



# Civil Resolution Tribunal

Date Issued: July 8, 2020

File: SC-2020-001711

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Martin v. Rhodes*, 2020 BCCRT 760

BETWEEN:

BRIAN MARTIN

**APPLICANT**

AND:

KRYSTAL RHODES

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

### INTRODUCTION

1. This dispute is about property damage. The applicant, Brian Martin, says he loaned his truck and boat trailer to the respondent, Krystal Rhodes. He says Ms. Rhodes damaged some of the equipment in his truck and dirtied the back seat. Mr. Martin also says Ms. Rhodes did not have the oil changed and failed to refuel his truck as

promised. He claims \$943.09 for damage and lost equipment, the cost of an oil change, fuel, his time, and cleaning expenses.

2. Ms. Rhodes denies that she damaged Mr. Martin's property.
3. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
6. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

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

## **ISSUE**

9. The issue in this dispute is whether Ms. Rhodes damaged Mr. Martin's property and, if so, the remedy that is available.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, Mr. Martin 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.
11. Mr. Martin says he agreed to loan his boat trailer to Ms. Rhodes so she could pick up a boat she had purchased in Campbell River. Mr. Martin says when he arrived at Ms. Rhodes's house with his trailer, Ms. Rhodes's SUV would not start. Mr. Martin says he then agreed to loan Ms. Rhodes his truck as well on the condition that she refueled the truck before returning it. Mr. Martin also says Ms. Rhodes agreed to change the oil because a warning light was on in his truck. Mr. Martin says he expected the truck and trailer to be returned the same evening. However, he says Ms. Rhodes did not return his truck and trailer for 4 days until after he reported them as stolen to the RCMP. Neither party stated the date Mr. Martin loaned his truck and trailer to Ms. Rhodes.
12. Mr. Martin says he helped Ms. Rhodes unload her boat and belongings from his truck after she returned the truck and trailer. He says at that time, he discovered that the 2 inch straps in the trailer were frayed, the jack was broken beyond repair, and the trailer lock was missing. He also says there was dirt all over the truck's back

seats from 2 plants that Ms. Rhodes had placed there. He says in addition, Ms. Rhodes had not changed the oil. He did not state whether the truck had been refueled. Mr. Martin provided photos of the back seat, the straps, and the jack. He also provided a receipt for an oil change that was done on August 10, 2019.

13. Ms. Rhodes says the parties agreed to switch vehicles so she could use Mr. Martin's boat trailer to move her boat. Neither party explained whether Mr. Martin actually took Ms. Rhodes's SUV and I find it is not relevant for the purposes of this decision. Ms. Rhodes admits that she used Mr. Martin's truck to move personal items as well. Ms. Rhodes did not specifically dispute that she agreed to refuel Mr. Martin's truck or get the oil changed.
14. Ms. Rhodes agrees that Mr. Martin reported the truck and trailer as stolen. Ms. Rhodes denies that there was any damage to Mr. Martin's truck or equipment. She says that Mr. Martin had provided her duct tape when she borrowed his truck and someone by the name of TM "fixed the trailer with bolts". Aside from this, Ms. Rhodes did not mention any damage to the truck, trailer, or any equipment when she borrowed it. She also did not deny that the trailer lock was missing when she returned the truck and trailer.

***Did Ms. Rhodes damage Mr. Martin's property?***

15. Based on the evidence before me, I find Mr. Martin loaned his truck and trailer to Ms. Rhodes so she could transfer her boat from Campbell River and to move personal items. Neither party provided evidence about whether they specifically discussed how long Ms. Rhodes would keep Mr. Martin's truck and trailer, but I find nothing turns on this.
16. When Mr. Martin lent his truck and trailer to Ms. Rhodes, this created a legal relationship of bailment. A bailment is the temporary transfer of property from the "bailor" (in this case, Mr. Martin), to the "bailee" (in this case, Ms. Rhodes). As a bailee, Ms. Rhodes was obligated to take reasonable care of Mr. Martin's truck and trailer. Normally in a civil claim like this one Mr. Martin is responsible for proving Ms.

