Civil Resolution Tribunal

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File: SC-2021-006451

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Krohn v. 1133174 B.C. Ltd.*, 2022 BCCRT 222

B E T W E E N :

LARS KROHN

APPLICANT

A N D :

1133174 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about visitor parking. The applicant, Lars Krohn, parked in visitor parking at a residential development owned or operated by the respondent corporation, 1133174 B.C. Ltd. ("113"). Mr. Krohn did not display a visitor parking pass on his car, and it was towed on 113's instructions. Mr. Krohn says he did not know he needed a parking pass or that his vehicle could be towed without one. He

claims $260.40 for towing charges he paid, $400 for emotional distress and inconvenience, and $20 he allegedly paid a stranger for a ride to the towing company.

2. As explained below, there were no signs saying that a visitor parking pass was required or that vehicles without one could be towed. 113 says the tenant whom Mr. Krohn visited was responsible for informing Mr. Krohn about visitor parking policies and for providing him with a visitor parking pass. So, 113 says it is not responsible for Mr. Krohn's claimed remedies and owes nothing. Neither party makes any claims against the tenant in this dispute.

3. Mr. Krohn is self-represented in this dispute. 113 is represented by an authorized property management employee.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT), which 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 113 unreasonably cause Mr. Krohn's vehicle to be towed?

    b. If so, does 113 owe Mr. Krohn $260.40 for towing fees, $400 for emotional distress and inconvenience, and $20 for a travel expense?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Krohn must prove his claim on a balance of probabilities, meaning "more likely than not". 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.

10. At the outset, I note that the tenant Mr. Krohn visited, KK, signed a residential tenancy agreement with the landlord Devon Properties Ltd. (Devon), and not 113. The parties do not explain the relationship between 113 and Devon, or draw a clear distinction between them. Based on the submitted evidence, I find that 113 is likely the owner or operator of the rental complex known as Orchard Walk, where KK resides. I find that 113 likely hired Devon to be Orchard Walk's property manager. It is undisputed that 113 is responsible for parking policies and vehicle towing contracts at Orchard Walk.

11. The following facts are also undisputed:

    a. 113 says it enforced its visitor parking policies less strictly in the past.

b. 113 says it changed its parking policy on July 24, 2021, and hired a towing company to patrol its visitor parking and tow away any vehicles that did not display a valid visitor parking pass.

c. 113 sent a policy change notice to its tenants, and posted it on a tenant notice board in the lobby area and in elevators, which are not publicly accessible.

d. Mr. Krohn visited KK for 2 hours on August 12, 2021, and parked in visitor parking without displaying a visitor pass. During this time, a towing company towed away Mr. Krohn's vehicle on 113's standing instructions.

e. Mr. Krohn noticed his vehicle was missing at 8:00 p.m. He retrieved it from the towing company at about 9:00 p.m. by paying $260.40 in fees.

12. Mr. Krohn says other buildings he has lived in or visited have had clear signs identifying any parking pass or registration requirements. Mr. Krohn says 113's parking signage did not indicate that he needed a visitor parking pass. I find that the visitor parking spaces where Mr. Krohn parked each have a space number and "visitor" painted on the asphalt, but are otherwise unmarked. I find that adjacent spaces reserved for "contractor parking" are labelled with those words on the asphalt, and also feature signs in front of each space that say, "Contractor parking only, please register with the office, violators will be towed." 113 does not explain why the contractor spaces have tow warnings while the visitor spaces do not. Mr. Krohn says the lack of visitor parking signs led him to believe he was free to park in visitor parking without taking any further steps, such as registering or displaying a pass. He says he was parked correctly, and 113 unreasonably towed his vehicle.

13. Mr. Krohn says, and 113 does not dispute, that KK never told him about any visitor parking requirements and never gave him a visitor parking pass. As noted, 113 says that under the rental agreement KK was required to inform Mr. Krohn about any parking policies and provide him with a visitor parking pass as necessary. However, Mr. Krohn is not a party to KK's rental agreement, and so it does not bind Mr. Krohn. So, I find that KK's alleged failure to inform Mr. Krohn about visitor parking policies

does not necessarily relieve 113 of all responsibility to notify visitors like Mr. Krohn about those policies.

14. Mr. Krohn was not an Orchard Walk resident and did not have a rental agreement with 113 or Devon. Further, Mr. Krohn did not pay 113 anything to use visitor parking, and there were no visitor parking terms and conditions posted in the parking area. So, I find Mr. Krohn did not agree to a parking contract with 113 simply by parking in a visitor parking space. I find there was no contract of any kind between the parties. I also find the law of bailment is not applicable to this dispute because Mr. Krohn's claim is not about damage to, or inappropriate care for, his vehicle by 113.

15. As there was no contract and no bailment relationship, I find that 113 towed Mr. Krohn's vehicle under the law of trespass (see *Webster v. Robbins Parking Service Ltd.*, 2016 BCSC 1863 at paragraph 87). In other words, if Mr. Krohn parked his vehicle in visitor parking without permission, he trespassed on 113's property. Unless prohibited by law, a private property owner may have unauthorized vehicles towed from its property.

