



Civil Resolution Tribunal

Date Issued: July 29, 2021

File: SC-2021-000551

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yee v. Rapid Auto Glass Ltd.*, 2021 BCCRT 827

BETWEEN:

TERENCE YEE

APPLICANT

AND:

RAPID AUTO GLASS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about alleged vehicle damage. The applicant, Terence Yee, hired the respondent, Rapid Auto Glass Ltd (Rapid), to repair a broken window in his vehicle. Mr. Yee says a Rapid employee vaped inside his vehicle and drove it aggressively, which he says damaged his vehicle and required him to have it

sanitized. He claims \$2,200 for vehicle repair costs, \$300 for cleaning costs, and \$500 for mental distress, for a total of \$3,000.

2. Rapid denies damaging Mr. Yee's vehicle and says it sanitized the vehicle before and after completing the window repairs. Rapid says there is no basis for Mr. Yee's claim for mental distress, and it owes Mr. Yee nothing.
3. Mr. Yee represents himself in this dispute and Rapid is represented by an employee or principal.

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). 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.
5. 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.
6. 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.

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. Did Rapid's employee damage Mr. Yee's vehicle?
 - b. Did Rapid's employee vape in Mr. Yee's vehicle, and if so, is Mr. Yee entitled to reimbursement for the cost of sanitizing his vehicle?
 - c. Is Mr. Yee entitled to damages for mental distress?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Yee must prove his claims on a balance of probabilities. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
10. In January 2021, Mr. Yee hired Rapid to repair a broken window in his vehicle after a break-in. Rapid picked up Mr. Yee's vehicle from his home on January 3, 2021 at around noon and returned it on the evening of January 4, 2021 after completing the window repairs. Mr. Yee paid Rapid in full for its services. None of this is disputed.

Did Rapid's employee damage Mr. Yee's vehicle?

11. Mr. Yee says the Rapid employee who picked up his vehicle on January 3, 2021 drove it "deliberately hard" by revving the engine and jumping a curb. He says a mechanic determined that this damaged the vehicle's suspension. Mr. Yee says he drives his vehicle very lightly and has never had any problems with the suspension before this incident. He claims \$2,200 for the cost of repairs. However, for the following reasons, I find Mr. Yee has not proven this claim.

12. I find it was an implied term of the parties' contract that Rapid would drive Mr. Yee's vehicle with reasonable care. Mr. Yee submitted several video clips from dashcam footage of Rapid's employee driving his vehicle. At various points in some of the clips the engine sounds louder than expected, as if the driver is revving the engine. However, I cannot find from the videos alone that the driver was unnecessarily revving the engine or that they were driving "deliberately hard" or in a way that would damage the vehicle. I find the revving noises occurred when the vehicle was accelerating and seem to be more reasonably associated with a driver who was unfamiliar with the vehicle. I also find there is no indication in the dashcam footage that the Rapid employee jumped a curb as Mr. Yee claims.
13. Mr. Yee says that when Rapid returned his vehicle its service light was on, and he says it was not on before Rapid picked up his vehicle. However, Mr. Yee provided no evidence to support this assertion.
14. Mr. Yee obtained repair estimates from BCAA and Southside Nissan (Southside). He says the \$2,200 he claims for repairs is the average between the 2 estimates. The \$2,525.72 estimate from Southside is for labour and materials to replace both rear leaf springs and shock absorbers and to perform a 4-wheel alignment. The \$1,793.04 estimate from BCAA is to replace the rear shock absorbers "and/or strut assembly" and leaf spring set, plus wheel alignment. Neither of these estimates indicate what caused the problems with the suspension or how it was determined that the repairs were required. I find there is no indication in either of these estimates that Rapid's employee damaged the vehicle.
15. Rapid contacted both BCAA and Southside about the estimates. The evidence indicates that both BCAA and Southside may have given Rapid information about their communications with Mr. Yee without his permission. Mr. Yee says that both BCAA and Southside breached his privacy rights by providing Rapid with that information. However, neither BCAA nor Southside are parties to this dispute, so I do not need to address this allegation in this decision. I also find it is unnecessary for me

to consider Rapid's evidence from Southside or BCAA, because I find the estimates Mr. Yee provided are insufficient to prove his claim.

16. Rapid also provided a statement from Orion Huel, the owner of Orion Automotive Inc. (Orion), who it says is an expert in automotive repairs. However, CRT rule 8.3 (2) requires an expert to state their qualifications in any written expert opinion evidence, and the statement does not contain this information. So, I find Orion Huel's statement does not meet the CRT's requirements for expert evidence. However, since Mr. Yee has the burden of proving his claim and I find he has not done so, I find nothing turns on the Orion statement.
17. In summary, I find Mr. Yee has not proven that Rapid's employee damaged his vehicle and I dismiss this claim.

