



Civil Resolution Tribunal

Date Issued: October 7, 2022

File: SC-2022-000251

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *West Coast Car Rental Inc. v. Venor*, 2022 BCCRT 1106

B E T W E E N :

WEST COAST CAR RENTAL INC.

APPLICANT

A N D :

FRANK VENOR

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a car rental. The applicant, West Coast Car Rental Inc. (WCCR), rented a GMC Terrain SUV to the respondent, Frank Venor. WCCR says that Mr. Venor drove the rental vehicle while under the influence of alcohol, and that the police impounded the vehicle for 30 days as a result. WCCR says that Mr. Venor also damaged the vehicle. WCCR claims \$4,989.47, which includes: \$1,539.95 for towing

and storage costs, \$721.06 for repairs, \$2,228.46 for loss of use while the vehicle was impounded, and \$500 for an administration and recovery fee.

2. Mr. Venor denies drinking and driving or causing any vehicle damage. While he admits the police impounded the rental vehicle for 30 days, he says he continued to pay WCCR the vehicle's daily rental rate, so it has already been compensated \$1,200 for loss of use. He also says WCCR is holding a \$1,500 deposit on his credit card. Mr. Venor did not file a counterclaim.
3. WCCR is represented by an employee or principal. Mr. Venor is self-represented.

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). 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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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. Does Mr. Venor owe WCCR \$1,539.95 for towing and storage costs?
 - b. Does Mr. Venor owe WCCR \$721.06 for vehicle damage?
 - c. Does Mr. Venor owe WCCR \$2,228.46 for loss of use while the vehicle was impounded?
 - d. Does Mr. Venor owe WCCR \$500 for an administration and recovery fee?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant, WCCR must prove its claims on a balance of probabilities (meaning “more likely than not”). Mr. Venor chose not to file any evidence in this dispute, despite having the opportunity to do so. I have read all of the parties’ arguments and reviewed all the evidence before me, but I refer only to what I find is necessary to explain my decision.
10. It is undisputed that Mr. Venor rented the above-described vehicle from WCCR. However, WCCR did not provide a copy of the parties’ contract. So, the dates and contractual terms of the rental are not before me.
11. Nevertheless, Mr. Venor admits that at some point during his rental period, the police impounded the vehicle for 30 days. As noted, WCCR alleges the vehicle was

impounded because Mr. Venor was driving while under the influence of alcohol, which Mr. Venor denies.

12. WCCR provided a copy of the police's Notice of Impoundment. The notice indicates that Mr. Venor was driving, and that the vehicle was impounded on November 24, 2021 for 30 days due to an immediate roadside prohibition under section 215.46 of the *Motor Vehicle Act* (MVA). Based on the notice and the MVA, I am satisfied that the police impounded the vehicle because Mr. Venor was either driving under the influence of alcohol or he failed or refused to provide a breath sample to test his blood alcohol level.
13. As the parties' contract is not before me, I cannot conclusively determine whether Mr. Venor breached an express term in the contract by driving the vehicle while under the influence of alcohol or by failing or refusing to provide a breath sample. However, even if there was no express contractual term, I find the parties' contract included an implied term to that effect.
14. Further, I find the law of negligence also applies to this dispute. To prove negligence, WCCR must establish that Mr. Venor owed it a duty of care, that he breached the standard of care, and that WCCR sustained foreseeable damage caused by Mr. Venor's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
15. I accept that Mr. Venor, as the vehicle's renter, owed WCCR a duty of care to safeguard WCCR's vehicle. I am also satisfied that Mr. Venor breached the standard of care by driving the vehicle while impaired, or by failing or refusing to provide a breath sample when the known consequence was vehicle impoundment.
16. With these findings, I turn to WCCR's claimed damages.

Towing and storage

17. I find that towing and storage fees are foreseeable losses resulting from Mr. Venor's breach of the standard of care. WCCR provided an invoice from the towing company, which includes the storage fees and totals the claimed \$1,539.95. WCCR's receipt

shows it paid the invoice on January 4, 2022. So, I find the vehicle was stored for 42 days. I note this is consistent with the invoice, which shows 34 days of storage at a rate of \$24.44 and 8 days of storage at a rate of \$49.25.

18. I infer that WCCR did not retrieve the vehicle exactly 30 days after it was impounded because that date fell on a statutory holiday. However, WCCR did not explain why it could not retrieve the vehicle before January 4, 2022. Accounting for the time of year, I find WCCR's foreseeable losses for storage costs do not exceed 34 days, particularly given the daily storage rate more than doubled after that period. So, I find it is appropriate to reduce the towing company's invoice by the \$413.70 charge for 8 days of storage at the higher rate.

