notice Enforcement Act*. This system is referred to on the back of the parking bylaw notice. I therefore refuse to resolve all issues that relate to declaratory or injunctive relief of the parking bylaw notice or cancellation of related fines.
10. The applicant subsequently started a BC Provincial Court proceeding on the same facts. Busters Towing has applied to dismiss this claim. As this dispute was started first, I find I have jurisdiction over this matter and will proceed.

ISSUE

11. The issue in this dispute is whether the City or Busters Towing are liable to Mr. Gutierrez for towing fees, storage fees, vehicle damage, or damages for loss of use of his car.

EVIDENCE AND ANALYSIS

12. 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. I note that Busters Towing provided very limited arguments but presented multiple documents as evidence.
13. It is undisputed that on January 8, 2018, Mr. Gutierrez parked his vehicle in an area where stopping was not permitted. A City bylaw officer ticketed and photographed Mr. Gutierrez's car next to the sign prohibiting parking at the time. As documented in a towing invoice, Busters Towing towed the car and placed it in storage that night. His car was later returned in late January 2018, though I was unable to determine an exact date on the evidence and submissions before me.

Towing Fees

14. There is no dispute that Busters Towing towed Mr. Gutierrez's vehicle and charged him towing fees. In his most recent submission Mr. Gutierrez says he is "fine with paying the towing fees". Given this submission and the evidence before me, I dismiss this claim against the respondents.

Storage Fees

15. Mr. Gutierrez says he should not pay the storage fees charged by Busters Towing. However, he did not say how much the storage fees were or how much he paid.
16. Mr. Gutierrez also says that he had to park where he did due to a medical condition. He provided a January 14, 2019 letter from a physician showing he had a "historical diagnosis of asthma". However, I am unable to place any significant weight upon the letter. There is no indication that the asthma limited his mobility or otherwise prevented him from parking in a legal area and walking to his destination. As noted above, I also lack the jurisdiction to consider the validity of the parking bylaw notice. These submissions touch upon that issue.

17. Busters Towing submits that it settled the issue of storage fees with Mr. Gutierrez by waiving most of them. I find this likely occurred. Busters Towing provided a partial phone log in support of its submission. The entry for January 21, 2019, shows that Busters Towing agreed to waive all storage fees, save for one day. Mr. Gutierrez did not mention any such agreement in his Dispute Notice, but that is understandable as it was filed on January 14, 2019, prior to this settlement. In his subsequent submissions Mr. Gutierrez did not dispute the existence of a settlement or say how much he wished to be reimbursed for storage fees. Mr. Gutierrez did not explain why the City should reimburse the storage fees.
18. In summary, I dismiss this claim against the respondents as I find the applicant has not proved his claimed damages.

Preventing Access to Mr. Gutierrez's Vehicle

19. Mr. Gutierrez claims that Busters Towing initially denied that it had his car. He claims \$200 as damages as he was unable to access his vehicle.
20. I find that Mr. Gutierrez has not met his burden of proof. He did not say how long Busters Towing denied having his car. This leaves open the possibility that he was only inconvenienced for a few minutes and makes it difficult to evaluate his claim. Aside from issuing the parking bylaw notice, there is no submission or evidence that the City contributed to any delay. Mr. Gutierrez also did not explain how he arrived at \$200 as an estimate of damages.
21. The phone log entries before me indicate that Mr. Gutierrez initially refused to pay both the storage fees and towing fees until January 18, 2019. He then delayed picking up his car for at least 4 more days. The limited evidence before me supports the conclusion that Mr. Gutierrez was responsible for most if not all of the delay in picking up his car.
22. I dismiss this claim against the respondents.

Vehicle Damage

23. Mr. Gutierrez says that Busters Towing must pay for car repairs documented in a May 7, 2019 invoice. The invoice shows that Mr. Gutierrez's car had a leaking upper engine mount, which was replaced at a total cost of \$372.53. Mr. Gutierrez also refers to engine block damage, but I find it relatively clear from the context that such references are to the engine mount. Mr. Gutierrez says that it is "highly likely" that this damage was caused by improper towing methods.
24. I find this claim to be speculative. The May 2019 invoice explains that the top engine mount had to be replaced because it was "worn". The invoice states that Mr. Gutierrez's 2003 car had an odometer reading of over 400,000 kilometers. The timing belt and water pump were also replaced at the time. The vehicle's age, the other repairs, and the mechanic's comments on the invoice do not support Mr. Gutierrez's claim.
25. There is no expert evidence before me that shows towing, improper or otherwise, could cause the type of wear that requires engine mount replacement. Mr. Gutierrez also acknowledges that he does not know how his car was towed as he was not there at the time.
26. Finally, the claimed repairs were carried out between March 19 and May 7, 2019. Where there is some relationship in time between the January 2019 towing and the subsequent repairs, I find it to be relatively weak.
27. Given the above, I dismiss this claim.

TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES

28. Under section 49 of the CRTA, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.

29. Mr. Gutierrez was unsuccessful in this dispute. None of the parties claimed dispute-related expenses. I therefore decline to make any orders for reimbursement of tribunal fees or dispute-related expenses.

ORDER

30. I refuse to resolve Mr. Gutierrez's claims about the parking bylaw notice for declaratory or injunctive relief or cancellation of related fines. I dismiss Mr. Gutierrez's remaining claims against the respondents.

David Jiang, Tribunal Member