



Civil Resolution Tribunal

Date Issued: August 20, 2020

File: SC-2020-003991

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Terrace Motors Ltd dba Budget Rent A Car dba Terrace Chrysler,
Terrace Motors Toyota v. Finnegan, 2020 BCCRT 929*

B E T W E E N :

TERRACE MOTORS LTD DBA BUDGET RENT A CAR doing business
as Terrace Chrysler, Terrace Motors Toyota

APPLICANT

A N D :

STUART FINNEGAN

RESPONDENT

A N D :

TERRACE MOTORS LTD DBA BUDGET RENT A CAR doing business
as Terrace Chrysler, Terrace Motors Toyota

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about who is responsible for rental car damage, and related costs and damages. Terrace Motors Ltd doing business as Budget Rent A Car, Terrace Chrysler, and Terrace Motors Toyota (Terrace Motors), the applicant and respondent by counterclaim, rented a car to Stuart Finnegan, the respondent and applicant by counterclaim. Mr. Finnegan collided with another vehicle while driving the rental car.
2. Terrace Motors says Mr. Finnegan owes it \$2,516.01 for the cost of repairing the collision damage, an unpaid rental fee, and 14 days of lost rental income because of the collision. Mr. Finnegan denies that the collision caused any damage to the rental car, because only the side view mirror contacted the other car. He says the only reason for the collision was that the rental car did not have adequate winter tires. Mr. Finnegan counterclaims for \$4,078 as the value of his inconvenience, lost income and 4 hours of lost work, missed customer appointments, and lost contracts, due to the collision. Terrace Motors says the rental car was equipped with adequate winter tires rated “M+S” (mud and snow), and says that it bears no fault for the collision, so it owes nothing.
3. In this dispute, Terrace Motors is represented by a manager, HD. Mr. Finnegan is 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. This dispute involves an “it said, he said” scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or CRT proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Keeping in mind that the CRT’s mandate includes proportionality and a speedy resolution of disputes, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I decided to hear this dispute through written submissions.
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.
8. Mr. Finnegan said that he wanted HD, the “owner” of Terrace Motors, to pay the counterclaimed amount. However, Mr. Finnegan does not otherwise suggest that HD should be personally liable, and Mr. Finnegan’s counterclaim does not name HD as a party. So, my decision does not consider whether HD is personally liable for Mr. Finnegan’s counterclaim.
9. I note that Mr. Finnegan did not name the Insurance Corporation of British Columbia, or the other driver, in his counterclaim, and does not seek a decision apportioning collision liability between himself and the other driver. I find this dispute is not about assigning fault for the collision between Mr. Finnegan and the other driver. Rather, this dispute is about which of Terrace Motors and Mr. Finnegan are responsible for rental car damage and its consequences.

ISSUES

10. The issues in this dispute are:

- a. Should Terrace Motors have provided different tires with the rental car?
- b. Does Mr. Finnegan owe \$2,516.01 for collision repairs, an unpaid rental fee, and 14 days of lost rental income?
- c. Does Terrace Motors owe \$4,078 in damages for inconvenience, lost work and income, missed appointments, and lost contracts?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Terrace Motors, as the applicant, must prove its claims on a balance of probabilities. Mr. Finnegan, as the applicant by counterclaim, must prove his counterclaims to the same standard. I have read all the submitted evidence, but I refer only to the relevant evidence needed to provide context for my decision.
12. The undisputed evidence is that Mr. Finnegan rented a car from Terrace Motors on January 20, 2019. It was snowy. Mr. Finnegan signed an inspection slip listing pre-existing damage to the rental car, but he did not inspect the car's tires despite the snowy conditions. Mr. Finnegan says he was unable to inspect the rental car tires before departure because of heavy snow. I find this argument unpersuasive, as Mr. Finnegan did not explain why he was unable to remove enough snow from the tires to view the tires' sidewall markings and tread.
13. After leaving Terrace Motors, Mr. Finnegan says he found the car was slipping and sliding in the snow. Mr. Finnegan says he parked the car at his hotel and walked into town, because "it was unsafe to drive." He says he tried to contact Terrace Motors several times about the car's tires that day, but his calls were not answered. However, Mr. Finnegan provided no evidence, such as mobile phone records, text messages, or emails, showing any attempts to contact Terrace Motors. Mr.

