



# Civil Resolution Tribunal

Date Issued: November 19, 2020

File: SC-2020-004710

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nieken-Spence v. Topacio*, 2020 BCCRT 1309

BETWEEN:

MATTHEW NIEKEN-SPENCE

**APPLICANT**

AND:

LISA TOPACIO

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about payment for van repairs.

2. The applicant, Matthew Nieken-Spence, repaired a 1975 VW van belonging to the respondent, Lisa Topacio. Mr. Nieken-Spence says he returned the van to Ms. Topacio in April 2020, but she refused to pay the full repair costs. He claims \$1,750.51 for parts and \$1,568.00 for labour, for a total of \$3,318.51.
3. Ms. Topacio agrees that Mr. Nieken-Spence repaired her van. She says she only agreed to pay for parts, not labour. Ms. Topacio says she owes Mr. Nieken-Spence \$710.04, based on his receipts for parts.
4. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 the interests of justice.
7. Section 42 of the CRTA says 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 how much Ms. Topacio must pay Mr. Nieken-Spence for van repairs.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this the applicant, Mr. Nieken-Spence, must prove his claim on a balance of probabilities. I have reviewed all evidence provided but only refer to that needed to explain, and give context to, my decision.
11. Between November 2018 and August 2019 Mr. Nieken-Spence worked on Ms. Topacio's van and returned it to running order. Ms. Topacio paid Mr. Nieken-Spence \$4,800 for these repairs. However, the van continued to have engine trouble. None of this is disputed.
12. The parties agree they met in August or September 2019 and entered into a verbal agreement. Mr. Nieken-Spence agreed to fix the engine and Ms. Topacio agreed to pay for the cost of parts only, no labour.
13. On April 9, 2020 Mr. Nieken-Spence texted Ms. Topacio a list of the parts used for a total cost of \$1,250. Neither party provided a copy of the text but agree that the message was sent.
14. The parties agree that Ms. Topacio took her van back on April 13, 2020 and agreed to pay Mr. Nieken-Spence \$1,250 for the parts he had used. They agreed that Ms. Topacio could pay in May, 2020, when she would have the money.
15. After April 9, 2020, Mr. Nieken-Spence asked Ms. Topacio for a further \$256.69 for parts he had used but forgotten to add to the original list. Ms. Topacio told Mr. Neiken-

Spence she would only pay the original \$1,250 and asked him to provide parts receipts. Mr. Nieken-Spence later provided some of his parts receipts to Ms. Topacio. None of this is disputed.

16. Based on his May 20, 2020 invoice, I find Mr. Nieken-Spence charged Ms. Topacio \$3,318.51 for parts and labour for the engine repairs. He says it is fair because it is comparable to estimates he provided from 2 other repair shops for the same work. I find the other estimates not relevant to this dispute as the issue is not whether Mr. Nieken-Spence's invoice is reasonable, but whether it reflects the parties' verbal agreement.
17. Ms. Topacio says she should not have to pay the full \$3,318.51 claimed for several reasons.
18. First, she says Mr. Nieken-Spence took a long time to complete all the van repairs. As there is no evidence, or submission, that the parties agreed on a time frame for the repairs I find Mr. Nieken-Spence did not breach the parties' verbal agreement by taking a long time to fix the van.
19. Second, Ms. Topacio says the van is still not working properly and relies on her photo of the van leaking oil. I infer Ms. Topacio claims Mr. Nieken-Spence's engine repairs are deficient. The burden is on Ms. Topacio to prove that Mr. Nieken-Spence's repair job is deficient.
20. Where the subject matter is technical, or beyond common understanding, expert evidence is often needed to help the decision maker determine the appropriate standard of care (see *Bergen v. Guliker*, 2015 BCCA 238). I find engine repair is a technical subject and beyond common understanding and requires expert evidence to prove. Ms. Topacio has provided no such evidence. So, I find she has failed to prove Mr. Nieken-Spence's engine repair work is deficient.
21. Third, Ms. Topacio says that she never agreed to pay labour costs. Mr. Nieken-Spence says Ms. Topacio breached the agreement by refusing to pay the full parts costs in May 2020, so he is no longer bound by it. I disagree.

22. I find Ms. Topacio did not refuse to pay, but rather disagreed with the amount Mr. Nieken-Spence was asking for. I find Ms. Topacio did not breach the agreement, so Mr. Nieken-Spence is still bound by his agreement not to charge labour costs for the engine repair. I find Mr. Nieken-Spence is not entitled to payment of \$1,568 for labour.
23. Fourth, Ms. Topacio says Mr. Nieken-Spence overcharged her for the parts he used, based on his invoice and the receipts he provided for most of the parts. Mr. Nieken-Spence acknowledges that he charged Ms. Topacio more than what he paid for the parts. He says he charged the list price, even though he paid a discounted price, as a mechanic. He says this is standard in the industry and the list price is what he meant when he agreed to charge Ms. Topacio only parts costs for the engine repair.
24. As the applicant, the burden is on Mr. Nieken-Spence to prove his claim, including his claim that he is entitled to payment of the list price of the parts used, and not his actual cost. There is no evidence from either party about whether the parts costs agreed to was list cost, or Mr. Nieken-Spence's actual cost. So, I find Mr. Nieken-Spence has failed to prove that Ms. Topacio agreed to pay the list price for parts when Mr. Nieken-Spence's actual costs were less.
25. I disagree with Ms. Topacio's calculation of \$710.04 as it takes into account the difference between the list price and the actual cost of parts Mr. Nieken-Spence used in his first set of repairs, before August 2019. I find the first set of repairs were part of a separate agreement which ended with Ms. Topacio paying \$4,800 and taking back the van. That first agreement is not before me in this dispute and so I will only consider the cost of the parts used in the second set of repairs, after August 2019.
26. Based on the parts listed in the May 20, 2020 invoice, and the receipts for those parts which Mr. Nieken-Spence gave to Ms. Topacio, I find Mr. Nieken-Spence is entitled to reimbursement of \$608.60 as his cost for parts, including the alternator, cylinder head, machine shop charges, push rod tube seals, fuel level sending unit, speedometer cable and electric ignitor.

27. Neither party provided receipts for the remainder of the identified parts, including the cylinder head temperature sensor, engine oil, used flywheel, and spark plugs. Mr. Nieken-Spence charged Ms. Topacio \$271.69 for those parts in his May 2020 invoice. There is no dispute that he actually used those parts so I find he is entitled to some payment for them. As the charged cost is likely more than Mr. Nieken-Spence's actual cost, I find he is entitled to reimbursement of \$200 for those parts, on a judgment basis. Overall, I find Mr. Nieken-Spence is entitled to payment of \$808.60 for parts costs.
28. The *Court Order Interest Act* applies to the CRT. Mr. Nieken-Spence is entitled to pre-judgment interest on the \$808.60 parts costs from May 20, 2020, the date of his invoice, to the date of this decision. This equals \$3.23.
29. 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. As Mr. Nieken-Spence was only partially successful in this dispute, I find he is entitled to reimbursement of \$87.50 as half his paid CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

30. Within 30 days of the date of this order, I order Ms. Topacio to pay Mr. Nieken-Spence a total of \$899.33, broken down as follows:
  - a. \$808.60 in debt,
  - b. \$3.23 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$87.50 in CRT fees.
31. Mr. Nieken-Spence is entitled to post-judgment interest, as applicable.
32. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

33. 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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Sherelle Goodwin, Tribunal Member