



Civil Resolution Tribunal

Date Issued: December 3, 2019

File: SC-2019-005544

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Van Der Kloot v. Langley (Township)*, 2019 BCCRT 1358

B E T W E E N :

HAYLEY VAN DER KLOOT

APPLICANT

A N D :

Langley (Township)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about vehicle damage. The applicant, Hayley Van Der Kloot, says that a fire truck owned by the respondent, Langley (Township), “bullied” her through an intersection and caused damage to her vehicle. The applicant asks for an order that the respondent pay her \$5,000 for repair costs. The respondent

denies that it is responsible for the damage to the respondent's vehicle or the associated repair costs.

2. The applicant is self-represented. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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

7. The issue in this dispute is whether the respondent is responsible for the damages to the applicant's vehicle and her claimed repair costs.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this one, the applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will only refer to what is necessary to provide context to my decision.
9. On July 24, 2017, the applicant was driving her white Ford F350 pickup truck on 264th Street in Langley and stopped for a red light at an intersection. When she saw the flashing lights of a fire truck approaching from behind, the applicant says she pulled to the right to allow the fire truck to pass on her left. According to the applicant, the fire truck was very close to her vehicle. The applicant says the fire truck was creeping forward, which led her to assume that there was not enough room for it to pass. She says she had no choice but to keep moving to create space for the fire truck, and that the fire truck crowded her into a sand-filled barrel and a concrete barrier at the intersection. After she felt a bump on the passenger side of her truck, the applicant decided that the only way to get out of the truck's way was to proceed through the intersection.
10. The applicant's position is that the fire truck left her no option but to keep moving until her vehicle came into contact with the barriers, and forced her to go through the intersection to allow it to proceed to the emergency. The applicant says that the incident resulted in damage to her passenger side fender, running board and door, as well as dents, scratches and scrapes on the passenger side of the vehicle. The applicant provided photos of the damage, and an October 18, 2017 repair estimate of \$3,280.55. The applicant states that the labour and shop rates have increased since she obtained the estimate, and that the estimated repair cost is now over

\$5,000. She claims \$5,000 in damages, which is the tribunal's monetary limit for small claims matters.

11. The respondent admits that its fire truck was in the area of the incident, but denies that it is responsible for the damage to the applicant's vehicle. It provided statements dated July 25, 2017 from the fire captain, SB, and the driver of the fire truck, JH, about what happened. According to SB and JH, they were responding to an emergency call and were driving northbound on 264th Street while looking for an address. There was a white pickup truck stopped in the northbound lane. According to JH, he waited for traffic to clear from the southbound lane, and then drove to the intersection in the southbound lane. SB and JH said the fire truck stopped at the intersection to ensure that all traffic had stopped. SB stated that the vehicle in the northbound lane then "sped north across the road". Once the intersection was clear, JH says that he entered the intersection and drove to the address of the emergency call.
12. There is no dispute that the applicant had an obligation under section 177 of the *Motor Vehicle Act* (MVA) to yield the right of way to the fire truck, and to drive to the edge of the roadway, stop, and remain there until the fire truck had passed. The respondent also relies upon section 122 of the MVA, which provides privileges for drivers of emergency vehicles to, among other things, disregard rules and traffic control devices. The section requires that the driver of an emergency vehicle must still drive with due regard for safety.
13. The thrust of the applicant's argument is that the respondent's employees operated the fire truck in a negligent manner and caused the damage to her vehicle. To be successful in an action for negligence, the applicant must establish that the respondent owed her a duty of care, that the respondent breached the standard of care, that the applicant sustained damage, and that the damage was caused by the respondent's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

14. I am satisfied that the respondent (through its employees) owed a duty of care to the applicant to operate the fire truck in a reasonably safe manner. However, I find that the evidence does not show that the respondent breached that standard.
15. The parties agree that there was no contact between the fire truck and the applicant's vehicle. The applicant admits that she made an assumption that she was blocking the fire truck. There is no indication that the respondent's employees somehow directed the applicant to move her vehicle. While the applicant may have felt pressure to get out of the way of an emergency vehicle, the evidence does not establish that the fire truck forced her to move her vehicle or drive into the barriers. I also find that the applicant has not proven that JH drove the fire truck in an unsafe manner.
16. I find that the applicant has failed to establish that the respondent was negligent. Accordingly, it is not responsible for the damage to her vehicle and I dismiss the applicant's claim for \$5,000.
17. 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. As the applicant was not successful, I find that she is not entitled to reimbursement of tribunal fees. The respondent asked for reimbursement of both tribunal fees and dispute-related expenses. However, as it did not pay any tribunal fees and did not provide any evidence of expenses, I do not find it necessary to make an order in this regard.

ORDER

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

Lynn Scrivener, Tribunal Member