



# Civil Resolution Tribunal

Date Issued: March 9, 2022

File: SC-2021-006814

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Christoffersen v. ICBC*, 2022 BCCRT 255

BETWEEN:

JAMES CHRISTOFFERSEN

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This small claims dispute is about motor vehicle insurance coverage. The applicant, James Christoffersen, had a storage insurance policy on his truck through the respondent insurer, Insurance Corporation of British Columbia (ICBC). Mr. Christoffersen says that on April 13, 2020, he discovered his truck had been vandalized and various parts stolen. Mr. Christoffersen says ICBC improperly refused

to cover his losses from this incident. While he says his vehicle repairs and replacement parts cost significantly more, Mr. Christoffersen claims \$5,000, which is the small claims monetary limit of the Civil Resolution Tribunal (CRT). I find Mr. Christoffersen abandons the amount of his claim over \$5,000.

2. ICBC says Mr. Christoffersen failed to provide sufficient evidence of his claimed losses. ICBC also says Mr. Christoffersen made repairs to the vehicle himself after the loss, so it could not determine what damages were related to the reported loss. In any event, ICBC says Mr. Christoffersen transferred his truck's title to a new owner on April 1, 2021, so he no longer has any insurable interest in the vehicle. ICBC says I should dismiss this dispute.
3. Mr. Christoffersen is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. 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.
8. Under section 11(1)(a)(i) of the CRTA, the CRT may refuse to resolve a claim or dispute if it would be more appropriate for another legally binding process or dispute resolution process. ICBC submits that this dispute may be more appropriately dealt with by the dispute resolution process provided under the *Residential Tenancy Act* (RTA). ICBC did not otherwise explain why that process would be more appropriate, but I infer that ICBC is referring to the fact that the alleged thief was living in Mr. Smith's residence at the time of the theft.
9. I find there is insufficient evidence before me to establish that Mr. Christoffersen was in a landlord-tenant relationship with the alleged thief, who is undisputedly a member of his family. However, even if they were in such a relationship, I find this dispute does not fall within the Residential Tenancy Board's exclusive decision-making authority under the RTA. Mr. Smith did not bring this claim against his alleged former tenant. Rather, he brought it against ICBC for insurance coverage. I find that this is an insurance coverage dispute, which falls under the CRT's small claims jurisdiction over debt and damages. So, I find it is appropriate for the CRT to resolve this dispute.
10. ICBC submitted a number of items in evidence after the CRT's deadline, but before Mr. Christoffersen made his reply submissions. The evidence consists of several dozen photos of Mr. Christoffersen's truck. Mr. Christoffersen argues that ICBC should have been able to submit all its evidence on time. I find the evidence is relevant to this dispute. Bearing in mind the CRT's flexible mandate, I admit the late evidence as Mr. Christoffersen had an opportunity to respond to it, and so I find he is not prejudiced by its admission. I have considered it in my analysis below.

## **ISSUES**

11. The issues in this dispute are:

- a. Does Mr. Christoffersen have an insurable interest in the truck, such that he has standing to bring his claim?
- b. Did Mr. Christoffersen breach his insurance policy by starting repair work before ICBC had a reasonable opportunity to inspect the truck?
- c. To what extent, if any, is Mr. Christoffersen entitled to insurance coverage for the alleged vandalism and stolen parts?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicant Mr. Christoffersen must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
13. It is undisputed that Mr. Christoffersen’s vehicle had a valid storage insurance policy with ICBC that provided coverage for vandalism and theft. I find Mr. Christoffersen has the burden to prove on a balance of probabilities that his vehicle was vandalized, items from it were stolen, and the repair and part replacement costs.
14. Mr. Christoffersen says he was storing his 1979 Ford F150 truck in his home’s garage, though he was no longer living in that residence. The evidence shows that on April 26, 2020, Mr. Christoffersen reported to ICBC that a family member had stolen parts off his truck. Mr. Christoffersen stated he learned of the theft on April 13, 2020 and had filed a police report.
15. ICBC’s file notes in evidence show that on June 16, 2020, Mr. Christoffersen advised he had towed the truck to his new residence. ICBC requested photos of the truck before and after the theft to assess its condition. I find that Mr. Christoffersen provided photographs to ICBC, though it is unclear on the evidence when he sent them.

