



# Civil Resolution Tribunal

Date Issued: September 30, 2020

File: SC-2020-000649

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fraser v. ICBC*, 2020 BCCRT 1109

**BETWEEN:**

SANDRA FRASER

**APPLICANT**

**AND:**

INSURANCE CORPORATION OF BRITISH COLUMBIA and  
ENTERPRISE RENT-A-CAR CANADA COMPANY/LA COMPAGNIE  
DE LOCATION D'AUTOS ENTERPRISE CANADA

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This small claims dispute is about an allegedly unsafe rental vehicle.
2. The applicant, Sandra Fraser, says that the respondent insurer, Insurance Corporation of British Columbia (ICBC), failed to provide her with a rental vehicle

equipped with snow tires, despite her repeated requests. Ms. Fraser amended the original Dispute Notice to also include the respondent rental vehicle provider, Enterprise Rent-A-Car Canada Company/La Compagnie de Location D'Autos Enterprise Canada (Enterprise).

3. Ms. Fraser says that because the rental vehicle ICBC and Enterprise provided her did not have snow tires, the car slid off the road in winter conditions. Although the rental vehicle was not damaged, she says this near accident has caused her mental anguish, including anxiety, insomnia, and psychosomatic ailments. Ms. Fraser claims \$5,000 in damages for mental distress.
4. ICBC says that it authorized Enterprise to provide Ms. Fraser with a rental car that had winter tires in accordance with her request. It says it was Enterprise's obligation to provide Ms. Fraser with a properly equipped vehicle. ICBC also says it is not a proper respondent to this dispute.
5. Enterprise failed to file a Dispute Response as required and has not participated in this dispute. So, Enterprise is technically in default, as discussed further below.
6. Ms. Fraser is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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.

9. 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.
10. 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.
11. As a preliminary matter, I address ICBC's submission that it is not a proper party to this dispute. I disagree. As discussed below, ICBC reserved and paid for Ms. Fraser's rental vehicle. Part of Ms. Fraser's claim is that ICBC did not properly authorize, communicate, or confirm with Enterprise that her rental vehicle be equipped with snow tires. Therefore, I find that ICBC is a properly named party to this dispute.

## **ISSUES**

12. The issues in this dispute are:
  - a. Was Ms. Fraser's rental vehicle equipped with snow tires?
  - b. If not, is ICBC or Enterprise or both responsible for Ms. Fraser's alleged near accident?
  - c. If so, what damages are Ms. Fraser entitled to, if any?

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, the applicant Ms. Fraser bears the burden of proof on a balance of probabilities. Ms. Fraser and ICBC have provided evidence and

submissions in support of their respective positions. While I have considered all this information, I will refer to only that which is necessary to provide context to my decision.

14. This dispute stems from when Ms. Fraser reported her vehicle stolen to ICBC on November 12, 2019. As part of her contract of insurance, ICBC authorized a rental vehicle for Ms. Fraser and sent a vehicle reservation to Enterprise on November 22.
15. ICBC says that on November 24, 2019, Enterprise advised it that Ms. Fraser requested snow tires on the rental vehicle. ICBC submitted its claim file notes showing that it authorized an additional \$10 per day charge for snow tires on November 25, 2019. ICBC also submitted its automated rental management system (ARMS) printout with Enterprise, which show that Enterprise received ICBC's authorization for winter tires and that Ms. Fraser also picked up the rental car on November 25, 2019.
16. Ms. Fraser says that Enterprise provided her with a vehicle equipped with all-season tires, despite her request for snow tires. She provided statements from 2 witnesses who observed that Ms. Fraser's rental vehicle was equipped with all-season tires. ICBC also submitted photos of the rental vehicle in question, showing the tires on it were rated "M+S", or mud and snow, but they did not appear to have the mountain symbol to indicate they were winter tires. I am satisfied on the evidence that Enterprise provided Ms. Fraser with a vehicle equipped with all-season "M+S" tires, rather than snow tires.
17. Given ICBC's evidence that it authorized the extra charge for snow tires and that it communicated this to Enterprise, I find that ICBC was not responsible for providing her with a rental car equipped with "inadequate" tires, as alleged. I find that Ms. Fraser has not proven any other basis on which ICBC should be responsible for her claimed damages. Therefore, I dismiss Ms. Fraser's claims against ICBC.
18. Ms. Fraser says that while driving the rental vehicle with "inadequate" tires, she encountered winter conditions and the vehicle slid off the road. She says a branch

got stuck in the car's undercarriage during this incident, and she needed assistance from a car garage to remove it. Ms. Fraser says she had her young granddaughter in the vehicle with her and while neither of them was physically injured, Ms. Fraser says she has suffered mental anguish as a result of the near accident and what she described as closely avoiding "possibly fatal consequences".

19. Ms. Fraser did not provide the date of this near accident. ICBC says that during the facilitation stage of this dispute, Ms. Fraser agreed the incident "most likely" occurred on December 2, 2019, which Ms. Fraser does not dispute.
20. The ICBC ARMS printout shows that Ms. Fraser returned the rental vehicle to Enterprise on December 11, 2019, which was the date her rental authorization from ICBC expired. ICBC's claim file notes show that Ms. Fraser first reported the near accident to ICBC on January 22, 2020. The notes show she did not report any physical or psychological injuries from the incident at that time, just that she was unhappy about not receiving a car with snow tires.
21. Ms. Fraser did not provide any details about the winter conditions she encountered, or her location at the time of the incident. She also provided no evidence to show that if the rental vehicle had been equipped with snow tires, the incident would not have occurred. Ms. Fraser says that she had repeatedly phoned both ICBC and Enterprise about getting a car with snow tires but did not explain why she continued to drive the car in winter conditions if she thought it was unsafe to do so.
22. Further, Ms. Fraser has provided no medical evidence to support her psychological injuries claim, which I would expect to exist if her anxiety and insomnia was as severe as she claims. While a specific medical diagnosis is not required, there must be some evidence to show that Ms. Fraser's condition rose above a trivial or minor inconvenience. I find the non-binding decision of *Eggberry v. Horn et al*, 2018 BCCRT 224 persuasive and applicable. It states that claims for mental distress must be supported by medical evidence, and here there is none.

23. Ms. Fraser also submitted a letter from her brother, which stated that Ms. Fraser had paid him \$600 for gas, as he had driven her to various locations while she was without a vehicle. However, Ms. Fraser did not explain how her being without a vehicle was related to this dispute rather than her separate vehicle theft claim, which is not before me in this dispute. Further, she did not explain why she would not have incurred this gas expense in any event, had she driven herself on these trips.
24. So, while I accept that Enterprise provided Ms. Fraser with a rental vehicle equipped only with all-season "M+S" tires when ICBC had authorized the extra cost for snow tires, I find there is insufficient evidence to conclude that this caused Ms. Fraser's claimed damages.
25. Ordinarily, Enterprise would be held liable because liability usually is assumed when a party is in default. However, given the facts and my findings that Ms. Fraser has not proven her damages, I dismiss Ms. Fraser's claim against both respondents.
26. 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 find that Ms. Fraser was unsuccessful and so I dismiss her claim for CRT fees. ICBC did not pay any fees.
27. ICBC claims \$300.30 for a transcript of a January 22, 2020 special investigation unit interview with Ms. Fraser about her vehicle theft claim. While ICBC was successful in this dispute, I did not rely on the transcript and I find the claimed expense was not reasonably incurred for this dispute. Therefore, I decline to order its reimbursement.

## **ORDER**

28. I dismiss Ms. Fraser's claims and this dispute.

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Kristin Gardner, Tribunal Member