



# Civil Resolution Tribunal

Date Issued: August 20, 2021

File: SC-2021-000642

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Davidson v. Island Cruising Ltd.*, 2021 BCCRT 918

BETWEEN:

ROB DAVIDSON and Hillary Davidson

**APPLICANTS**

AND:

ISLAND CRUISING LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about a yacht rental. The applicants, Rob Davidson and Hillary Davidson, say the respondent, Island Cruising Ltd. (Island), provided a faulty yacht and claim \$5,000 as a refund.
2. Island disagrees. It says the Davidsons damaged the boat through their negligence.

3. Mr. Davidson represents the Davidsons. Island's principal, LM, represents it.
4. For the reasons that follow, I find the Davidsons have proven most of their claims. I order Island to pay the amounts set out below.

## **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. Some of the evidence in this dispute amounts to a "they said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
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.

## **ISSUES**

9. The issues in this dispute are as follows:
  - a. Did Island or the Davidsons breach the parties' contract?
  - b. If so, what are the appropriate remedies?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the Davidsons as applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed facts. In May 2020 the Davidsons entered into a written contract with Island to rent a yacht from August 30 to September 6, 2020. Under its terms Mr. Davidson would be the skipper or captain and Ms. Davidson would be the crew. June 2020 invoices show the Davidsons paid \$5,168.80 for the rental.
12. On August 30, 2020, the Davidsons met Island's employee, MM, at the yacht's location. MM told the Davidsons how to operate the yacht. MM and the Davidsons also inspected various parts of the yacht together to make sure they functioned.
13. The Davidsons returned the next day on August 31, 2020. They inspected the yacht and then set sail from the marina. About 20 to 60 minutes later the yacht's engine temperature alarm went off. The Davidsons called MM and MM recommended changing the impeller. The Davidsons did so but after restarting the engine the same alarm went off 2 minutes later. The Davidsons then called LM, who advised the Davidsons to check if there was water coming out the engine exhaust outlet, and if not, to clear the water lines. The Davidsons found water was not coming out, cleared

the lines, and restarted the engine. However, water began to flow into the boat. The Davidsons called MM, and MM arranged for another individual, GW, to tow the boat back to the marina.

14. Once docked GW looked at the yacht and determined that the muffler was leaking water. GW discusses this in an email referenced below. MM removed the muffler and ordered a replacement, which arrived on September 2, 2020. On that same day, Mr. Davidson advised LM that the Davidsons no longer wanted to rent the yacht due to safety concerns.

***Did Island or the Davidsons breach the parties' contract?***

15. Section 14(a) of the contract said that Island guaranteed that if the yacht broke down during the rental, it would complete repairs within 4 hours of being notified or provide compensation for lost vacation time. From the undisputed facts, I find that the Davidsons experienced a breakdown during the rental. Section 14(e)(ii) excluded certain items from this guarantee, but I find the muffler was not one of them. I also find that repairs could not be completed within 4 hours as the replacement muffler did not arrive until September 2, 2020. As such, I find the Davidsons were entitled to compensation under the contract.
16. I also find the Davidsons were not obligated to continue using the yacht for the remaining rental period. The Davidsons say that on the afternoon of September 2, 2020, they asked MM's opinion about using the yacht. They say MM advised he would not and that if it was his boat, he would lift it out of the water for a full engine inspection. Island did not provide any evidence from MM to refute this, so I accept the Davidsons' submission as accurate. I find the Davidsons were not obligated to continue using the yacht given MM's comments.
17. Island alleges that the Davidsons' failure to check the water intake and otherwise ensure the ongoing flow of coolant water caused the engine to overheat and damaged the muffler. Under section 11(a) of the contract, Mr. Davidson warranted that he was competent in the navigation of the yacht, and capable of operating the equipment

provided. So, I find Island essentially alleges that Mr. Davidson breached section 11(a) by breaching the standards of a competent skipper. As Island alleges the breach, I find it has the burden to prove it.

18. Where a dispute's subject matter is technical or outside the knowledge and experience of the ordinary person, expert evidence will likely be necessary to determine the standard of care. See *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119. I find that the proper operation of the yacht is outside the knowledge or experience of an ordinary person. I therefore find that determining whether Mr. Davidson operated the yacht in a competent manner requires expert opinion evidence.
19. Island submitted that Mr. Davidson's failure to check the flow of coolant water caused the engine problems and muffler damage. However, this submission did not come from an expert with stated qualifications or a neutral person, as required by CRT rules 8.3(2) and 8.3(7). So, I find Island's allegations are unproven.
20. Further, I find the evidence about the cause of the engine trouble indicates that the Davidsons were not responsible. GW recounted the events of August 31, 2020 in a September 28, 2020 email to the Mr. Davidson. GW said that MM called him to tow the yacht. GW did so and said that once docked, he inspected the engine and found the problem was the "absolutely wrong" installation of the muffler. He said it "was not up to Marine Best Management Practices" and "no manufacturers installation specifications or instructions were followed". GW did not suggest any other causes or say that the Davidsons were at fault in any way.
21. I find GW's email is expert evidence under the CRT rule 8.3. This is because I find yacht engine repairs is a technical matter, GW stated his qualifications in the email, and I find GW did not act as an advocate. GW said he had over 20 years of marine experience that included employing and overseeing marine diesel engineers and mechanics, marine electricians, marine joiners, and completing major marine refits, insurance claim repairs, and at-sea assistance. MM also followed GW's recommendation to replace the muffler and there is no evidence of any other repairs.

22. Island provided an excerpt from a sailing course manual that says what steps to take when starting a diesel boat engine. It says to check for water coming out of the exhaust outlet, and if not, to shut down the engine immediately. The excerpt also says the water in the exhaust is crucial to engine cooling. While I acknowledge this evidence, it does not directly address the muffler, which GW diagnosed as the problem. It is also not expert evidence about the specific circumstances in this dispute.
23. I also considered whether Island's liability was excluded under the terms of the contract. These terms included an indemnification clause under section 8, a waiver of liability under section 9, and a presumption that the yacht was seaworthy under section 1(b) of the contract. However, I find the general wording of these terms do not override the clearly worded and specific guarantee in section 14 of the contract.

***What are the appropriate remedies?***

24. Under section 14(c) of the contract Island guaranteed it would correct a breakdown within 4 hours of receiving a call. Island also agreed that if it failed to do so, it would provide compensatory sail time or a sailing credit. The sailing credit is based on a formula that accounts for time used. I find that under the formula the credit is equal to \$4,368.19. Given this, I find it appropriate to order Island to pay the Davidsons \$4,368.19 as damages for breach of contract.
25. The *Court Order Interest Act* applies to the CRT. The Davidsons are entitled to pre-judgment interest on the damages award of \$4,368.19 from August 31, 2020, the date of the breach, to the date of this decision. This equals \$19.07.
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 see no reason in this case not to follow that general rule. I find the Davidsons are the largely successful parties. So, I find they are entitled to reimbursement of \$175 in CRT fees. They did not claim for any specific dispute-related expenses, so I order none.

## ORDERS

27. Within 14 days of the date of this order, I order Island to pay the Davidsons a total of \$4,562.26, broken down as follows:
- a. \$4,368.19 as damages for breach of contract,
  - b. \$19.07 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
28. The Davidsons are entitled to post-judgment interest, as applicable.
29. 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.

30. 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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David Jiang, Tribunal Member