Finnegan says he was “left with no choice” but to return the car to Terrace Motors, because “any person in my position would not continue to drive a rental car that was unsafe and skidding on the road due to tires that were bald.” He also says, “I could see the tires were not adequate to drive in winter snow.”

14. Mr. Finnegan says he decided to return the car to Terrace Motors the next day, January 21, 2019. He says that while approaching a red light at 10 to 15 kilometres per hour, the rental car slid and “sideswiped” another vehicle. Mr. Finnegan says police attended the scene because traffic was blocked while Mr. Finnegan and others pushed the rental car out of a snowbank. Mr. Finnegan then drove the rental car to Terrace Motors. Mr. Finnegan says there was no damage to the rental car, and the other car only had a dark mark where the rental car side mirror had brushed it. Weeks later, Terrace Motors says it determined that the rental car had been damaged in the collision, and sought a repair payment from Mr. Finnegan.

Should Terrace Motors have provided different tires with the rental car?

15. Mr. Finnegan argues that Terrace Motors was negligent because it provided inadequate rental car tires. To show negligence, Mr. Finnegan must prove that Terrace Motors owed him a duty of care and breached a reasonable standard of care, and that Mr. Finnegan sustained damage that was caused by Terrace Motors’ breach. Mr. Finnegan says, essentially, that Terrace Motors’ alleged failure to provide adequate winter tires was a breach of the appropriate standard of care.
16. So, does the evidence show the rental car tires were inadequate? Mr. Finnegan says that rental car companies are required to provide adequate winter tires on their vehicles. In particular, he says that winter tires or chains are required on most routes in British Columbia from October 1 to April 30, but he provided no evidence supporting this statement. Section 208 of the *Motor Vehicle Act* says that the minister responsible for the *Transportation Act* may require winter tires to be used on certain roads at certain times, but there is no evidence before me showing that winter tires were required at the time of Mr. Finnegan’s car rental on the roads he drove. Further, section 208 says that a person who **drives or operates** a vehicle

without required winter tires commits an offence, not a person who owns or rents out a vehicle (my bold emphasis added).

17. I find the evidence fails to prove that any legislation or contract required Terrace Motors to provide winter tires on the rental car. Even if I am wrong and adequate winter tires were required, I find the evidence does not show Terrace Motors failed to provide them or breached the standard of care, for the reasons below.
18. Under the *Motor Vehicle Act Regulations* section 7.162, winter tires must have 3.5 millimetres of tread depth, and must be labelled with either the letters “M” and “S”, or a 3-peaked mountain/snowflake symbol. Mr. Finnegan says that the rental car tires were not winter tires, and were “bald.”
19. Mr. Finnegan did not check the car’s tires before leaving Terrace Motors. He says they were not “winter tires,” but provided no information or evidence about the model or the ratings of the equipped tires. Terrace Motors says the tires were M+S rated. On balance, I find the tires were M+S rated winter tires. Further, there is no evidence before me showing the tires’ actual tread depth, such as measurements or photos or witness statements, other than Mr. Finnegan’s unsupported arguments that the tires were “bald.” So, I find the evidence fails to show that there was less than 3.5 millimetres of tread. As a result, I find the evidence does not show the rental car was equipped with inadequate or non-winter tires. On the evidence before me, I find the car tires met the required standard of care.

Does Mr. Finnegan owe \$2,516.01 for collision repairs, an unpaid rental fee, and 14 days of lost rental income?

20. There is little written evidence of the parties’ car rental agreement. An unsigned one-page car rental invoice shows there was no charge for the rental. Terrace Motors says that when Mr. Finnegan returned the car, one of its employees, M, gave Mr. Finnegan the car rental for free, and provided him with a 4 wheel drive vehicle. Mr. Finnegan says the 4 wheel drive vehicle had winter tires, which Terrace Motors says were also M+S tires. I find that this free rental was simply a price

adjustment, and did not render the rental contract “void” as Mr. Finnegan alleges. Further, although Mr. Finnegan says he obtained a free car rental coupon from “Budget head office” after complaining to it about the rental car, I find this is a different company than Terrace Motors, and that the coupon was not an admission of liability.

