



Civil Resolution Tribunal

Date Issued: May 4, 2020

File: SC-2019-010463

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nguyen v. Marisco*, 2020 BCCRT 487

BETWEEN:

NHU PHUONG NGUYEN

APPLICANT

AND:

FRANCIS MARISCO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about losses associated with vehicle damage. The applicant, Nhu Phuong Nguyen, says that the respondent, Francis Marisco, vandalized her vehicle. The applicant says that she incurred various costs due to

the repair and loss of use of her vehicle. She asks for an order that the respondent pay her \$1,865.48 in damages. The respondent admits that he kicked the applicant's vehicle. However, he denies that he caused any damage or that he is responsible for any of the amounts the applicant claims.

2. The parties are self-represented.

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. 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.
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. 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.

ISSUES

7. The issues in this dispute are:
 - a. whether the respondent must reimburse the applicant \$300 for her insurance deductible,
 - b. whether the respondent is responsible for the applicant's car rental costs of \$1,271.48,
 - c. whether the respondent is responsible for the applicant's \$50.00 monthly parking rental charge, and
 - d. whether the respondent is responsible for the applicant's \$244.00 monthly car insurance payment.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
9. The November 3, 2019 incident that forms the basis of this dispute was captured on video. The footage was taken from a window above a parking area. It shows a person walking between parked vehicles and shouting at someone to turn off their car, apparently due to concern about exhaust entering a nearby residence. The person kicked the rear bumper of the running vehicle near the license plate. He then walked around the vehicle punching various areas on the doors and hood. The person continued to shout and swear, then walked away.
10. The applicant says the respondent is the person shown in the video footage, and that he caused damage to her vehicle. The respondent does not dispute that he is the person in the footage, and admits to kicking the vehicle, but says that he did not cause any damage. I find that this amounts to an admission. On this basis, I find

that the respondent is the person shown in the video footage. Having determined this, the next consideration is whether he is responsible for the damages the applicant claims.

11. The repairs to the body of the applicant's vehicle cost \$2,315.45, less a \$300 insurance deductible paid by the applicant. The applicant claims reimbursement for the \$300 insurance deductible. Although the respondent says that there was no damage as he was wearing running shoes at the time, I find that the damage is confirmed by the evidence.
12. Images in evidence show dents, scuffs and hand prints on the applicant's vehicle that correspond to the areas the respondent was shown to be kicking and punching. I also note that the evidence contains an email message from the respondent to the applicant stating that "I will pay the deductible for your damage". Based on the evidence before me, I find that the respondent did damage the applicant's vehicle and acknowledged his responsibility for it. Therefore, the applicant is entitled to reimbursement of her \$300 insurance deductible.
13. The applicant relates the remainder of her claims not to the body damage but to a fluid leak she says the respondent caused. The applicant says that, after the respondent kicked her car, it started leaking "coolant/radiator" fluid. She provided an image showing dark spots on the asphalt near a vehicle tire. The applicant says this leak occurred due to the "hard kick" to the rear bumper, which the applicant states is connected to the muffler and caused a "shock wave to the engine compartment".
14. As a result of the fluid leak, the applicant says that she felt her car was unsafe to drive until she ordered a replacement part. She says she had to use an Evo car share vehicle because her insurance did not include rental coverage. The applicant provided an Evo usage log between November 3 and December 12, 2019 showing charges of \$1,271.48, and for which she claims reimbursement. The applicant also asks for an order that the respondent reimburse her for the \$50 monthly rental charge for her reserved parking spot and her monthly insurance charge of \$244 as she was unable to use her vehicle. In her submissions, the applicant says that her

car was not in a driveable condition for 1 month, but says elsewhere in her submissions that she could not drive her car for 2 months. She did not explain this discrepancy. However, given my conclusion below, I find that nothing turns on this.

15. The respondent's position is that a fluid leak is not caused by a kick to the bumper. He denies that he is responsible for any of the costs the applicant claims as a result of the fluid leak. He says that he often saw the applicant using an Evo before the incident, and that she left her car in her reserved parking spot after the incident. The respondent's position is that since the applicant had to pay for the parking spot and insurance anyway, there was no extra expense to her.
16. The applicant has described a leak and provided the image of the dark spots. However, I find that this is not sufficient to establish the nature of the problem with the vehicle or its possible relationship to the respondent's conduct. There is no information from a mechanic or other automotive professional that diagnoses the problem, comments on whether the problem could have been caused by a kick, or confirms that it would have made the vehicle unsafe to drive. Further, the evidence before me does not contain any information about the nature or cost of the replacement part or repairs, or when the repairs were performed.
17. I find that the applicant has not proven that the respondent caused a fluid leak in her vehicle. Therefore, she is not entitled to the damages she claims as a result of the leak.
18. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$300 insurance deductible from the November 9, 2019 date of payment to the date of this decision. This equals \$2.69.
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 partially successful, I find that she is entitled to reimbursement of one half of the tribunal fees she paid, or \$62.50. The applicant did not claim dispute-related expenses.

ORDERS

20. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$365.19, broken down as follows:
 - a. \$300 as reimbursement of the insurance deductible,
 - b. \$2.69 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 as reimbursement of tribunal fees.
21. The applicant is entitled to post-judgment interest, as applicable.
22. The remainder of the applicant's claims are dismissed.
23. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

24. 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.

Lynn Scrivener, Tribunal Member