



# Civil Resolution Tribunal

Date Issued: July 14, 2020

File: SC-2020-001944

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Feist v. School District No. 035 (Langley)*, 2020 BCCRT 786

B E T W E E N :

MONA FEIST

**APPLICANT**

A N D :

SCHOOL DISTRICT NO. 035 (LANGLEY)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

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## INTRODUCTION

1. This small claims dispute is about vehicle damage. The applicant, Mona Feist, says her truck was damaged by a gate at the entrance to a school parking lot owned by the respondent, School District No. 035 (Langley). I will refer to the respondent as

SD35. Although the Insurance Corporation of British Columbia (ICBC) paid for the repairs less a \$300 deductible, Ms. Feist seeks \$2,493.93 so she can reimburse ICBC and maintain her claims-free status.

2. SD35 denies that the gate could damage Ms. Feist's truck and says ICBC determined SD35 was not at fault.
3. Ms. Feist is self-represented. SD3535 is represented by an employee, BI.

## **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. 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.
6. 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.
7. 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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Whether the gate damaged Ms. Feist's truck,
  - b. If so, whether SD35 is responsible for the damage, and
  - c. What remedy is available.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Ms. Feist must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. Ms. Feist provided photos of the gates to the YC School (school) parking lot showing them in both opened and closed positions. The photos show a driveway leading from the road into a parking lot with a metal gate at either side of the entrance. The posts holding the gates were placed in the grassy areas on either side of the driveway and swung in an arc to meet in the centre. The photo of the closed gates showed their tips met at the centre of the driveway and were held closed by a short metal chain. When the left gate was open, its tip reached another metal post on the grassy area to the left of the driveway. There was no corresponding post for the right gate.
11. Ms. Feist says on August 6, 2019 she drove her truck through the driveway when the right gate struck the passenger side rear cab door pillar and then stuck under the box liner. I infer from her statement that the tip of the gate struck her truck. She says she had to drive forward to detach the right gate from her truck. She says she contacted SD35 on August 19, 2019 to report the damage and was instructed to contact ICBC.
12. Ms. Feist made a claim through ICBC and had her truck repaired. She provided a copy of a December 23, 2019 invoice from a repair shop for \$2,493.93 (invoice).

She says she paid a \$300 deductible. The invoice contained the ICBC claim number that was assigned to Ms. Feist when she reported the damage in August, 2019. It also indicated the date of loss was August 6, 2019. I infer from the dates on the invoice that the truck was repaired around December 20, 2019. Ms. Feist did not explain why the repairs were done 4 months after the incident. Since SD35 did not raise this as an issue, I find nothing turns on the delay.

13. SD35 denies the gates could move independently due to their weight and positioning. It says that the gates were heavy and required physical force to move them from open or closed positions. SD35 did not indicate how much force was needed. SD35 says there was no evidence that the gates moved independently from the open position and damaged Ms. Feist's truck.

***Was Ms. Feist's truck damaged by the right gate?***

14. Ms. Feist provided several close-up photos of her truck. She did not provide a description of what the photos showed and I find I cannot conclude whether they showed damage from the gate.
15. Ms. Feist also provided a video recording of the closed gates. I infer the purpose of the video was to show that the gates could move easily. The video first panned the entire length of both gates. It then focused on the chained tips of the gates. There was a little slack in the chain and the right gate first moved forward and then back. Ms. Feist did not state what caused the right gate to move or who made the recording. The video did not show the entire gates when the right gate moved. Based on the angle, I infer the person who was recording the video was standing close to the right gate and near its centre. I find the person recording the video could have moved the right gate. I find the video does not prove how much force was required to move the right gate or that it could swing without being pushed.
16. SD35 provided a statement from its Manager of Transportation and Grounds, TA. He stated the following:

- a. He frequently dealt with parking lot gates, including the gates at the school.
  - b. The gates at the school were heavy and did not move by themselves from their open or closed positions.
  - c. Physical force was required to move the gates to another position.
  - d. On September 16, 2019 he advised TH from ICBC that SD35 did not believe Ms. Feist's truck was damaged by the gate swinging open.
  - e. On September 22, 2019 TH informed him that ICBC was not holding SD35 at fault for the incident.
  - f. On March 16, 2020, ICBC's claim adjuster, VN, emailed him that ICBC was not pursuing recovery from SD35.
  - g. There was no evidence that the gates at the school moved on their own from an opened position to cause damage to Ms. Feist's vehicle.
17. On balance, I find Ms. Feist's truck was damaged by the right gate. I prefer Ms. Feist's testimony of how her truck was damaged. TA was not present when the incident occurred and did not provide any evidence that he inspected the gates after receiving Ms. Feist's complaint or how often the gates were inspected and maintained. While he stated the gates were heavy, TA did not provide their actual weight. I find this is relevant since SD35 says the gates were too heavy to move independently.

***Is SD35 responsible for the damage to Ms. Feist's truck?***

18. According to section 3 of the *Occupiers Liability Act* (OLA), an occupier of a premise owes a duty to take reasonable care to see that a person and their property on the premises will be reasonably safe in using the premises. I find the OLA applies to this dispute. SD35 has a duty to use reasonable care to prevent injury or harm from danger that is or ought to be known. In determining liability, the harm that occurred must be reasonably foreseeable. A foreseeable risk is "one which would occur to

the mind of a reasonable man in the position of the defendant and which he would not brush aside as far-fetched" (*Powell v. 585562 BC Ltd*, 2018 BCP 19 at paragraph 66).

19. The question of whether or not this duty is met is determined on a standard of reasonableness of the system implemented to safeguard the risk on the premises and of the implementation of that system. (see *Foley v. Imperial Oil Limited* 2011 BCCA 262 at paragraph 28).
20. The onus is on Ms. Feist to prove on a balance of probabilities that SD35 breached this duty of care. The fact her truck was damaged does not create a presumption of negligence. Ms. Feist must be able to point to some act or failure on the part of SD35 which resulted in the injury. The test is one of reasonableness, not perfection (*Fulber v. Brown's Social House Ltd.*, 2013 BCSC 1760 at paragraph 28).
21. I find SD35 knew or ought to have known that the right gate could damage a vehicle while in the school's driveway. I say this because the grassy area on the left side of the driveway had a post to tie or secure the left gate. I find this shows SD35 was aware that the gate should be secured when it was open. However, SD35 did not install a similar post for the right gate. By not doing so, I find SD35 did not take reasonable care to see that Ms. Feist's truck would be reasonably safe in using the premises.
22. Whether ICBC found SD35 at fault is not relevant since there is no evidence of what ICBC based its decision on and in any event, ICBC's fault assessment is not binding on the CRT. I find Ms. Feist is entitled to \$2,493.93 for the cost of truck repairs.
23. The *Court Order Interest Act* applies to the CRT. I find Ms. Feist is entitled to pre-judgment interest on the \$300 deductible she paid from December 23, 2019 to the date of this decision. This equals \$3.11.
24. 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. I find Ms. Feist is entitled to reimbursement of \$125 in CRT fees. She did not claim dispute-related expenses.

## ORDERS

25. Within 14 days of the date of this order, I order the respondent, School District No. 035 (Langley), to pay the applicant, Mona Feist, a total of \$2,622.04, broken down as follows:
  - a. \$2,493.93 in damages,
  - b. \$3.11 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 for CRT fees.
26. The applicant is entitled to post-judgment interest, as applicable.
27. 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.
28. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals 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.

29. 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



30. 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