16. However, Mr. Krohn says he reasonably believed that he had 113's permission to park in visitor parking without displaying a pass. He says 113 was negligent and failed to meet an appropriate standard of care by towing his vehicle without adequate notice of the parking pass requirement. Mr. Krohn says this dispute is similar to one considered in a previous CRT decision, *Cordero v. The Owners, Strata Plan BCS 1816*, 2020 BCCRT 394. I agree that *Cordero* considered a similar situation, as did *Fung v. The Owners, Strata Plan LMS 0013*, 2018 BCCRT 840. I am not required to follow those decisions, but I find their reasoning is persuasive and applicable here.

17. To establish negligence, Mr. Krohn must prove: a) 113 owed Mr. Krohn a duty of care, b) 113 breached the applicable standard of care, c) Mr. Krohn sustained reasonably foreseeable damage, and d) 113's breach caused the damage (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

18. Given that 113 allowed public visitor parking, I find that 113 owed a duty of care to visitors using visitor parking, including Mr. Krohn. I also find that the claimed $260.40 towing fee, shown on a submitted invoice, foreseeably resulted from 113's instructions to tow vehicles not displaying a visitor parking pass. I address Mr. Krohn's other claimed remedies below.

19. For the following reasons, I also find that 113 breached the applicable standard of care by not providing clear signage or other adequate notice that visitors must display a valid parking pass or risk being towed. I find the parking spaces labelled only with "visitor" were an invitation to park there, and reasonably led Mr. Krohn to believe that he was permitted to park there without doing anything else. Further, I find the absence of visitor parking signs, and the presence of adjacent contractor parking registration and towing signs, also indicated that no visitor parking passes were required. Given the parking signage, I find there was no reason for Mr. Krohn to make further parking inquiries, and he reasonably believed he was parked properly.

20. Although Mr. Krohn says neither KK nor others informed him about visitor parking policies, he did not submit a witness statement from KK. However, 113 agrees that KK failed to inform Mr. Krohn about visitor parking policies, so I decline to draw an adverse inference against Mr. Krohn for failing to provide a statement from KK.

21. Mr. Krohn also says, and 113 does not deny, that he had never been towed or received any warnings about visitor parking passes during his previous visits before and after the parking policy change. Mr. Krohn says he noticed others were parked in visitor parking with no passes on his previous visits. He submitted a photo of a vehicle parked in a visitor space with no pass the day after his vehicle was towed.

22. Further, the July 24, 2021 parking notice, posted inside the locked building, said that any vehicle not displaying a valid visitor parking tag on its rear-view mirror while parked in visitor parking would be towed without warning at the owner's expense. The notice was addressed to "All Residents of Orchard Walk" which I find does not include visitors such as Mr. Krohn. It used small, letter-sized font. I find that there was no reason for visitors such as Mr. Krohn to read this posted message addressed only to

residents, and that he likely would not have noticed its contents in passing. Overall, I accept his statement that he was unaware of any visitor parking pass requirements at the time his vehicle was towed. I also accept his submission that he would not have parked in visitor parking without a pass if he had known about the requirement.

23. Having weighed the evidence, I find 113 gave Mr. Krohn its implied consent to park in visitor parking, and then unreasonably revoked that consent with no notice by having his vehicle towed. I find this revocation breached the standard of care, and 113 was negligent in towing the vehicle away. So, I find 113 is liable for damages that foreseeably resulted from the towing, which I address below.

24. I find Mr. Krohn is entitled to reimbursement of the claimed $260.40 towing fee.

25. Mr. Krohn says he obtained a ride to the towing company from a stranger in exchange for $20. However, he does not explain whether the stranger required payment or whether he provided the $20 as a voluntary gratuity. There are no receipts or other evidence of this alleged payment in evidence, although I would not necessarily expect an individual to provide a receipt in this situation. Mr. Krohn provided no other details about the stranger, the ride, or the length of the trip. Further, Mr. Krohn does not explain why he got a ride from a stranger and not from KK. On balance, I find Mr. Krohn has not met his burden of proving that he reasonably paid a stranger for a ride to the towing company, so I dismiss his claim for $20.

26. Mr. Krohn also claims $400 for emotional distress and inconvenience because of the towing. I find Mr. Krohn was not unduly inconvenienced, as he admits he retrieved his car only 1 hour after leaving KK's home, and does not say that he missed any work or incurred any costs because of that delay. I acknowledge that Mr. Krohn says he was worried about the missing vehicle and about how he would retrieve it. However, he provided no medical evidence showing that he suffered any emotional trauma from the experience. Paragraph 9 of *Mustapha* says that minor and transient upsets do not constitute compensable personal injuries. I find the evidence fails to show Mr. Krohn's alleged emotional distress was more than a minor and transient upset. I dismiss his claim for $400 for emotional distress and inconvenience.

CRT Fees, Expenses, and Interest

27. The *Court Order Interest Act* applies to the CRT. I find Mr. Krohn is entitled to pre-judgment interest on the $260.40 towing fee, calculated from the August 12, 2021 date he paid that fee until the date of this decision. This equals $0.65.

28. Under section 49 of the CRTA, and the 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. Mr. Krohn was partly successful in this dispute, so I find he is entitled to reimbursement of half the CRT fees he paid, which equals $62.50. 113 paid no CRT fees, and neither party claimed CRT dispute-related expenses.

ORDERS

29. Within 30 days of the date of this decision, I order 113 to pay Mr. Krohn a total of $323.55, broken down as follows:

    a. $260.40 in damages for towing fees,

    b. $0.65 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $62.50 in CRT fees.

30. I dismiss Mr. Krohn's remaining claims.

31. 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.

32. 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.

Chad McCarthy, Tribunal Member