



# Civil Resolution Tribunal

Date Issued: September 13, 2019

File: SC-2019-002754

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Montfort v. Township of Langley*, 2019 BCCRT 1083

BETWEEN:

PATRICE MONTFORT

**APPLICANT**

AND:

TOWNSHIP OF LANGLEY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

### INTRODUCTION

1. On December 29, 2018 the applicant, Patrice Montfort, was driving on Fraser Highway near 196 Street when he hit a pothole in the road damaging his car's tire and rim (incident). He says the respondent, the Township of Langley, was negligent in failing to properly maintain the road, and he wants it to pay him \$1,757.35 for the cost of repairing his car.

2. The respondent says it never received a report of the pothole before the incident and that based on its complaints-based policy for repairing potholes on its roads, it was not negligent and does not owe the applicant anything.
3. The applicant is self-represented and the respondent is represented by an employee or principal.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. 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.

## **ISSUE**

8. The issue in this dispute is whether the respondent failed to properly maintain its roads, and if so, whether it is required to pay the applicant \$1,757.35 to repair his car.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicant must prove his claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claim.
11. The applicant says the incident occurred at 8:30 p.m. on December 29, 2018, and he submitted phone records showing he called 911 at 8:31 p.m. to report the pothole.
12. The respondent says that earlier that day the Surrey Fire Dispatch (SFD) had received a complaint about the pothole. The respondent says the intersection is within 200 meters of the border between the City of Langley (City) and the respondent Township of Langley, and SFD mistakenly contacted the City about the pothole, rather than the respondent. The City's incident report in evidence indicates that on December 29, 2018 at 8:04 p.m. it received the call from the SFD notifying it of the pothole which had popped 4 cars' tires. The report indicates the City investigator arrived at 8:25 p.m. that evening.
13. The applicant says this report is inaccurate because the incident forming the basis of this dispute did not occur until 8:30 p.m. and there was no sign of City repair crews on site at the time of the incident. However, the applicant says that at 9:30 p.m. that night he returned to the scene of the incident to take more photos, but the pothole had already been repaired and there was no sign of the repair crew.

Therefore, it is undisputed that at some point on the evening of December 29, 2018 the City repaired the pothole. I place little weight on the discrepancies in timing in the evidence, since the times are relatively close, and the person writing the City's incident report could have been mistaken or had the incorrect time.

14. I note the applicant says the pothole was "wrongly fixed" but he does not elaborate or explain what the City allegedly did wrong in its repairs. He submitted some photos of the repaired pothole, but I find they are insufficient to establish deficiencies in the repairs. I also note the applicant's claimed damages resulted from hitting the pothole, not from the allegedly deficient repairs. For these reasons, I dismiss this aspect of the applicant's claim.
15. The applicant submitted a photo from Google Earth which he says was taken 2 months before the incident and shows the existence of the pothole. However, I find the photo is taken from a distance such that I cannot determine whether there is a pothole in the photo. There is no evidence to suggest that the respondent was aware of the pothole prior to the incident or prior to the City repairing it on December 29, 2018.
16. The applicant says he called the respondent at 11:29 p.m. on December 29, 2018 to report the pothole. The evidence shows that the number the applicant called was for SFD. He says the receptionist he spoke with told him they had received multiple complaints about the pothole and advised him to report his car's damage to the "city." The applicant says he later went to the respondent's office to report the incident and that he was advised by both the receptionist and a senior worker that the part of Fraser Highway where the incident occurred belongs to the City. The applicant says he drove to City hall where someone told him the pothole was the respondent's responsibility. He then returned to the respondent's office to fill out a Notice of Claim.
17. On January 29, 2019 the applicant submitted a Notice of Claim to the respondent describing the incident and asking for \$1,235.10 for the cost of repairing his car. On

February 13, 2019, the respondent notified the applicant by letter and email that it was not negligent with respect to the pothole and denied his claim.

18. I turn to the applicable law. The respondent is a municipality or local government, as described in the *Local Government Act* (LGA). The respondent relies on section 744 of the LGA and says it is not strictly liable for the pothole.
19. The respondent says at the time of the incident it had an unwritten policy to repair potholes upon receiving a complaint. The respondent says this complaint-based policy is based on balancing its responsibilities with budgetary constraints, and since it is a policy decision it is immune from liability.
20. In *Dyal v. Township of Langley*, 2018 BCCRT 469, the tribunal decided a case with very similar facts to this one, which is not binding on me but which I find helpful as it sets out the law applicable to this dispute. In that case the tribunal member relied on *Barratt v. Corporation of North Vancouver*, 1980 2 SCR 418, in which the Supreme Court of Canada held that the municipality was not negligent for failing to maintain a pothole which caused a cyclist to suffer injuries. The court held the municipality's method of exercising its power to maintain its roads was a policy matter to be determined by the municipality. The court held that if the municipality's employees acted negligently in implementing its policy then the municipality could be liable, but the municipality would not be liable because it decided to implement one policy over another.
21. The evidence in this dispute shows that the respondent did not receive notice of the pothole until after the City repaired it. Therefore, I find the evidence does not establish that the respondent's employees were negligent in implementing its complaint-based policy for repairing potholes.
22. I note that in his submissions the applicant says the size and nature of the "pothole" he hit was such that it should have been considered a crevasse or a road failure. However, I find the same legal principles apply regardless of the term used to describe the problem with the road.

23. The applicant also says the respondent is negligent because many of its employees and its contracted dispatcher, SFD, were not aware of the boundary between it and the City, and because the respondent failed in its responsibilities to investigate his claim. However, even if the applicant could prove that these actions or inactions amounted to negligence, there is no evidence he incurred resulting damage. The damages he claims in this dispute resulted from driving into the pothole, not from the subsequent reporting and investigation of the incident. I dismiss the applicant's claim.
24. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the applicant was unsuccessful he is not entitled to reimbursement of his tribunal fees, and he did not claim any dispute-related expenses.

## **ORDER**

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

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Sarah Orr, Tribunal Member