



Civil Resolution Tribunal

Date Issued: November 19, 2019

File: SC-2019-003571

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Enright v. Cruz*, 2019 BCCRT 1307

BETWEEN:

HEIDI ENRIGHT

APPLICANT

AND:

ROWENA DELA CRUZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident that occurred on September 12, 2018. The parties were both driving northbound on Willingdon Avenue near Canada Way in Burnaby, British Columbia when their two vehicles collided.

2. The parties agree that the right front end of Ms. Enright's car collided with the left rear part of the vehicle driven by the respondent, Rowena Dela Cruz.
3. The parties are both insured by the Insurance Corporation of British Columbia (ICBC). ICBC assessed each party 50% fault for the accident. The applicant says the respondent is 100% responsible for the accident and seeks \$300, which I infer is the amount of her deductible.
4. The applicant is self-represented. The respondent is represented by an ICBC adjuster.

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. Some of the evidence in this dispute amounts to a "she said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

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 by 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. In this dispute, the applicant submits ICBC failed to consider evidence, or otherwise gather evidence, during its investigation of the accident and fault assessment. As ICBC is not a party to this dispute, I make no findings about the allegations against ICBC.

ISSUE

10. The issue in this dispute is who is responsible for the accident, and if not the applicant, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof 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 at around 12:30 pm on September 12, 2018, the parties were each driving northbound on Willingdon Avenue in Burnaby, near Canada Way.
13. The applicant says that she changed lanes, from the left-most lane to one lane to her right, and remained in that lane for approximately 150 feet when the respondent, in the lane to the applicant's right, proceeded to enter the applicant's lane. The respondent did not provide a statement in evidence, but did give ICBC an oral report about the accident. The tribunal has flexibility to receive evidence that is not admissible in court, such as hearsay. In her statement, the respondent said that at all times, she was traveling in the same lane of travel, and did not attempt to make a lane change, but rather the applicant attempted to change lanes into the respondent's lane, causing the accident.
14. The content of the respondent's oral report is hearsay, but I find the fact the statement was made to ICBC is not in dispute. I accept that the respondent made the statement as described above.
15. It is undisputed that the right front corner panel of the applicant's vehicle and the left rear corner panel of the respondent's vehicle came into contact. As noted above, ICBC assessed both the applicant and the respondent each 50% at fault for the accident. ICBC said that, without more evidence like a witness statement or video footage, it was unable to determine who was more responsible for the accident because each party accused the other of making an unsafe lane change, causing the accident.
16. The parties did not stop to exchange information immediately after the accident, and the applicant reported the accident to the Burnaby RCMP and ICBC later that day. I find nothing turns on the fact the respondent reported the accident to ICBC after the RCMP contacted her. The evidence is that the respondent was driving between jobs at the time of the accident, and her report to ICBC was still made on the same day the accident occurred. Further, I find nothing turns on the fact the parties were unable to exchange information at the scene of the accident. Given the accident's location just before an overpass, and the fact the parties turned different directions

after the overpass, I find the post-accident actions of the parties are not determinative of fault in this case.

17. Further, the applicant submits that the location of the damage on the vehicles shows that the respondent is responsible for the accident. However, I do not agree. The location of the damage on the vehicles does not prove where on the road the impact occurred. That is, the damage does not tell us whether the accident occurred due to the applicant moving into the respondent's lane, or whether the respondent moved into the applicant's lane. What is left is conflicting evidence from the parties about who changed lanes.
18. Faced with such conflicting evidence, in the circumstances here it is impossible to know with certainty how the accident happened. As noted above, the burden is on the applicant to prove, on a balance of probabilities, that the respondent was solely responsible for the accident. I find that she has not met that burden.
19. As a result, I find the applicant has not proved she is less than 50% liable and so I dismiss her claim. Therefore, I find the applicant is not entitled to her claimed \$300.
20. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was not successful, I find that she is not entitled to reimbursement of her paid tribunal fees. Neither party claimed dispute-related expenses.

ORDER

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

Andrea Ritchie, Vice Chair