



Civil Resolution Tribunal

Date Issued: March 11, 2020

File: SC-2019-008873

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brown v. Cowichan Towing Ltd.*, 2020 BCCRT 283

BETWEEN:

KATRINA BROWN

APPLICANT

AND:

COWICHAN TOWING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This small claims dispute is about vehicle damage.
2. The applicant, Katrina Brown, says the respondent towing company, Cowichan Towing Ltd., damaged her Westfalia van when it towed it to a repair shop. In

contrast, the respondent says the van was damaged before it provided its towing services and says it is not responsible to pay for repairs. The applicant seeks \$3,921, the amount she says it will cost to repair the van.

3. The applicant is self-represented. The respondent is represented by one of its owners.

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. 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.
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. 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.

ISSUE

- 8. The issue in this dispute is whether the respondent damaged the applicant's van, and if so, to what extent, if any, the respondent is responsible to pay \$3,921 for the van's repairs.

EVIDENCE AND ANALYSIS

- 9. 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.
- 10. It is undisputed that on May 20, 2019, the applicant was having van trouble and called a roadside service for assistance. The respondent tow company was dispatched and arrived on scene to take the van to the applicant's preferred mechanic shop, VV. The applicant says before her van was hooked up to the tow truck, she left with her partner who had been driving their own vehicle directly behind the applicant's van.
- 11. Upon arrival at VV, the applicant says the van was already there, but the respondent's tow truck had left. The applicant says she noticed significant damage to the van's right rear bumper and scuffing on the right front bumper. The applicant phoned the roadside company, and the next day the respondent attended to inspect the vehicle. As a result of its inspection, the respondent advised the applicant it was not responsible for the damage.
- 12. The applicant reported the damage to her insurer, the Insurance Corporation of British Columbia (ICBC), who subsequently examined the van. An ICBC adjuster's June 3, 2019 email to the applicant said the ICBC estimator noted the right front

and rear bumper damage but was unable to confirm the damages were towing related. The adjuster said the estimator noted the front bumper damage appeared to be caused by contact with concrete. A further June 13, 2019 email from the same ICBC adjuster noted the significant rear bumper damage appeared to have been caused from being hit from the bottom up, on an angle. In its October 21, 2019 email, the ICBC adjuster said the estimator noted the damages as “odd” and “not typical” of towing-related damage. ICBC declined coverage for the van’s damages.

13. The applicant disagrees with ICBC’s position, and submits a statement from her mechanic, NRD. In the undated statement, NRD stated he is VV’s owner and founder, but otherwise did not explain his qualifications or experience. He stated the applicant has been his client since she purchased the van. He said he was aware of the van’s condition before this incident, but did not state the last time he inspected the van before May 20, 2019. He reviewed the photographs of the van’s damage and stated that it was his opinion, from the look of the rear bumper damage, the van “possibly fell off” the tow truck while loading, or the van was “dragged against something” strong enough to tear the metal of the rear bumper / corner panel. He did not comment on the damage to the front bumper.
14. The respondent questions NRD’s qualifications to provide an expert opinion. The applicant submits NRD is “a professional trained in the automotive industry”. However, without further information about NRD’s experience and qualifications in terms of body work and damage estimating, I am unable to determine whether NRD is properly qualified to give the expert opinion he gives about the possible cause of damage. As such, I find the statement is not properly expert evidence under the tribunal’s rules. Additionally, NRD does not explain, if the van “fell off” the tow truck, how the front bumper damage would result. Given all the above, I give NRD’s statement limited weight.
15. In further support of her position, the applicant submitted a dash cam photograph from her partner’s vehicle, which she says was taken on May 20, 2019, before the respondent allegedly damaged her vehicle. She says the photograph shows the van

was undamaged before the respondent arrived. I disagree. I find the photo is of poor quality and is significantly obscured because the windshield was covered with raindrops. I am unable to see the areas of the van which were allegedly later damaged. The applicant does not explain why she did not provide a clear dash cam photograph of the van, such as just after the windshield wipers had cleared the windshield, which I infer would have been available since her partner had been driving behind her for almost 2 hours. In any event, I find the photograph is of no assistance in determining the cause of the van's damage.

16. So, I find there is an evidentiary tie. The applicant says the respondent caused the vehicle damage, which the respondent denies. I find there is no persuasive evidence either way. It is undisputed the applicant was not present when the towing services were provided, and there is no indication there were any independent witnesses. Faced with conflicting evidence from the parties, I am unable to determine the damage's cause. As noted above, the burden is on the applicant to prove, on a balance of probabilities, that the respondent is responsible for the van's damage. I find she has not done so. As a result, I dismiss the applicant's claims.
17. 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 she is not entitled to reimbursement of her paid tribunal fees. Neither party claimed dispute-related expenses.

ORDER

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

