



Civil Resolution Tribunal

Date Issued: May 16, 2022

File: SC-2021-004283

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lietz v. Babcock*, 2022 BCCRT 577

BETWEEN:

GARY LIETZ

APPLICANT

AND:

COREY BABCOCK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a dirt bike. The applicant, Mr. Gary Lietz, sold the dirt bike to the respondent, Mr. Corey Babcock. Mr. Lietz says he accepted the return of the dirt bike and provided Mr. Babcock a partial refund. However, he says Mr. Babcock damaged the dirt bike by running it without oil. He seeks \$5,000 as compensation for the expected cost of fixing the dirt bike.

2. Mr. Babcock denies liability. He says he bought the dirt bike for approximately \$3,000, and unknown to him, it was badly damaged. He denies operating or damaging the bike.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss Mr. Lietz's claims.

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 "he said, he 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.

The Residential Tenancy Branch

9. The parties' submissions and evidence indicate that this dispute occurs in the context of a residential tenancy, with Mr. Babcock as the landlord and Mr. Lietz as the tenant. The CRT generally does not have jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). The RTB has exclusive jurisdiction over matters falling within the *Residential Tenancy Act* (RTA).
10. That said, Mr. Lietz claims for damages for a dirt bike. He did not claim for a breach of the tenancy agreement, and neither party said the CRT lacked jurisdiction. So, I will consider Mr. Lietz's claims below.

Mr. Babcock's Late Evidence

11. Mr. Babcock provided as late evidence multiple photos of the rental property and documents about a restraining order. I find this evidence irrelevant to this dispute and nothing would turn on it regardless of whether it was submitted on time. So, I have decided not to admit the evidence and have not considered it in my decision.
12. Mr. Babcock also provided as late evidence the dirt bike purchase receipt, both sides of a handwritten August 4, 2020 note to Mr. Lietz, and a bank draft. Mr. Lietz provided identical copies of this evidence, so I find nothing turns on the fact that Mr. Babcock submitted his copies late. Given this, I admit this late evidence and consider it below.

ISSUE

13. The issue in this dispute is whether Mr. Babcock is liable to Mr. Lietz for any damage caused to the dirt bike.

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant Mr. Lietz must prove his claims on a balance of probabilities. This means 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.
15. I begin with the undisputed background. Mr. Lietz sold his 2007 KLX 450 Kawasaki dirt bike to Mr. Babcock. The parties partially documented their transaction on an April 12, 2020 receipt. It shows Mr. Babcock agreed to take the bike for 6 months' worth of rent for the period of May 1 to October 31, 2020. Mr. Lietz paid monthly rent of \$500 so I find Mr. Babcock essentially purchased the dirt bike for \$3,000.
16. Mr. Lietz's undisputed submission is that prior to the sale, the parties tested the dirt bike's motor successfully for several minutes. Mr. Lietz then drained the oil so that they could visually check for metal shavings or particulates in the oil. The parties did not identify any issues. There is no indication that they put any replacement oil in the dirt bike.
17. Mr. Babcock subsequently had the bike inspected in early August 2020 by a mechanic. In an August 6, 2020 invoice, the mechanic wrote that there was no oil in the dirt bike, and it appeared to have been operated without any oil in it. Further, the mechanic found that the cams and cylinder head had to be replaced. The bike also made a "horrible noise" and leaked oil when operated.
18. Dissatisfied, Mr. Babcock returned the bike to Mr. Lietz. Mr. Lietz accepted the bike and provided Mr. Babcock an August 10, 2020 bank draft for \$2,600. Mr. Lietz's notes on the bank draft indicate that he had already paid some amounts to Mr. Babcock separately, so the refund was therefore less than \$3,000.

Is Mr. Babcock liable to Mr. Lietz for any damage caused to the dirt bike?

19. I find that on April 12, 2020, the parties entered into a private sale which was subject to section 18(c) of the *Sale of Goods Act* (SGA). Section 18(c) requires that the goods sold be durable for a reasonable period, considering how the goods would be normally used and the sale's surrounding circumstances. The other implied warranties in section 18 of the SGA do not apply to private sales.
20. A seller of used goods can exclude this implied warranty through a contract term, but the seller must do so in clear and unambiguous language: *Conners v. McMillan*, 2020 BCPC 230 at paragraphs 63 to 65. There is no indication the parties did so here.
21. Mr. Lietz bears the burden of proving the bike he received back was defective. Mr. Babcock bears the burden of proving the bike was already defective when he bought it from Mr. Lietz. The parties tested the dirt bike in April 2020 without observing the issues identified by the mechanic 4 months later in August 2020. There is no indication they noticed any leaking oil or heard a "horrible noise". There is no evidence to explain how these issues could have escaped the parties' notice in April 2020 if they existed at the time. So, given the fact that the dirt bike initially worked and the passage of time after the sale, I find it unproven that the dirt bike was damaged or inoperable when Mr. Lietz sold it to Mr. Babcock.
22. However, I find little turns on this because the parties entered into a new agreement or amended their agreement on August 10, 2020. This is because Mr. Babcock returned the bike and Mr. Lietz agreed to provide a partial refund, as shown by the bank draft. I find it clear that, prior to returning the dirt bike, Mr. Babcock advised Mr. Lietz that it was defective. In a handwritten August 4, 2020 note to Mr. Lietz, Mr. Babcock wrote that "the bike is [sh*t]" and "the shop said [it's] worth \$500". In an August 7, 2020 video taken by Mr. Lietz, Mr. Babcock expressly stated that the dirt bike had been run without oil and he denied being responsible. So, I find Mr. Lietz agreed to take back the dirt bike and provide a partial refund despite these problems. It follows that that Mr. Lietz cannot claim for fixing these issues as Mr. Babcock expressly warned him about them before Mr. Lietz agreed to provide the refund.

23. Mr. Lietz says he was under pressure to provide a refund because Mr. Babcock threatened him with eviction. I find Mr. Lietz relies on the law of duress. Duress is an unfair, excessive, or coercive use of force. To establish duress, Mr. Lietz must prove Mr. Babcock put him in a position where he had no realistic alternative but to accept the other's offer. See *Dairy Queen Canada Inc. v. M.Y. Sundae*, 2017 BCCA 442.
24. Mr. Lietz took video footage of meetings with Mr. Babcock and submitted various voicemail messages. The evidence shows the parties had a poor relationship characterized by unpleasant interactions. However, I find Mr. Lietz still had the option of disagreeing and filing a claim with the RTB if he feared that Mr. Babcock would prematurely end his tenancy, or otherwise deny him access to the rental accommodations. Mr. Lietz notes that he commenced 2 RTB proceedings naming Mr. Babcock as a party, so I find he was aware of this option. Given this, I find duress unproven in these circumstances.
25. 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 dismiss Mr. Lietz's claims for reimbursement.

ORDER

26. I dismiss Mr. Lietz's claims and this dispute.

David Jiang, Tribunal Member