



# Civil Resolution Tribunal

Date Issued: July 14, 2020

File: SC-2020-001628

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lundy v. Comack*, 2020 BCCRT 779

BETWEEN:

GORDON LUNDY

**APPLICANT**

AND:

JUSTIN COMACK

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about car repairs. The applicant, Gordon Lundy, paid the respondent, Justin Comack, to repair his vehicle. However, Mr. Lundy says Mr. Comack failed to complete the repairs. He asks for an order that Mr. Comack pay him \$1,250 in damages. Mr. Comack admits that the repair was not complete, but

says that Mr. Lundy took his vehicle back before it could be done. Mr. Comack denies that he owes Mr. Lundy any money.

2. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. The CRT 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 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.
6. 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**

7. The issue in this dispute is whether Mr. Comack is responsible for the \$1,250 in damages for incomplete work and towing charges claimed by Mr. Lundy.

## EVIDENCE AND ANALYSIS

8. In a civil dispute like this, 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. Based on the limited evidence before me, it is apparent that Mr. Lundy and Mr. Comack made an agreement for Mr. Comack to replace the transmission in Mr. Lundy's vehicle. The agreement was verbal rather than in writing.
10. Mr. Lundy says he towed his vehicle to Mr. Comack's property on December 15, 2019, and sent him an \$1,150 e-transfer on January 13, 2020 when Mr. Comack said he was ready to work on the vehicle. Later that day, Mr. Comack sent Mr. Lundy a text message saying that he installed the new transmission, but it was not working. He stated that he may need to get a replacement transmission. It appears that Mr. Comack obtained another transmission, but the repair was not completed as quickly as Mr. Lundy would have liked. He retrieved his vehicle from Mr. Comack's property on February 9, 2020.
11. Mr. Lundy says that Mr. Cormack did not fix his vehicle despite having it for more than 50 days, and prioritized trips and other activities over the repair job. Mr. Comack says that he does vehicle repairs "on the side" and does not work at it full-time. He says that there was no timeline or completion date for the repair. Mr. Comack says he completed the repair but was sold a defective part. According to Mr. Comack, he was in the process of doing the warranty repair when Mr. Lundy removed the vehicle from his property. He says that he offered to refund \$200 in labour but, as used parts cannot be returned, he could not refund the money spent on the transmission.
12. Mr. Lundy says that the transmission Mr. Comack installed in his vehicle worked, it just had the wrong torque converter. Mr. Lundy states that he is willing to pay for the cost of the transmission but does not think that he should pay labour charges for Mr.

Comack's "mistake". He also says that Mr. Comack should pay his other costs, including towing and the cost of getting another mechanic to get the right torque converter.

13. In effect, Mr. Lundy says that Mr. Comack breached their agreement by taking too long to repair the vehicle. The text messages Mr. Lundy and Mr. Comack exchanged show queries about when the vehicle may be ready and discussions about needing a functioning vehicle. However, the evidence does not support the conclusion that the parties agreed to a particular time frame for the work to be completed. I find that there was no breach of the parties' agreement due to the timing of the repair.
14. Although he has a different full-time job, I accept that Mr. Comack held himself out as a mechanic. Mr. Lundy suggests that Mr. Comack was mistaken about what needed to be done to the transmission to make it functional. When assessing problems with a vehicle, a mechanic must meet a reasonable professional standard. The evidence before me does not contain a statement from a mechanic or other automotive professional to comment on the status of the transmission or the quality of Mr. Comack's workmanship. In the absence of this evidence, I am unable to determine whether Mr. Comack fell below a reasonable standard in assessing the problems with the vehicle generally or the transmission specifically.
15. The evidence before me contains limited information about the damages Mr. Lundy claims. Mr. Lundy admits that he has a transmission purchased by Mr. Comack. Mr. Lundy asks for a refund of everything he paid to Mr. Comack except the cost of the transmission, but he did not provide any evidence about what that cost was. Text messages in evidence suggest that Mr. Comack spent \$3,500 for the transmission (which is higher than what Mr. Lundy says he paid to Mr. Comack), but this is also not supported by evidence. In addition, Mr. Lundy did not say how much he spent on towing services or other mechanic services, or provide any supporting evidence of these expenses.

16. I find that the evidence before me does not establish any problems with Mr. Comack's workmanship or any associated damages. Keeping in mind that Mr. Lundy bears the burden of proving his claims, I find that he has not shown that he is entitled to the \$1,250 he claims. Accordingly, I dismiss his claims.

17. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Lundy was unsuccessful, I dismiss his claim for reimbursement of CRT fees.

## **ORDER**

18. I dismiss Mr. Lundy's claims and this dispute.

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Lynn Scrivener, Tribunal Member