21. In any event, the rental invoice does not say who is responsible for vehicle damage. However, the parties agree that Mr. Finnegan signed a vehicle inspection slip when he picked up the car, that listed pre-existing damage. The parties also agree that no additional damage was noted on the slip when Mr. Finnegan returned the car. There are two undated inspection slips signed by Mr. Finnegan in evidence, and I find each lists identical pre-existing damage. Immediately above Mr. Finnegan’s signature on both slips are the words (capitalization in original): “RENTER RESPONSIBLE FOR ALL DAMAGE AT TIME OF RETURN THAT IS NOT NOTED ON THIS VEHICLE INSPECTION REPORT.” Having considered all the evidence, I find Mr. Finnegan agreed to be responsible for any new vehicle damage, including collision damage.
22. Even if I had found the rental car had poor tires that were prone to slipping and skidding, I still would have found that Terrace Motors was not responsible for any collision damage, for the following reasons.
23. I found above that Mr. Finnegan did not provide a persuasive reason why he was unable to check the markings and tread of the rental car tires before departing Terrace Motors. He continued to drive the rental car despite finding it unsafe for the road conditions, including after a collision caused by skidding and sliding. By doing so, I find Mr. Finnegan accepted any risk of collision damage resulting from inadequate tires. So, I find Mr. Finnegan is liable to Terrace Motors for the cost of any collision damage to the rental car. However, as explained below, I also find Terrace Motors has failed to prove that the collision caused any damage, or the value of any collision-related damage.

24. Terrace Motors does not deny that no additional damage was recorded on the vehicle inspection slips after Mr. Finnegan returned the rental car following the collision. Terrace Motors says that its employee, M, felt rushed or pressured by Mr. Finnegan during the return process, but there is no witness statement from M or other evidence supporting that argument, so I do not find it persuasive. Terrace Motors says that it did not adequately inspect the right side of the vehicle until after it heard from ICBC about the collision, weeks after it occurred. Only then did Terrace Motors attribute right-sided damage to Mr. Finnegan's collision. Terrace Motors did not say why it attributed this unspecified damage to the collision, and how it knew it was not the pre-existing damage noted on the vehicle inspection slips, or unnoticed damage that occurred after the collision. I find this casts doubt on the presence or amount of alleged collision damage.
25. I find the evidence does not reveal any adequate description of the alleged collision damage, as opposed to pre-existing damage. Terrace Motors provided an email from an ICBC employee assigning fault for the collision among the drivers, but it did not say whether the rental car was damaged. There are no police reports or other supporting evidence describing whether any vehicle damage occurred, or the nature of such damage. There are also no photos of the alleged collision damage in evidence.
26. Terrace Motors provided what it called an ICBC inspection document, which I find contains an estimate of the cost of repairing certain parts of the rental car's front bumper and right door areas. However, the report does not describe the reasons for each repair or the nature of the damage, other than saying the type of loss for the whole report was "collision". The evidence does not show, and Terrace Motors does not say, that the inspector knew about the pre-existing rental car damage as recorded on the vehicle inspection slips signed by Mr. Finnegan, including on the front bumper and right door. On balance, I find the inspector did not know about the pre-existing damage. Similarly, a May 20, 2020 repair invoice for \$1,256.61 shows that certain repairs were performed to the front bumper and right door, but it does not state the nature or cause of the damage repaired. I note that Terrace Motors

says it did not rent the car for a period of 1 month, but the repairs were performed 4 months after the collision. So, I also find it is possible that additional damage occurred after the collision during later rentals.

27. Terrace Motors bears the burden of proving that collision damage occurred. Having weighed the evidence, I find it is not sufficient to prove that the estimated or actual repairs were related to collision damage, and not to damage from another cause.
28. Even if collision damage had been proven, I also find the evidence fails to prove the value of any collision damage repairs. As noted, the repair invoice does not say why the repairs were performed, or whether each was for collision damage or other damage. Also, despite the ICBC report being for a "collision," I find the estimated repairs could have been for damage that ICBC did not know was pre-existing.
29. Overall, I find Terrace Motors has not met its burden of proving that the collision damaged the rental car, and if so, what the collision-specific damage was worth.
30. I noted above that Terrace Motors' employee, M, provided the rental car for free. Terrace Motors says M did not have the authority to offer a free rental, and now wants Mr. Finnegan to pay the rental fee. I find that M was acting as an employee of Terrace Motors, and it appeared to Mr. Finnegan she had authority to offer a free rental. I find Mr. Finnegan accepted this price change in exchange for his disappointing experience with the rental car. I find that the free rental was a binding agreement, and Terrace Motors is not now entitled to break that agreement. I find Mr. Finnegan does not owe a rental fee.
31. Terrace Motors says the rental car was unavailable to rent for 1 month, although it claims only 2 weeks of lost rental income from Mr. Finnegan. However, Terrace Motors' own arguments show that it was unaware of any collision damage until it inspected the car following correspondence from ICBC. Terrace Motors does not explain if, or why, it chose not to re-rent the car before learning of the collision damage. The evidence also shows that Terrace Motors waited 4 months before repairing the rental car, from which I infer that it re-rented the car before the May

2020 repairs. I find this means the car remained in a rent-able state. In any event, given my finding that Terrace Motors failed to prove any collision damage, I find that it cannot successfully claim for lost rental revenue from such damage. Even if collision damage had been proven, I find Terrace Motors failed to mitigate its damages by not having the car inspected and repaired immediately. I also note Terrace Motors provided no evidence showing that it had to turn down car rental requests because the rental car was unavailable, or supporting the value of 2 weeks of lost car rentals. So, I find Mr. Finnegan owes Terrace Motors nothing for lost car rental income.

32. I dismiss Terrace Motors' claim for \$2,516.01 for collision repairs, an unpaid rental fee, and lost rental income.

Does Terrace Motors owe \$4,078 in damages for inconvenience, lost work and income, missed appointments, and lost contracts

33. Mr. Finnegan says that in addition to inconvenience, he lost 4 hours of work and other income because of the collision. He also says that because he missed business appointments during that time, he lost customer contracts.
34. First, I determined above that the evidence failed to show the rental car tires supplied by Terrace Motors were inadequate, and failed to show that Terrace Motors was liable for any collision damage. Second, as between Terrace Motors and Mr. Finnegan only, I found that even if the rental car had inadequate tires, Mr. Finnegan accepted responsibility for rental car damage and his collision-related losses by continuing to operate a car he considered to be unsafe. Therefore, I find Terrace Motors is not liable for Mr. Finnegan's counterclaimed amounts.
35. Even if I had found that Terrace Motors was liable for collision-related losses, I would not have awarded Mr. Finnegan the counterclaimed damages because I also find he has failed to prove the amount of those damages. He provided no evidence supporting the value of his inconvenience. He provided no evidence of supporting the amount of his lost wages, or the amount of lost income. Mr. Finnegan provided

calendar entries showing his missed “potential customer” business appointments around the time of the collision, but provided no evidence showing what the appointments were for, or that he failed to conclude contracts or other business because he missed these appointments.

36. I also note that inconvenience damages may be awarded in situations involving “peace of mind” contracts, where the contract’s subject matter is to provide pleasure, relaxation, or peace of mind (see *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30 at paragraphs 41 to 47). I find the parties’ car rental contract was not a “peace of mind” contract. *Fidler* says that mental distress damages may also be recoverable under other types of contracts, where an object of the contract is to secure a psychological benefit the parties should have known, when breached, could cause significant mental suffering. I find it was not a purpose of the rental contract to secure a psychological benefit, or that Mr. Finnegan suffered mental distress beyond minor inconvenience, so I also would have declined to award inconvenience damages on this basis.
37. I dismiss Mr. Finnegan’s claim for \$4,078 for inconvenience, lost work and income, missed appointments, and lost contracts.

CRT FEES AND EXPENSES

38. 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. Neither party was successful in its claims, and neither party claimed CRT dispute-related expenses. So, I order no reimbursement of CRT fees or expenses.

ORDERS

39. I dismiss Terrace Motors’ claims, Mr. Finnegan’s counterclaims, and this dispute.

Chad McCarthy, Tribunal Member