Rhodes was negligent in damaging his property. However, in bailment cases like this one there is a presumption that Ms. Rhodes was negligent in damaging Mr. Martin's property. This is because only Ms. Rhodes can actually know what happened, which puts Mr. Martin at a disadvantage. In order to avoid liability, Ms. Rhodes must rebut the presumption of negligence (see *Cahoon v. Isfeld Ford*, 2009 BCPC 334). Since Ms. Rhodes did not provide any evidence to rebut this presumption, I find she did not take reasonable care of the truck and trailer and is responsible for the damages Mr. Martin alleges.

***What remedies are available?***

17. Mr. Martin seeks \$34.99 for a "tow power couple lock 040-6966-0 CT", \$29.99 for a "10,000# ratchet tie down strap 2 x 27 CT 040-2627-2", and \$307.00 for a "hylift jack all lordco # HL604". Ms. Rhodes did not dispute the amounts Mr. Martin claimed. Although Mr. Martin did not provide receipts for any of these parts, I find the amounts he claimed are reasonable. I find Mr. Martin is entitled to \$371.98 for the damaged and lost equipment.
18. Mr. Martin claimed \$75 for an oil change. However, the receipt he provided was for \$70.41. The receipt for the oil change shows it was done in Campbell River. I infer Mr. Martin regularly used this company in Campbell River since the receipt listed previous oil changes done at the same location. I find under these circumstances it would be reasonable for Mr. Martin to ask Ms. Rhodes to get the truck's oil changed while she was in Campbell River. Ms. Rhodes did not state that she had the oil changed. For this reason, I accept that Ms. Rhodes did not change the oil and I find she must reimburse Mr. Martin \$70.41 for the cost.
19. Mr. Martin claimed \$150 "fuel tax", and \$75 for his "time/gas". Mr. Martin did not explain what a "fuel tax" was and also did not explain how he arrived at \$75 for his time and gas. I dismiss his claim for the "fuel tax" and his time. On a judgment basis, I find \$50 is a reasonable amount for the cost of fuel and I find Ms. Rhodes must reimburse Mr. Martin \$50 for fuel.

20. Mr. Martin claimed \$200 for cleaning the back seats in his truck. Again, he did not provide a receipt or explain how he arrived at this amount. He also did not provide details of any attempts he made to clean the seats. Ms. Rhodes did not deny that her plants left dirt on the back seats of Mr. Martin's truck. I have reviewed the photo Mr. Martin provided and it appears the seats can be cleaned with a vacuum. Also, some of the stains do not appear to be from dirt and may have already been present when Ms. Rhodes borrowed the truck. For this reason, I dismiss Mr. Martin's claim for cleaning expenses.
21. Mr. Martin also says Ms. Rhodes made false statements to the CRT and so she should be fined according to section 92 of the CRTA. Section 92 states that a person who provides false or misleading evidence in a CRT proceeding commits an offence and is liable on conviction to a fine of \$10,000 or up to 6 months imprisonment, or both. Mr. Martin has not provided any objective evidence to support his allegations that Ms. Rhodes gave false or misleading information in this proceeding. In any event, the CRTA has no express provision providing the CRT jurisdiction over an offence punishable by imprisonment. Under the *Provincial Court Act*, the provincial court has exclusive jurisdiction about a trial of a person charged with an offence that on conviction, the person is liable to be sentenced to a term of imprisonment. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal's jurisdiction. Based on the above, I refuse to resolve this aspect of Mr. Martin's claim.

## **INTEREST, CRT FEES, AND DISPUTE RELATED EXPENSES**

22. The *Court Order Interest Act* applies to the CRT. Mr. Martin is entitled to pre-judgment interest on the \$497.39 in damages from June 22, 2019, the date Mr. Martin says Ms. Rhodes became aware of his claim, to the date of this decision. This equals \$10.02.
23. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable

dispute-related expenses. I see no reason in this case not to follow that general rule. Since Mr. Martin was partially successful, I find he is entitled to reimbursement of \$87.50 in CRT fees. He did not claim any dispute-related expenses.

## ORDERS

24. Within 14 days of the date of this order, I order the respondent, Krystal Rhodes, to pay the applicant, Brian Martin, a total of \$594.91, broken down as follows:

- a. \$497.39 in damages
- b. \$10.02 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 for CRT.

25. The applicant is entitled to post-judgment interest, as applicable.

26. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that CRTs may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

27. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Rama Sood, Tribunal Member