16. There is no evidence before me of any further communication between Mr. Christoffersen and ICBC until January 21, 2021, when Mr. Christoffersen started to follow up with his claim for theft and damage.
17. In a March 12, 2021 telephone statement to ICBC, Mr. Christoffersen explained that the truck had been in his family since the 1980s, and he was storing it to eventually give it to his son. He stated the alleged thief had been living in the house where the truck was being stored, and that the thief had “sabotaged” the wiring and stolen various parts, including the front and rear original bumpers and a custom front bush bar bumper were stolen, along with the interior door panels, gauges, and a new motor that was also in the garage to be installed in the truck. He also said the side mirrors had been damaged.
18. In response to ICBC’s request, Mr. Christoffersen then sent ICBC an itemized list of parts he said had been stolen and damaged and a couple of pictures of the truck from before the alleged theft. Mr. Christoffersen also provided invoices for various replacement parts and advised ICBC that the truck was being worked on to get it back in safe running condition. ICBC arranged to tow the truck to its estimating facility for further assessment on May 20, 2021.
19. ICBC says it ultimately denied Mr. Christoffersen’s claim because it could not determine with any certainty what parts were stolen or their value at the time of the theft. ICBC also says Mr. Christoffersen breached his insurance policy by making repairs to the truck before giving ICBC “reasonable opportunity to inspect” it.

***Insurable interest in the truck***

20. I turn first to consider ICBC’s position that Mr. Christoffersen no longer has an insurable interest in the truck because he transferred its ownership in April 2021. Mr. Christoffersen admits he transferred the truck’s ownership to his son.
21. To have an “insurable interest” the insured must demonstrate “some relation to, or concern in” the subject of the insurance, and benefit from the subject matter remaining intact or be prejudiced by its damage (see *Kosmopoulos v. Constitution*

*Insurance Co.*, 1987 Can LII 75 (SCC) at paragraph 42). ICBC refers to the CRT decision in *Bull v. ICBC*, 2020 BCCRT 101, where a tribunal member found an insured's insurable interest in a vehicle ended when they transferred the vehicle's ownership.

22. Previous CRT decisions are not binding on me. In any event, I find the facts in *Bull* are distinguishable from this dispute. In *Bull*, the applicant had made a claim with ICBC to replace his broken windshield, but he sold the vehicle and transferred its ownership before the work was completed. The tribunal member found ICBC was entitled to deny the buyer's claim to replace the windshield under the applicant's insurance policy because the applicant no longer had an "insurable interest" in the vehicle.
23. Unlike in *Bull*, where the loss was not triggered until the windshield replacement work was completed, I find Mr. Christoffersen's loss occurred on the date of the theft. Further, the evidence shows that he incurred many of his claimed costs to replace stolen parts in about February 2021, before he transferred the truck's ownership. I find just because ICBC's decision to deny Mr. Christoffersen's claim was after he had already transferred the ownership, does not extinguish his right to challenge the decision. I find that at the time of loss, Mr. Christoffersen was the truck's registered owner, and he had an insurable interest in the truck remaining undamaged at that time. So, I find it is appropriate to determine whether ICBC properly denied his claim for insurance coverage.

***Reasonable opportunity to inspect***

24. I next consider ICBC's position that Mr. Christoffersen breached his insurance policy by making repairs to the truck before ICBC had inspected it. Division 8, Section 5(3)(b) of the policy says that if loss or damage to a vehicle covered by the policy occurs, the owner must not remove any physical evidence of the loss or damage or make any repairs to the vehicle, unless immediately necessary to protect the vehicle from further loss, until the insurer has had a reasonable opportunity to inspect it.

