



# Civil Resolution Tribunal

Date Issued: April 29, 2020

File: SC-2019-010002

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Horth v. Shane's At Your Door Auto Ltd.*, 2020 BCCRT 462

BETWEEN:

GORDON HORTH

**APPLICANT**

AND:

SHANE'S AT YOUR DOOR AUTO LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about mechanical repairs the respondent, Shane's At Your Door Auto Ltd., did on a 2008 Jeep Grand Cherokee owned by the applicant, Gordon Horth. The applicant says the respondent did not fix his vehicle's problems, and

alleges it also caused additional damage. The applicant claims \$4,648.18, for what he paid a third party for vehicle repairs.

2. The respondent says it fixed “almost everything”, and admits it later failed to discover that the refurbished turbocharger it had installed was faulty, for which part and associated labour the respondent later refunded the applicant. The respondent denies damaging the applicant’s vehicle, and says it was damaged already.
3. The applicant is self-represented. The respondent is represented by its principal, Shane Seifried.

## **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. Bearing in mind the tribunal’s mandate of proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
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.

8. I note that I was originally unable to open an item of the respondent's evidence. I requested it, and the respondent provided a copy of his November 1, 2019 submission that is a duplicate of another evidence item. So, nothing turns on the duplicate, although I note the applicant was given the opportunity to respond to this later-provided duplicate evidence item.

## **ISSUE**

9. The issue in this dispute is whether the applicant is entitled to \$4,648.18 for third party vehicle repairs.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant must prove his claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. It is undisputed that before the applicant brought his 2008 Jeep to the respondent the Jeep was experiencing power loss, especially up hills. The applicant says the electronic throttle control light would also appear on the dashboard. These issues prompted the applicant to take the Jeep to the respondent for diagnosis in October 2018.
12. It is also undisputed the respondent determined the applicant's turbocharger and plenums were damaged, and advised that both "key parts" required replacement. The applicant agreed for the respondent to do the work. There is no explanation in evidence about whether a plenum's function is necessarily tied to the turbocharger's function.
13. The respondent's October 31, 2018 invoice totaled \$6,355.20. Of that, \$1,603.33 was for a refurbished turbocharger that another mechanic shop, Progressive Auto Repair & Maintenance (Progressive), later determined was faulty and replaced. Other significant work on the respondent's invoice was \$2,590.43 for 2 plenum

replacement parts. The respondent's invoice shows the applicant's Jeep had 265,000 kilometers on the odometer.

14. It is undisputed that over the following few months the applicant kept experiencing the same problem, loss of power and the throttle control light coming on. The applicant brought the Jeep back to the respondent 3 times between November 2018 and April 2019. The respondent admits that on each occasion it was unable to identify the problem. The parties agree the respondent suggested the applicant take the Jeep to a specialist for a diagnosis.
15. The applicant then took the Jeep to Progressive, who fixed the problem in July 2019 by replacing the turbocharger. At the same time, Progressive did some other repairs on damaged parts, which the applicants says the respondent damaged. In particular, the applicant says Progressive found "various broken components", stripped and broken mounting threads and bolts, a cracked intake pipe, and damaged seals.
16. The applicant says Progressive's invoice was \$8,323.74. However, the copy in evidence totals only \$6,591.32, a \$1,732.42 difference that is not explained. The applicant says Progressive determined the respondent's work in 2018 was "done incorrectly with multiple mistakes that did not fix the mechanical problems and caused considerable damage". The applicant claims a net of \$4,648.18, which he says is based on: Progressive's repair \$8,323.74 bill, less \$2,908.52 for the new turbocharger, and less \$767.04 for minor maintenance items completed by Progressive. If I deduct the \$1,732.42 figure from the applicant's \$4,648.18 claim, this leaves \$2,915.76.
17. The respondent admits the refurbished turbocharger it installed was faulty and also admits that it failed to diagnose that problem in the 3 visits when the applicant brought the Jeep back in. In August 2019, the respondent refunded the applicant \$2,365, what it charged him for the turbocharger and associated labour. However, the respondent submits it otherwise fixed the Jeep and so it should not have to

provide any further refund. For the reasons that follow, I find the evidence does not show otherwise.

18. I find it is clear Progressive found the turbocharger installed by the respondent was faulty, which the respondent admits. However, as noted, the respondent has already refunded the applicant for its charges for the faulty turbocharger. The costs related to the turbocharger's replacement are not part of the applicant's claim.
19. The difficulty for the applicant is that while Progressive's invoice does note certain broken and incorrectly installed items, Progressive does not say that the respondent damaged or incorrectly installed them. I cannot conclude from Progressive's invoice that the respondent is responsible for the damaged parts or whether they were simply aging items in the Jeep or otherwise damaged by unknown third parties either before or after the respondent's work. In other words, I cannot tell if the broken items were things already damaged when the respondent did its work. I also note Progressive does not expressly say there was anything wrong with the plenums, which were a significant portion of the respondent's invoice, \$2,590.43. It is also significant that 9 months passed between the respondent's work and Progressive's repair, although I acknowledge the applicant had ongoing problems with power loss and the throttle light after the respondent's repair. I come to the same conclusion about Progressive's November 29, 2019 email to the applicant, which also does not expressly criticize the respondent.
20. On balance, I find the issue of whether the respondent likely damaged the parts or simply failed to fix them as part of its (refunded) turbocharger repair is not within ordinary knowledge. Rather, I find it requires expert evidence and as noted Progressive did not provide an opinion about whether the respondent damaged the parts as the applicant claims. I find Progressive's criticisms of the respondent is limited to the work done on the turbocharger, and as noted the respondent already refunded that.

21. In summary, I find the applicant has not shown it is more likely than not that the respondent damaged his Jeep's various parts as claimed. So, I find the applicant's claims must be dismissed.

22. Under section 49 of the CRTA and tribunal rules, as the applicant was unsuccessful, I find he is not entitled to be reimbursed for \$175 in tribunal fees or his claimed dispute-related expenses of \$11.50.

## **ORDER**

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

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Shelley Lopez, Vice Chair