Did Rapid's employee vape in Mr. Yee's vehicle, and if so, is Mr. Yee entitled to reimbursement for the cost of sanitizing his vehicle?

18. Mr. Yee says the Rapid employee who picked up his vehicle on January 3, 2021 vaped inside the vehicle while driving it. Mr. Yee says that on January 6, 2021, after seeing the employee vaping in the dashcam footage, he asked Rapid's representative about its COVID-19 protocols for handling customer vehicles. He says Rapid told him they would follow up with him the following day but never did. He says that since he never received a response from Rapid, and since he no longer trusted Rapid after its employee vaped in his vehicle, he sanitized the vehicle for his family's safety. Mr. Yee claims \$300 for the cost of sanitizing his vehicle.
19. I find it was an implied term of the parties' agreement that Rapid would take reasonable care of Mr. Yee's vehicle while in its possession, which I find includes not vaping or smoking inside the vehicle. Two of the dashcam videos in evidence show puffs of what appears to be smoke along with the sounds of inhaling, exhaling, and coughing. I find this evidence is consistent with Rapid's employee vaping inside Mr. Yee's vehicle, and Rapid does not dispute this. I find this was a breach of the parties' contract. However, Rapid says that when vehicles arrive at its shop it performs a pre-

clean and sanitization, and after the repairs are completed it completes an “in-depth post COVID-19 clean and ANOTHER sanitization.” Rapid says it told Mr. Yee about its cleaning protocols, but it does not specify when it did so. I infer Rapid’s position is that Mr. Yee suffered no damages from Rapid’s breach of contract because of Rapid’s cleaning protocols.

20. Given Rapid’s employee’s behaviour and the COVID-19 pandemic, I find it was reasonable that Mr. Yee lost trust in Rapid, and it was reasonable for him to incur costs to ensure his vehicle was properly sanitized. Mr. Yee submitted a printout from Metrotown Carwash showing it charges \$299 per vehicle for “COVID-19 deep sanitizing”. However, he did not submit an invoice or receipt, so it is unclear if he paid Metrotown Carwash, or anyone, to sanitize his vehicle. However, given the heightened need for safety and cleanliness during the COVID-19 pandemic, I find Mr. Yee is entitled to some compensation for sanitizing his vehicle. Rapid submitted a printout showing that ICBC allows Rapid to claim only \$39.76 for pre-cleaning and post-cleaning sanitization because of COVID-19, but I find this does not represent market pricing. Rapid also says it works closely with a detail shop and the standard price for a full interior detail is \$150, though it does not specify whether \$150 was the standard price before the COVID-19 pandemic or whether any additional sanitizing measures are required during the pandemic.
21. In the absence of an invoice or receipt from Mr. Yee, and considering all the evidence, on a judgment basis I find Rapid must pay Mr. Yee \$200 for the cost of sanitizing his vehicle.

Is Mr. Yee entitled to damages for mental distress?

22. Mr. Yee says that after his experience with Rapid he now has anxiety for his and his family’s health during the COVID-19 pandemic, and a distrust of businesses. He claims \$500 in damages for mental distress. However, the BC Court of Appeal has found that there must be some evidentiary basis for awarding damages for mental distress (see *Lau v. Royal Bank of Canada*, 2017 BCCA 253 at paragraph 48). Aside

from his assertions, Mr. Yee did not submit any medical or other evidence to support his claim, so I dismiss it.

23. The *Court Order Interest Act* applies to the CRT. Mr. Yee is entitled to pre-judgment interest on the \$200 owing, calculated from January 4, 2021, which is the date Rapid returned Mr. Yee's vehicle to him, to the date of this decision. This equals \$0.51.
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. Since Mr. Yee was partly successful, I find he is entitled to reimbursement of half his CRT fees, which equals \$62.50. He did not claim any dispute-related expenses.
25. Rapid claims \$212.80 in dispute-related expenses for a June 16, 2021 invoice from Orion for Orion Huel's statement. However, Rapid was unsuccessful, and generally an unsuccessful party is not reimbursed for such expenses. I see no reason in this case not to follow that general rule. So, I find Rapid is not entitled to reimbursement for this invoice.

ORDERS

26. Within 30 days of the date of this order, I order Rapid to pay Mr. Yee a total of \$263.01, broken down as follows:
 - a. \$200 in damages for the cost of sanitizing the vehicle,
 - b. \$0.51 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
27. Mr. Yee is entitled to post-judgment interest, as applicable.
28. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

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 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.

Sarah Orr, Tribunal Member