25. ICBC's file notes show that Mr. Christoffersen advised on April 28, 2020 that he did not know whether there was more damage than what had been reported stolen, for example "brake lines cut, etc.", and ICBC told him that it would follow up about getting an estimate for the truck to determine his loss. However, there is no evidence before me that ICBC contacted Mr. Christoffersen further about obtaining an estimate.
26. ICBC says its investigation was "ongoing" but stopped on October 2, 2020 after Mr. Christoffersen failed to respond to a September 9, 2020 voicemail. However, ICBC did not provide any details about this alleged voicemail or any file notes confirming it was left. Mr. Christoffersen says he never received the voicemail and would have responded if he had. On balance, I find it unproven that ICBC left Mr. Christoffersen a voicemail or that he failed to respond to ICBC's investigation requests.
27. Mr. Christoffersen sent ICBC a January 21, 2021 email seeking an update on his theft and damage claim and stating an automotive repair shop was working on the truck "to get it running". I find ICBC did not provide a substantive response to this email. Mr. Christoffersen then sent a February 23, 2021 email, advising that the repair shop had assessed the damage and was in the process of "putting it back together", by replacing the stolen parts and ensuring it was safe to drive. Again, ICBC did not provide a substantive response to Mr. Christoffersen until March 18, 2021, when it requested a detailed itemized breakdown of stolen parts.
28. I find that the first time ICBC advised Mr. Christoffersen that it wanted to inspect the truck in person was April 29, 2021, more than one year after Mr. Christoffersen reported the theft and damage. Up until that date, ICBC had only requested photos of the truck, which I find Mr. Christoffersen provided.
29. I find based on ICBC's notes, it knew or should have known that it would likely need to inspect the truck in person by April 28, 2020. I find it was unreasonable for ICBC to expect Mr. Christoffersen not to do any repairs and to keep the truck in an undriveable condition for more than a year before ICBC arranged to inspect the vehicle in person. I find ICBC had a reasonable opportunity to inspect the vehicle between April 28, 2020 and January 21, 2021, which was the first indication that Mr.

Christoffersen may have started repairs. Therefore, I find Mr. Christoffersen did not breach his insurance policy.

***Entitlement to insurance coverage***

30. This brings me to whether Mr. Christoffersen has proven items from his truck were vandalized and stolen and, if so, the appropriate compensation for replacement parts and repairs.

31. Mr. Christoffersen's itemized list of the stolen parts in evidence includes: a custom heavy-duty bumper, fog lamps, 5 litre motor, rear factory bumper, door panels, window visors, CD player, dashboard panel and glove box face, front grill and components, and shifter handle. He also says the mirrors and wire harness were damaged.

32. ICBC says Mr. Christoffersen has not provided adequate documentation of the truck's pre-theft condition. As noted, the truck is over 40 years old. I find it is understandable that Mr. Christoffersen does not have many photographs of the truck from before the theft. He provided 2 undated photographs showing the truck with what appears to be a black custom "heavy-duty" or bush bar bumper, along with an intact front grill, stock front bumper, and headlight casings. He also provided another photograph that appears to be dated in 1988, showing the interior dashboard and stereo in apparent good condition.

33. Mr. Christoffersen provided a signed statement from his son-in-law, PG, who towed the truck to Mr. Christoffersen's new residence after the theft. PG stated he observed missing door panels, bumpers, dash panel, gauges, and gear shift knob, as well as a "severely" damaged engine wiring harness. Mr. Christoffersen also provided post-theft photos showing the claimed missing and damaged parts, including obviously cut wires in the truck's interior and underneath the truck.

34. I note that ICBC says PG's statement should be given no weight because he is not an independent witness, and he has no expertise in this matter. However, I find expertise is not required to make observations about obvious missing parts and



damaged wiring on a vehicle he is familiar with. PG also saw the vehicle close in time after the alleged theft, so I find his statement about its post-theft condition is generally reliable. Overall, I find PG's familial relationship with Mr. Christoffersen does not invalidate his statement, and I find PG's evidence is credible.

35. On balance, I accept that the claimed parts were damaged or stolen while Mr. Christoffersen's truck was being stored. I say this because I find Mr. Christoffersen's report of the theft credible, noting that he reported it first to the police and then to ICBC, and the evidence shows his reports about what was taken were consistent. I also note that PG stated he had seen the truck "over the years" with all claimed parts intact and in running order.
36. So, what is the value of the stolen and damaged parts? Mr. Christoffersen told ICBC on June 2, 2021 that all stolen parts were original factory parts, except for the custom front bumper. I also find the stereo was not likely original, given it had a CD player, though there is no evidence before me about its actual age.
37. Mr. Christoffersen provided invoices showing he paid \$1,027.13 USD to replace the various stolen original factory parts, plus \$389.95 USD for the stereo. The total paid in USD equals just over \$1,800 in current Canadian funds. This amount does not include the cost to install the parts, though there is no evidence before me about installation costs or that Mr. Christoffersen is specifically claiming installation costs.
38. I find the legal concept of "betterment" applies to these parts, which means Mr. Christoffersen is entitled only to the value of the used parts that were stolen, as the replacement cost for new parts would put him in a better position than he was in before the theft. Given most of the parts were 40 years old and the lack of evidence about their actual condition just prior to the theft, I find a nominal amount of \$200 is appropriate compensation for all the stolen original factory parts and the stereo.
39. As for the custom heavy-duty bumper, Mr. Christoffersen told ICBC he paid \$500 for the metal but could not recall how much he paid in labour for its construction. There

