



Civil Resolution Tribunal

Date Issued: March 9, 2020

File: SC-2019-007687

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sweeney v. Bill Howich Chrysler Ltd. dba Bill Howich Chrysler RV & Marine, 2020 BCCRT 270*

B E T W E E N :

SUSAN SWEENEY

APPLICANT

A N D :

BILL HOWICH CHRYSLER LTD. dba Bill Howich Chrysler RV & Marine

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about compensation for a damaged RV water heater. The applicant, Susan Sweeney, says the respondent, Bill Howich Chrysler Ltd. dba Bill Howich

Chrysler RV & Marine, did not properly winterize her campervan. She says water left in the water heater froze and cracked the heater.

2. The parties agree that the respondent is responsible for damaging the water heater. The only issue I must determine is what is the appropriate remedy. The applicant claims for repair costs and related expenses totaling \$3,686.16. The respondent disagrees and says it was not given the opportunity to inspect or repair the damage. The respondent does not provide an alternative figure.
3. The applicant is self-represented. The respondent is represented by an employee.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

8. What is the appropriate remedy for the damaged water heater?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The parties agree on a statement of facts that is in evidence. They agree that in October 2018 the respondent winterized the applicant's campervan. In July 2019 the respondent's employee advised the applicant that the respondent was unable to de-winterize the campervan. The parties note they disagree about the context of this conversation, but I find that nothing turns on this.
11. The parties also agree that later that month the applicant took her campervan to another RV dealership, SRV. SRV advised the applicant that her campervan's water heater had been damaged.
12. Next, the statement of agreed facts says that on or around July 19, 2019, the applicant and the respondent's employee, DS, communicated with each other about repairing the campervan. However, the respondent submits in arguments that the applicant actually spoke to another one of its employees, K. As discussed below, I find that nothing turns on whether the applicant spoke to DS or K.
13. The parties agree that after speaking with DS or K, the applicant had SRV order the part needed to fix the water heater. On or around July 26, 2019, DS called the applicant and left a message. The applicant paid for SRV to repair the campervan. On or around August 22, 2019, the parties discussed who should pay for the SRV repairs.
14. From the above I find that the respondent breached the parties' contract to properly winterize the applicant's campervan.

15. What is the appropriate remedy? In general, damages for breach of contract are measured by the amount of money it would take to put the applicant in the same position as if the contract had been performed.
16. The applicant claims \$3,686.16 in total but provided a breakdown in arguments totaling \$3,649.57. I will focus my reasons on the breakdown. I dismiss any claims beyond that as they are unexplained and unsupported by evidence.
17. The applicant claims \$2,162.45 as reimbursement for replacing the damaged water heater. This amount is supported by an SRV invoice dated August 26, 2019, and a payment receipt. There is no suggestion the water heater was damaged before the respondent worked on it. Given this, I find the applicant is entitled to the replacement cost of \$2,162.45.
18. The respondent says it would have fixed or replaced the water heater at no cost. The parties provided extensive submissions on whether the applicant acted reasonably in seeking repairs from SRV rather than the respondent. These submissions also discuss whether the applicant spoke to DS or K in July 2019, and whether the applicant should have waited for DS to contact her about repairs.
19. If a respondent wishes to claim that an applicant has failed to minimize their damage, the respondent has the burden to prove this: *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51 at paragraph 54.
20. Ultimately, I find the respondent has failed to meet this burden. The applicant says that the respondent was not authorized by the manufacturer to purchase or install the water heater used in her campervan. The respondent did not address this in any detail. There is no evidence that the applicant had to seek repairs from the respondent under the terms of the parties' agreement for winterization work. There is no evidence that SRV charged an unreasonable amount for the repairs. According to the agreed statement of facts, the applicant proceeded with the SRV repairs at a time when the respondent had not made any commitment to repair the damage. The applicant also says that she did not wish to wait further as she had

intended to use the campervan in the summer. Overall, I find the applicant acted reasonably in the circumstances.

