



Civil Resolution Tribunal

Date Issued: November 30, 2022

File: SC-2022-002869

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gooch v. The Corporation of the City of Penticton*, 2022 BCCRT 1291

BETWEEN:

CHRISTINE RENEE GOOCH

APPLICANT

AND:

THE CORPORATION OF THE CITY OF PENTICTON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a damaged windshield. The applicant, Christine Renee Gooch, says the respondent, The Corporation of the City of Penticton, failed to adequately clean a city road, causing a rock to kick up and damage the applicant's windshield.
2. The applicant seeks \$300, which they say is the deductible their insurance company is charging to repair the windshield.

3. The respondent says it followed its street cleaning policy and is not responsible for the applicant's windshield damage.
4. The applicant is self-represented. The respondent is represented by an employee.

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 parties to a dispute that will likely continue after the dispute resolution process has ended.
6. Section 39 of the CRTA says that 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.
7. Section 42 of the CRTA says that 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.

ISSUE

9. The issue in this dispute is to what extent, if any, the respondent must pay the applicant \$300 for a damaged windshield.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove their claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
11. The applicant says that on March 7, 2022, while their vehicle was parked on the street on Duncan Avenue West in Penticton, British Columbia, a rock was kicked up by a passing vehicle and cracked their vehicle’s windshield. The respondent does not particularly deny that is how the damage happened, so I accept it.
12. The applicant says the respondent city is responsible for the damage for failing to adequately clean the streets of debris. As noted, they seek \$300 which they say is the deductible their insurance company is charging them to repair the windshield. To date, the windshield has not been replaced.
13. As also noted, the respondent says it followed its street cleaning policy and is not responsible for the damage. The respondent further says the applicant initially asked for \$200, and raised it to \$300 in this dispute, without explanation.
14. The issue for the applicant is that they provided no evidence of the repair costs, such as a quote, an insurance policy, or any documentation from their insurance company indicating any costs to be paid by the applicant.
15. As noted, the applicant has the burden of proving their claim. Here, I find they have provided no evidence supporting any claim for damages. So, I find I do not need to address the law around operational and policy decisions and I do not decide whether

the respondent city failed to adequately clean the streets. Because I find the applicant's damages are unproven, I dismiss the applicant's claim.

16. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As the applicant was unsuccessful, I dismiss their claim for reimbursement of tribunal fees. The respondent did not pay any fees or claim any dispute-related expenses.

ORDER

17. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair