



# Civil Resolution Tribunal

Date Issued: January 19, 2022

File: SC-2021-005400

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tamagi v. CBM Services Ltd.*, 2022 BCCRT 71

**BETWEEN:**

MARK TAMAGI

**APPLICANT**

**AND:**

CBM SERVICES LTD.

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about property damage. The respondent, CBM Services Ltd., installed a bike rack in the applicant's strata parking stall, before the applicant Mark

Tamagi owned the strata lot and at the prior owner's request. The applicant says the respondent negligently installed the bike rack, putting it in a dangerous and too-low position. The applicant says when he backed up his car into the stall, the bike rack "hit" his rear glass and smashed it. The applicant claims \$929.77 in damages for his car's replacement glass.

2. The respondent says the bike rack was installed to accommodate the building's piping located above the rack and that there are many other bike racks in the parking lot at the same height. The respondent says that if the rack were any higher a person would have a hard time locking up a bike. The respondent says the applicant caused the damage by backing his car into the bike rack.
3. The applicant is self-represented. The respondent 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). 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

## **ISSUE**

8. The issue is whether the respondent negligently installed the bike rack in the applicant's parking stall, and if so, whether the applicant is entitled to the claimed damages.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicant has the burden of proving his claims, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.
10. The evidence before me is limited. That said, it is undisputed the prior owner of the applicant's strata lot hired the respondent to install a bike rack at the back of their parking stall. The incident occurred on July 3, 2021, 2 days after the applicant moved into the strata lot. In particular, the applicant backed into his parking stall and hit the bike rack, smashing the car's rear glass. As noted, the applicant claims for reimbursement of the \$929.77 he paid to replace the glass.
11. First, this is not a contract claim since it is undisputed the applicant had no contract with the respondent because the applicant did not hire the respondent.
12. So, I turn then to whether the respondent was negligent. To establish negligence, the applicant must prove:
  - a. The respondent owed the applicant a duty of care,

- b. The respondent breached the standard of care,
- c. The applicant sustained damage, and
- d. The damage was caused by the respondent's breach.

(*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

13. The case law is somewhat complex about when a contractor might owe a duty of care to a future occupier, such as the applicant. However, even if I assume the respondent owed the applicant a duty of care, I find the applicant has not proven negligence. My reasons follow.
14. The applicant's submitted evidence does not obviously show that the respondent installed the bike rack too low. The photos in evidence show there are many other bike racks similarly installed and there is no evidence of other occupants having concerns. The photos show that in some locations, including the applicant's parking stall, the bike rack needed to be lower to accommodate piping overhead.
15. Contrary to the applicant's assertion, the fact that other bike racks are installed in a lower position is not determinative. The fact that the applicant damaged his car is not determinative either. I say this because the bike rack was there to be seen and the undisputed evidence is that the applicant had previously bumped the glass when backing in. I find it just as likely on the evidence before me that the damage occurred because the applicant negligently backed his car into the stall too far given the bike rack's known location.
16. Further, the applicant submitted no expert evidence to show that a competent bike rack installer would have installed the bike rack differently. Yet, since I find no obvious defect in the installation, I find expert evidence would be required for this technical matter (see *Bergen v. Guliker*, 2015 BCCA 283). Given the above, I find negligence unproven.
17. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related

expenses. As the applicant was unsuccessful, I dismiss his claim for reimbursement of paid CRT fees. The respondent paid \$50 in CRT fees but made no claim for reimbursement, so I make no order about it. No dispute-related expenses were claimed.

## **ORDER**

18. I dismiss the applicant's claims and this dispute.

---

Shelley Lopez, Vice Chair