21. The applicant claims \$6.33 for mailing registration papers for the new water heater. I find this claim is reasonably connected with replacing the water heater, but only allow it to the extent of \$1.33, as her August 28, 2019 receipt is only for this amount.
22. The applicant also claims reimbursement of \$95.17 for winterizing her campervan with the respondent. I have found that this work was not done properly. The evidence shows the applicant was largely deprived of the benefits of this service. The parties provided a copy the October 4, 2018 invoice that intermingles the costs for both winterizing and installing a dehumidifier, for \$179.69. The invoice says the dehumidifier itself cost \$75.80. On a judgment basis, I allow the respondent's claim for \$95.17 as a close approximation of her damages for this part of her claim.
23. Next, the applicant claims \$68.49 as reimbursement for SRV's fee for de-winterizing the campervan. I do not allow this amount as the applicant would have had to de-winterize the campervan even if the water heater was undamaged. The applicant says a portion of this invoice was for diagnosing the water heater problems, but I find the July 18, 2019 invoice does not support this. It only says it is for de-winterizing. I dismiss this part of the claim.
24. The applicant claims \$600 for meals from July 22 to August 20, 2019, during a recreational trip. The applicant explains she could not prepare meals and clean dishes without hot water and had to purchase meals. The applicant justifies her claim of \$50 per day for 12 days by saying that Revenue Canada uses a rate of \$51 per day for meal expenses while traveling, for tax purposes. I find that I must decline to award this amount as none of the meal expenses or the trip itself are documented. I dismiss this part of the claim.
25. The applicant also claims for mileage at a rate of \$.53 per kilometer, which she says is the rate used by Revenue Canada, I infer for business-related tax deductions. Her mileage claims total \$555.08 for driving 1,046 kilometers. There were 3 trips in

total, in July and August 2019. Of these, 2 were to drive to the respondent's address to discuss damage to her water heater and 1 was to drive to SRV's location for repairs.

26. The tribunal typically does not reimburse mileage as a dispute-related expense. See *Price-Williams v. LEAGHA SERVICE DEPOT LTD.*, 2019 BCCRT 569 at paragraph 25 and *Cote v. Crystal Classic Exteriors Inc.*, 2019 BCCRT 1449 at paragraph 23. Although not binding, I find the reasoning in these decisions applicable. The facts in *Price-Williams* are also similar as the applicant claimed mileage for obtaining car repairs and for filing the application for dispute resolution. In that decision, the tribunal did not allow the applicant's claim for mileage as they were not reasonably foreseeable from the respondent's faulty brake service.
27. I do not find the distance claimed (more than 1,000 kilometers) to be reasonably foreseeable from the respondent's breach of contract. On the evidence before me, it is also not readily apparent that the applicant could not have reduced the distance travelled by phoning the respondent or seeking repairs at a closer location. I dismiss this part of the claim.
28. The applicant also claims for meals on August 25, 26, and September 5, 2019, at a rate of \$51 per day, and ferry expenses of \$21.15 and \$23.40. I find that these meal and ferry expenses relate to the 3 trips discussed above. As these expenses relate to the long distances traveled by the applicant, I find that they were similarly not reasonably foreseeable. The meal expenses also have the additional hurdle of being undocumented. I dismiss this part of the claim.
29. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the total award of $(\$2,162.45 + \$1.33 + \$95.17 =) \$2,258.95$, calculated on the underlying amounts from the invoice dates of August 26 and 28, 2019, and October 4, 2018 to the date of this decision. This equals \$25.31.

30. 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 consider the applicant to be the successful party as she has succeeded on her main claim of reimbursement for the SRV repairs.
31. I find the applicant is entitled to reimbursement for a company search of the respondent for \$11.50 and \$5 for photocopying and fax fees. Both are documented by receipts. I also allow the applicant's claim for tribunal fees of \$175.

ORDERS

32. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$2,475.76, broken down as follows:
- a. \$2,258.95 in damages,
 - b. \$25.31 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$191.50, comprised of \$175.00 in tribunal fees and \$16.50 for dispute-related expenses.
33. The applicant is entitled to post-judgment interest, as applicable.
34. The applicant's remaining claims are dismissed.
35. 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.

36. 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.

David Jiang, Tribunal Member