



# Civil Resolution Tribunal

Date Issued: December 5, 2019

File: SC-2019-004997

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. Procare Auto Centres Ltd.*, 2019 BCCRT 1372

**B E T W E E N :**

LORNA SMITH

**APPLICANT**

**A N D :**

Procare Auto Centres Ltd.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. This is a dispute about car repairs. The applicant, Lorna Smith, says that she took her vehicle to the respondent, Procare Auto Centres Ltd., for repairs. The applicant says that the respondent did not perform the repairs correctly and, because it refused to honour its warranty, she had to get another service provider to fix the

problem. The applicant asks for an order that the respondent reimburse her the \$2,608.91 in repair costs. The respondent disagrees with the applicant's position, and denies that it is responsible for the damages she claims.

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. Some of the evidence in this dispute amounts to a "she said, he 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 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 the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
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 dispute is whether the respondent is responsible for the \$2,608.91 in repair costs claimed by the applicant.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. Both 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. In May of 2019, the applicant noticed oil leaking from her vehicle. She took it to an auto repair shop and was told the problem was a “possible rear seal leak”. The applicant brought her vehicle to the respondent’s facility, where a technician determined that the source of the oil leak was not the rear crankshaft seal and that further investigation would be required. The parties disagree about whether or not the applicant asked the respondent to replace the rear crankshaft seal as a precaution. However, there is no dispute that the respondent did replace the seal and that the applicant paid the invoice. The respondent’s invoice stated that its work came with a warranty for defects in materials and workmanship. As discussed

below, the issue in this dispute is whether later problems are covered under that warranty.

10. Oil continued to leak from the applicant's vehicle. The applicant took her vehicle to a different facility, KMB, in June of 2019 to investigate the ongoing leak. KMB repaired the oil cooler and 2 other leaks, but also advised the applicant that the rear seal appeared to be leaking.
11. The parties disagree as to what happened next. The applicant says she returned her vehicle to the respondent, expecting that the leaking seal would be repaired under the respondent's warranty. The applicant says the respondent refused to honour the warranty and that one of its employees became angry with her and told her that he would charge her for the repair "again". The applicant says she had KMB perform the repair at a cost of \$2,608.91, the amount she claims in this dispute.
12. The respondent denies that it refused to honour its warranty, and says that the applicant asked it to pay KMB to replace the seal. According to the respondent, vehicles like the applicant's have common oil leak issues from the oil cooler that cause the oil to drain out of a drain hole above the rear crankshaft seal. The respondent says it is not possible to determine whether the oil is leaking from the seal or the drain hole without removing the transmission. The respondent says that it advised the applicant that it would not pay KMB to replace the seal, but would do so itself. However, the respondent says that it told the applicant that the problem may not relate to the seal, and that she would have to pay some of its labour costs if the matter was not a warranty case. The respondent states that it regularly performs warranty repairs, which are covered by an agreement with its supplier, and had no reason to be angry with the applicant about her request. The respondent's position is that the applicant chose to have KMB perform the work and that she is solely responsible for this decision.
13. The respondent also says that its warranty only covers its own work. The description of the warranty on the respondent's invoice does not state that it will pay

for third party repairs. I find that it is reasonable that the respondent would want the opportunity to address any possible deficiencies itself, particularly given its arrangement with its parts supplier to pay for labour costs in replacing defective parts. While there may have been a misunderstanding about the scope of work that the respondent said would be covered by the warranty, I find that the respondent did not refuse to honour its warranty.

14. There is no dispute that the applicant's vehicle continued to leak after the respondent replaced the seal and after KMB repaired the oil cooler, or that it stopped leaking after KMB performed a second service on it. However, this is not determinative of whether the second repair done by KMB was necessary due to defects with the respondent's work or the seal itself.
15. The available evidence does not establish that there was a defect in the seal that the respondent installed on the applicant's vehicle. The respondent tried to retrieve the seal for testing, but KMB did not retain it or provide any comment about its status. I find that the applicant has not proven that the seal was faulty.
16. I find that assessing the quality of the respondent's work requires reference to an expert opinion from an automotive professional as this is outside of common knowledge. The evidence before me does not contain a statement from KMB or any other person to comment on the work performed by the respondent. KMB's June 20, 2019 invoice described a leak "from the rear main area" and, after the transmission was removed, found a "leak from the lower part of the plate from the rear main". The "sealant was not sealing on the bottom part", and the technician replaced a seal and "installed trans and transfer case". After this work, the leak was resolved. The parts listed on the respondent's invoice and KMB's invoice are not identical in description or price, and it is not clear whether the work performed by the respondent and KMB involved the same parts.
17. Further, the respondent says that the photos taken by KMB show a leak near the bottom right corner of the cover plate, but nothing from the actual seal. This is consistent with KMB's statement that the leak came from "lower part of the plate". I

also note that KMB appears to have worked on other areas in addition to the seal. I do not find that the evidence shows the source of the leak. In addition, based on the evidence before me, I am unable to conclude that the ongoing leak and need for further repairs was due to any fault in the respondent's workmanship.

18. As noted above, the applicant bears the burden of proving her claims. I find that the applicant has not proven that the seal was faulty or that the respondent's workmanship was deficient or caused the ongoing leak from her vehicle. Accordingly, the respondent is not responsible for the repair costs the applicant paid to KMB. I dismiss the applicant's claim.
19. 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. As the applicant was not successful, I dismiss her claim for reimbursement of tribunal fees.

## **ORDER**

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

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Lynn Scrivener, Tribunal Member