



Civil Resolution Tribunal

Date Issued: September 18, 2019

File: SC-2019-002738

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Oliver v. Randell, dba The Garage*, 2019 BCCRT 1101

BETWEEN:

JOSHUA OLIVER

APPLICANT

AND:

CRAIG RANDELL (Doing Business As THE GARAGE)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Joshua Oliver says the respondent, Craig Randell, doing business as the Garage, did unauthorized brake repair work on his Hyundai Santa Fe (car), and then charged him. The applicant claims the \$347.20 he paid for the repairs.

2. The respondent says the car had a dangerous problem, which he fixed due to his concern for the customer's safety and his duty to the public. The respondent says the applicant paid the invoice the same day and was given an option to leave the car, which he declined.
3. The parties each represent themselves.

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 must reimburse the applicant \$347.20 for alleged unauthorized repairs to the applicant's car's brakes.

EVIDENCE AND ANALYSIS

9. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I only refer to the evidence and submissions below as I find necessary to provide context for my decision.
10. It is uncontested and I find that, on March 28, 2019, the respondent agreed to inspect his car's brakes, without charge, and then give him a repair quote.
11. At around 11:00 a.m. on March 29, 2019, the applicant took the car to the respondent's garage.
12. The applicant says the respondent then completed the repair work without providing the applicant a quote or obtaining his agreement.
13. In support of his account of events, the applicant filed phone records showing he received only one call from the respondent on March 29, 2019, to say the work had already been done. The applicant submits that, had he authorized the work, the records would also show an earlier call to obtain his verbal consent.
14. The only evidence filed by the respondent is an unsigned authorization for repair work. The respondent says the authorization has the same content as one the applicant signed. While I am mindful that the burden of proof is on the applicant, I find that a mechanic's garage would be expected to keep a copy of the signed work authorization for each repair job. Here, the respondent cannot produce it. Considering the absence of this document and the other evidence, I find that the applicant did not sign an authorization for the repairs.

15. The respondent did not suggest that he obtained the applicant's verbal authorization and the applicant denies giving it. I find that the applicant did not give verbal authorization for the repairs.
16. Given that the applicant did not authorize the repairs, and considering the telephone records, I prefer the applicant's evidence and find that the respondent completed the repairs without the applicant's consent.
17. My finding is also consistent with the respondent's Dispute Response and submissions that the applicant signed the invoice once it was issued, and not as an advance authorization.
18. It is uncontested, and I find, that the applicant paid the respondent \$347.20 for the repairs.
19. Section 12 of the *Business Practices and Consumer Protection Act* (BPCPA) says that a consumer has no legal obligation in respect of unsolicited services unless or until the consumer acknowledges, in writing, his or her intention to accept those services. Unsolicited services are defined as services provided to a consumer who did not request them.
20. Section 14 of the BPCPA says that a supplier of unsolicited services must refund all money received for the services, within 15 days of receiving a refund demand.
21. I find that the respondent provided unsolicited services to the applicant by repairing his car. I find that the applicant did not provide written acknowledgement, as referred to in section 12 of the BPCPA, that he intended to accept those services.
22. I find that the applicant paid the invoice, not because he was accepting the brake service, but because the only other option was to leave his car with the respondent. As well, the BPCPA says that a request for services must not be inferred only from a consumer's payment for the services. I find that the applicant has no obligation to pay for the unsolicited repairs.

23. The respondent argues that he was entitled to complete and charge for the repairs due to his concern for the applicant's safety and his duty to the public. The respondent did not provide evidence that the applicant intended to drive an unsafe vehicle if the unsolicited repairs were not provided. If the respondent had the safety concerns he describes, he may have felt obliged to discuss them with the applicant and seek authorization for the repairs. He did not do so. I find he did not have those concerns. The respondent also did not provide expert opinion or point to any standards to establish that a failure to repair the car in the circumstances would constitute negligence. As well, I am not aware of any statute requiring a mechanic to repair a car to prevent it from being driven unsafely. I dismiss these submissions.
24. I order the respondent to reimburse the applicant the \$347.20 the applicant paid for the unsolicited repairs.
25. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$347.20 from March 29, 2019 the date of the payment, to the date of this decision. This equals \$3.23.
26. 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. The successful applicant did not pay CRT fees or claim dispute-related expenses. So, I make no order for them.

ORDERS

27. Within 15 days of the date of this order, I order the respondent to pay the applicant a total of \$350.43, broken down as follows:
 - a. \$347.20 as reimbursement for unsolicited brake repairs to the car, and
 - b. \$3.23 in pre-judgment interest under the *Court Order Interest Act*.
28. The applicant is entitled to post-judgment interest, as applicable.

29. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
30. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member