



Civil Resolution Tribunal

Date Issued: December 30, 2019

File: SC-2019-004599

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cote v. Crystal Classic Exteriors Inc.*, 2019 BCCRT 1449

B E T W E E N :

BLAIR COTE

APPLICANT

A N D :

CRYSTAL CLASSIC EXTERIORS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about the cost to repair a driveway damaged by spray paint and acetone.
2. The applicant Blair Cote says the respondent Crystal Classic Exteriors Inc. damaged his driveway and refused to pay to repair it.

3. While the respondent was working on the applicant's garage door trim, a can of black spray paint fell from the respondent's truck, spraying paint onto the driveway. The respondent advised its employee to apply acetone to remove the paint. The acetone left further marks on the driveway. These facts are undisputed.
4. The applicant claims \$4,255.63, which he describes as the cost to fix "driveway acid damage."
5. The respondent agrees that it caused damage to the applicant's driveway. The respondent disputes the amount claimed for repairs. The respondent says \$1,000 is a "fair value" to address the damage.
6. The applicant is self-represented. The respondent is represented by business contact Daniel Poznikoff.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.
9. 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.

10. 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

11. The issue in this dispute is what amount of damages is appropriate given the admitted damage to the applicant's driveway?

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I refer to the evidence and submissions only to the extent I find necessary to explain my decision.
13. The parties agree, and I find, the following facts:
- a. On July 4, 2017, K, the respondent's employee, attended at the applicant's property to perform warranty repair work on the garage door trim.
 - b. During the work, a can of black spray paint fell from the respondent's truck.
 - c. When the can hit the ground, the cap broke off and sprayed black paint over several parts of the driveway.
 - d. K alerted the homeowners. He then contacted the respondent's office.
 - e. The respondent's office advised K to apply acetone to the paint to remove it.
 - f. K applied acetone in two separate areas on the driveway.
 - g. The acetone caused additional damage to the driveway.

14. Given the respondent admits it damaged the applicant's driveway, the issue is this dispute is the appropriate amount of compensation to repair the damage.
15. The applicant filed a series of driveway photographs in evidence. Based on these photographs, I find that the driveway has some surface black and white discoloration, on 2 large paving stones out of a 6-stone driveway surface. It is uncontested, and I find, that this discoloration was caused by the respondent. There is no suggestion the damage is not simply cosmetic. In other words, it does not impact the ability to park.
16. In the Dispute Notice, the applicant referred to having obtained a quote to repair the driveway. In a May 21, 2019 demand letter, he wrote that he had "sourced quotes from industry professionals..." In his submissions, the applicant wrote that he consulted "more than seven experts and industry professionals" to "arrive at the method and cost of repair". However, the applicant did not file into evidence any quotes, nor any evidence to explain the method of repair.
17. Because the applicant bears the burden of proving the amount of his damages, and did not provide any quotes to do so, I draw an adverse inference against him on the amount of the repair cost. While the applicant proved the driveway was damaged, I find the applicant has not proved his damages claim in the entire amount he seeks. As well, in his Dispute Notice the applicant claims \$3,978, whereas in submissions he claims \$4,255.63. This unexplained discrepancy is further support for my conclusion that the applicant has not proven the amount claimed.
18. The respondent conceded that it damaged the driveway and submitted that \$1,000 was a fair value to repair it. I accept the respondent's submission and find that the respondent must pay the applicant \$1,000.
19. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$1,000 from July 4, 2017 the date of the damage, to the date of this decision. This equals \$19.45.

20. 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.
21. The applicant provided a receipt for \$11.08 for registered mail, which I find reasonable to deliver the Dispute Notice.
22. The applicant estimates mileage of \$56.49 based on a rate of 0.58 per kilometer, for trips to and from Home Depot, Rona, SK Forming and Canada Post. Apart from the trip to Canada Post, I decline to order these expenses, as the applicant has not explained why the trips were needed. The applicant also did not confirm the distances travelled. I find these expenditures are not expenses that reasonably and foreseeably arise from the respondent's negligence in applying acetone to the driveway.
23. As for the Canada Post mileage expenses, I do not allow them as dispute-related expenses because the tribunal typically does not reimburse mileage as a dispute-related expense, nor was the distance travelled confirmed (see *Price-Williams v. LEAGHA SERVICE DEPOT LTD.* 2019 BCCRT 569 at paragraph 25). Given that the applicant succeeded in his claim, I find the applicant is entitled to reimbursement of \$175 in tribunal fees and \$11.08 in dispute-related expenses.

ORDERS

24. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,205.53, broken down as follows:
 - a. \$1,000 in damages to repair the driveway surface discolouration,
 - b. \$19.45 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$186.08 for \$175 in tribunal fees and \$11.08 for dispute-related expenses.
25. The applicant is entitled to post-judgment interest, as applicable.

26. 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.
27. 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