



# Civil Resolution Tribunal

Date Issued: December 1, 2022

File: SC-2022-002727

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dhindsa v. V.S.S. Holdings Ltd. (dba Avis Car Rental)*, 2022 BCCRT 1295

**B E T W E E N :**

AMANDEEP SINGH DHINDSA

**APPLICANT**

**A N D :**

V.S.S. HOLDINGS LTD. (Doing Business As AVIS CAR RENTAL)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about car rental fees. The applicant, Amandeep Singh Dhindsa, says the respondent, V.S.S. Holdings Ltd. (dba Avis Car Rental) (Avis), overcharged them.

Mr. Dhindsa says they told Avis that police had impounded the car and so they say Avis should have retrieved it rather than letting it sit in the tow yard for 34 days, incurring both rental and storage charges that Avis charged to their credit card. Mr. Dhindsa says they should only have had to pay for 10 days of charges. Mr. Dhindsa claims a \$4,565.63 refund.

2. Avis says Mr. Dhindsa alone is responsible for the fact the car was impounded. Avis says the rental contract specifies that rental charges accrue until the car is returned to Avis' control. Contrary to Mr. Dhindsa's assertion that Avis failed to mitigate its damages, Avis also says it acted reasonably in applying for the car's release from the tow yard.
3. Mr. Dhindsa is self-represented. Avis is represented by an employee.

## **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). CRTA section 2 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. CRTA section 39 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. 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. CRTA section 42 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) whether Avis failed to mitigate its damages when it did not ask for an early release of its impounded car, and b) to what extent, if any, is Mr. Dhindsa entitled to the claimed \$4,565.63.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Mr. Dhindsa must prove their claim on a balance of probabilities (meaning “more likely than not”). I have read the parties’ submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. On January 13, 2022, Mr. Dhindsa rented the car from Avis’ Kelowna airport location. Initially the rental was for one day but Mr. Dhindsa extended it to January 15. On January 15, 2022, while Mr. Dhindsa had possession of the car, police impounded the car in Revelstoke for 30 days and had the car towed to a tow yard in Revelstoke. Avis contacted the tow yard on February 10 to assist in the release application after 30 days. The car was released on February 15, 2022. Avis then had the car towed to Kelowna and received the car back on February 20, 2022. Avis only billed Mr. Dhindsa for charges up until February 16, 2022. None of this is disputed.
11. In short, Avis charged Mr. Dhindsa \$2,111.40 for 34 days of rental fees, given the impoundment. It charged them \$1,862.95 for towing and storage fees during the impoundment, plus various fees and taxes, for a total of \$6,253.50.

12. Mr. Dhindsa essentially argues that Avis failed to mitigate its damages under the parties' rental agreement. I note there is no evidence that Avis had any express contractual obligation to seek the car's early release. The burden of proving a failure to mitigate rests on the person alleging it, here Mr. Dhindsa.
13. In particular, Mr. Dhindsa argues "Avis did not make any effort in getting the car released early from the impound yard", which they say Avis promised them on the phone when they called on January 15, 2022. Similarly, Mr. Dhindsa disputes Avis' \$1,862.95 charge for towing and storage. They say had Avis sought the car's release sooner, the storage charges would have been less. Mr. Dhindsa says the rental and storage charges should have been limited to 10 days, not 34.
14. I return to the relevant chronology. On a date not shown in the email copy in evidence, Mr. Dhindsa emailed Avis asking about the car's release, in which they referred to their call with an Avis agent on January 15. In this email, Mr. Dhindsa says the agent assured him he would not be charged more than 3 rental days. Mr. Dhindsa also referred to 3 days in the Dispute Notice that started this proceeding. Yet, in Mr. Dhindsa's later submissions in this CRT dispute, they say the agent assured them they would not be charged for more than 7 days' rental. Mr. Dhindsa does not explain the inconsistency. Given the above, I find it unproven Avis' agent made any assurances to Mr. Dhindsa about Avis obtaining or even seeking the car's early release from impoundment.
15. Next, Mr. Dhindsa relies on section 262 of the *Motor Vehicle Act* (MVA), in support of their argument that Avis should have done more to get its car released from impoundment earlier, so that the rental and storage charges would have been lower. Section 262 is titled "Early release of motor vehicle on grounds of economic hardship". That section says a car's owner can apply within 15 days after the impoundment for its release. Among other things, section 262 further says that the grounds for release are that the car must be used in a business and that the impoundment imposes an economic hardship on the business. Avis did not directly address Mr. Dhindsa's submission that Avis ought to have done more to seek the

car's early release. I accept Avis could have *applied* for an earlier release. However, apart from Mr. Dhindsa's unsupported assertion that the police told them Avis would certainly obtain early release, there is no evidence before me that Avis would have been successful. In particular, section 262 of the MVA indicates Avis would need to show it would suffer economic hardship if the car were not released. Yet, it did not suffer any such hardship, because it charged Mr. Dhindsa for the storage and rental fees during the impoundment.

16. Further, Avis submitted a copy of the Notice of Impoundment (Notice). It said the car was impounded on January 15, 2022 for 30 days and was being stored at Classic Towing in Revelstoke. The Notice referenced MVA section 215.46 (additional consequences – impoundment of vehicle) and section 253 (period of impoundment). There is nothing on the face of the Notice in evidence that refers to applying for early release from impoundment. I find there is no evidence before me that Avis knew it could apply for early release. Again, I also find it unproven Avis would have been successful had it applied.
17. So, I do not accept Mr. Dhindsa's argument that the charges should be reduced based on the car being released after 10 days. Rather, I find Avis was entitled to charge Mr. Dhindsa for the entire impoundment period plus the time it took to have the car towed back to Kelowna.
18. I turn then to Mr. Dhindsa's \$4,565.63 refund request. Mr. Dhindsa does not specifically challenge any of the other amounts and I find they are consistent with the parties' rental agreement. Mr. Dhindsa did argue in the Dispute Notice that started this proceeding that they should only have to pay \$337.07 in towing and storage, based on their use of an online calculator. I do not accept this assertion. Here, Avis submitted a copy of the towing and storage invoice it had to pay to have its car released. I find that is the appropriate measure of Avis' chargeable costs under the parties' rental agreement. Given my conclusions above, I find I must dismiss Mr. Dhindsa's claims.

19. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Dhindsa was not successful I dismiss their claim for reimbursement of CRT fees. Avis did not pay CRT fees and neither party claims dispute-related expenses.

## **ORDER**

20. I dismiss Mr. Dhindsa's claims and this dispute.

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Shelley Lopez, Vice Chair