is no evidence before me about the bumper's age. On a judgment basis, I find \$200 is reasonable compensation for the custom bumper.

40. I turn to the wiring harness. Mr. Christoffersen provided a handwritten statement from Barry Milewski, the owner of The Original Bonneville Hot Rod and Custom, which I find is a vehicle restoration business. Mr. Milewski stated that he assessed the truck's wiring situation and found numerous wires randomly cut or pulled out and hanging down, which he noted was a fire hazard. He recommended completely re-wiring the vehicle at an estimated \$3,990 for labour, plus the cost of the wiring harness part. Mr. Christoffersen provided an invoice showing he paid \$1,450.40 for the wiring harness.
41. I find Mr. Milewski's statement does not meet the criteria for an expert report under CRT rule 8.3 because it does not include his qualifications. However, I find Mr. Milewski is generally in the business of vehicle restoration, including mechanical restoration. ICBC did not question Mr. Milewski's qualifications. I find it is appropriate to exercise my discretion under CRT rule 1.2(2) to waive the requirements of rule 8.3(2) to promote the fair and efficient resolution of this dispute. For that reason, I accept Mr. Milewski's statement as expert evidence.
42. I acknowledge ICBC's concern that it is difficult to assess the condition of the truck's wiring immediately before the theft, given the truck's age. However, based on PG's statement and Mr. Christoffersen's evidence that he was storing the truck to give to his son, I accept that the truck was in running condition, including intact wiring. I also find the photos showing the cut and hanging wires is inconsistent with the evidence that Mr. Christoffersen and his son were actively maintaining and restoring the truck. So, on balance, I find the wiring harness was vandalized. Because it is impossible (and unsafe) to replace the truck's wiring with 40-year-old wires, I find ICBC must pay its actual replacement cost for both parts and labour. Therefore, I find ICBC is responsible for Mr. Christoffersen's \$5,440.40 cost to fix the damaged wiring harness (\$1,450.40 for the part, plus \$3,990 for labour).
43. I note that Mr. Christoffersen acknowledged in his reply submissions that the stolen 5 litre motor would be covered under his home insurance policy because it was sitting

on the garage floor, to be installed in the truck at a later date. As the motor was not installed or attached to the truck, I find Mr. Christoffersen is not entitled to anything from ICBC for the stolen motor.

44. I also note Mr. Christoffersen provided an April 1, 2021 invoice from 100 Mile New & Used Auto Parts Ltd. for various mechanical services, including servicing the carburetor, master cylinder, and battery, among other services. Mr. Christoffersen did not explain how these services were related to his theft and damage claim. So, I decline to allow anything for this invoice.
45. The combined total of Mr. Christoffersen's proven losses is \$5,840.40. However, as noted above, he has reduced his claim to \$5,000 to fit within the CRT's small claim monetary limit. So, I find ICBC must pay Mr. Christoffersen \$5,000.
46. The *Court Order Interest Act* applies to the CRT. Mr. Christoffersen is entitled to pre-judgement interest on the \$5,000 from September 2, 2021, the date the Dispute Notice was issued, to the date of this decision. This equals \$11.62.
47. 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. As the successful party, I find Mr. Christoffersen is entitled to reimbursement of \$175 in CRT fees. He did not claim any dispute-related expenses.

## **ORDERS**

48. Within 30 days of the date of this decision, I order ICBC to pay Mr. Christoffersen a total of \$5,186.62, broken down as follows:
  - a. \$5,000 in damages as insurance coverage for vehicle vandalism and theft,
  - b. \$11.62 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.

49. Mr. Christoffersen is entitled to post-judgment interest, as applicable.
50. 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.
51. 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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Kristin Gardner, Tribunal Member