19. I order Mr. Venor to pay WCCR \$1,126.25 for towing and storage.

Vehicle damage

20. WCCR says that when it picked up the vehicle from the storage yard, it discovered the vehicle's passenger side mirror was damaged. This damage is evident in the photographs provided. However, there is no evidence about how or when the damage occurred. As noted, Mr. Venor denies causing any damage.

21. WCCR says that Mr. Venor is responsible for "all and any" damage to the vehicle during the rental period. It is unclear whether that position is based on an express contractual term. It is also unclear when Mr. Venor's rental period ended or that the damage occurred during the applicable period. As the contract is not in evidence, I find breach of contract is unproven.

22. Under the law of negligence, I find any damage caused to the vehicle while it was impounded, either by the towing company or in the storage yard, is too remote. In other words, I find WCCR must prove Mr. Venor caused the damage himself to recover the repair costs. I find there is insufficient evidence before me that Mr. Venor damaged the vehicle himself. Therefore, I dismiss WCCR's claim for vehicle repairs.

Loss of use

23. WCCR claims \$2,228.46 for loss of use while the vehicle was impounded. The evidence shows this claim is based on an alleged loss of 26 days at \$85.71 per day. However, WCCR did not otherwise explain or provide any evidence in support of this claim.
24. Given the vehicle was in storage for 42 days, but WCCR claims loss of use for only 26 days, I infer that WCCR does not dispute Mr. Venor's submission that he continued paying for the vehicle while it was impounded. So, I find that Mr. Venor paid the vehicle's daily rental rate for 16 days. WCCR did not provide any evidence about the daily rate Mr. Venor paid or its usual daily rates for a GMC Terrain SUV to support its claimed \$85.71 daily rate. However, I note that Mr. Venor's undisputed submission is that he paid a total of \$1,200 while the vehicle was impounded, which amounts to \$75 per day over 16 days. As WCCR has not provided evidence to support the higher \$85.71 daily rate, I find \$75 per day is a reasonable rate for the vehicle's loss of use.
25. WCCR also provided no evidence about its rental bookings or that it likely would have rented the vehicle had it been available. Further, as I have found Mr. Venor is not responsible for the final 8 days the vehicle was in storage, I find WCCR's loss of use claim must be similarly reduced.
26. On a judgment basis, I find WCCR is entitled to compensation for the vehicle's loss of use for 12 days at the rate of \$75 per day. This equals \$900.

Administration and recovery fee

27. WCCR claims \$500 for an "administration and recovery fee". Mr. Venor did not specifically respond to this claim other than to say it was "n/a". Given that WCCR did not provide a copy of the parties' contract, I find it unproven that Mr. Venor is contractually responsible for this fee. However, I accept that WCCR did incur some labour and other expenses, such as fuel costs, to recover the vehicle from the storage yard, which I find were the result of Mr. Venor's negligence. On a judgment basis, I find that \$150 is a reasonable amount for WCCR's expenses to retrieve the vehicle.

28. In summary, I order Mr. Venor to pay WCCR \$1,126.25 for towing and storage fees, \$900 for loss of use, and \$150 for vehicle recovery expenses, for a total of \$2,176.25.
29. As noted, Mr. Venor said in his Dispute Response that WCCR is holding a \$1,500 deposit on his credit card. However, Mr. Venor provided no evidence about it, and he did not pursue this concern in his submissions. Further, an order for WCCR to release the credit card “hold” would amount to injunctive relief, which I find I do not have jurisdiction to order in the circumstances here. So, I leave it to Mr. Venor to address the hold with WCCR or his credit card company should it remain an issue.
30. The *Court Order Interest Act* applies to the CRT. WCCR is entitled to pre-judgment interest on the \$2,176.25 from January 4, 2022, the date it recovered the vehicle, to the date of this decision. This equals \$14.81.
31. 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 find that WCCR was partially successful, and so it is entitled to reimbursement of half its CRT fees, which is \$87.50. Mr. Venor paid no fees and neither party claimed dispute-related expenses.

ORDERS

32. Within 30 days of the date of this decision, I order Mr. Venor to pay WCCR a total of \$2,278.56, broken down as follows:
 - a. \$2,176.25 in damages for towing and storage expenses, loss of use, and vehicle recovery expenses,
 - b. \$14.81 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in CRT fees.
33. WCCR is entitled to post-judgment interest, as applicable.
34. I dismiss WCCR’s remaining claims.

35. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Kristin Gardner, Tribunal Member