



Civil Resolution Tribunal

Date Issued: December 2, 2022

File: SC-2022-003367

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ellis v. Dawson Service Ltd.*, 2022 BCCRT 1302

BETWEEN:

CHRISTOPHER WILLIAM ELLIS

APPLICANT

AND:

DAWSON SERVICE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This small claims dispute is about vehicle damage. The applicant, Christopher William Ellis, paid the respondent, Dawson Service Ltd. (Dawson), to perform an inspection on his minivan. Dawson parked the vehicle on the street outside its property, where it was undisputedly damaged in a hit and run accident.

2. Mr. Ellis seeks damages of \$5,000 for the vehicle's value plus towing charges. Dawson says Mr. Ellis did not have vehicle insurance and it is not responsible for the damage.
3. Mr. Ellis represents himself. Dawson is represented by one of its partners.

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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. 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.
6. 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.
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. Was Dawson negligent in handling Mr. Ellis's vehicle?
 - b. If so, to what extent, if any, is Mr. Ellis entitled to the claimed damages?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Ellis must prove his claims on a balance of probabilities (meaning "more likely than not"). However, the law of bailment imposes a reverse onus on Dawson, as discussed below. While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. The background facts are not disputed. On June 22, 2021, Mr. Ellis brought his customized 2003 Pontiac minivan to Dawson to have an out-of-province inspection completed so Mr. Ellis could register the vehicle in British Columbia. Later that same day, a Dawson employee contacted Mr. Ellis to say they needed to keep the vehicle overnight, which Mr. Ellis approved.
11. The vehicle was undisputedly then parked on a public street near Dawson's business overnight. The next morning, a Dawson employee contacted Mr. Ellis to advise the vehicle had been significantly damaged in a hit and run accident on the street. Mr. Ellis says the vehicle is a total loss, which Dawson does not dispute.
12. The law of bailment applies to this claim. Bailment is about the obligations on one party to safeguard another party's possessions. The bailor is a person who gives the goods or possessions and the bailee is the one who holds or stores them. A voluntary bailee for reward is someone who agrees to receive the goods as part of a transaction where the bailee gets paid. In caring for a bailor's property, the bailee must exercise reasonable care in all the circumstances (see: *Harris v. Maltman and KBM*

Autoworks, 2017 BCPC 273 and *Pearson v. North River Towing (2004) Ltd.*, 2018 BCPC 229).

13. Here, Dawson undisputedly agreed to take possession of Mr. Ellis's vehicle and inspect and repair it in return for payment. So, I find Mr. Ellis was a bailor, and Dawson was a voluntary bailee for reward.
14. Normally in civil cases, an applicant bears the burden to prove a respondent's liability. However, where property is damaged while in a bailee's possession, there is a presumption the bailee was negligent. The bailee must then rebut the presumption to avoid liability. This is because the bailee is in the best position to explain what actually happened to the goods (see: *Cahoon v. Isfeld Ford*, 2009 BCPC 334 at paragraph 12).
15. Here, Mr. Ellis says Dawson parked his vehicle on the public street without his permission. He says the damage is therefore Dawson's responsibility. Dawson says its employee told Mr. Ellis in their June 22, 2021 phone call that the vehicle would be parked on the street and that Mr. Ellis agreed to it. Dawson also provided photos of a sign in its office which states "vehicles left overnight may be parked on the street".
16. The problem for Dawson is that I find it has not adequately proven it informed Mr. Ellis that his vehicle would be parked on the street. The office sign says "may" and does not give any other details. Although it says Mr. Ellis "was informed during the telephone conversation" on June 22, 2021, Dawson does not say which employee allegedly informed Mr. Ellis, or provide any statement or evidence from that employee. As noted, Mr. Ellis specifically denies ever being told the vehicle would not be kept on Dawson's secured property, and says he would have picked up the vehicle and brought it back the next day if he had known. On balance, I find Dawson did not inform Mr. Ellis his vehicle would be parked on a public street overnight.
17. I find a reasonable vehicle service shop would advise its customers if their vehicle is to be stored overnight outside of its secured premises. Doing so would allow a customer to remove any belongings that may be left in the vehicle, or to decide not

to leave the vehicle with the shop overnight. So, by failing to inform Mr. Ellis that his vehicle would be parked on a public street overnight, I find it breached its duty to its customer, Mr. Ellis. I find that breach led to the vehicle damage that ultimately occurred.

18. It follows that Dawson has not met the burden of proving it was not negligent in storing Mr. Ellis's car.
19. Dawson also argues the vehicle was uninsured, which "created a huge liability" for it. It is undisputed that the vehicle's insurance had lapsed, unbeknownst to Mr. Ellis or Dawson. Mr. Ellis says he only learned of the lapse when contacting his insurer after the June 23, 2021 damage occurred. However, I find nothing turns on whether the vehicle was insured or not. As a bailee for reward, Dawson was obligated to take reasonable care of Mr. Ellis's vehicle, which I find it failed to do.
20. I also note nothing prevented Dawson from requesting a copy of the vehicle's valid insurance before taking possession of it, which it did not do.
21. Given the above, I find Dawson is responsible for the vehicle's damage.
22. Mr. Ellis says the vehicle was worth \$5,500, plus he had to pay \$223.55 for towing, but received \$150 for scraps. Although this totals \$5,573.55, Mr. Ellis limited his claim to \$5,000, which is the CRT's small claims monetary limit.
23. Mr. Ellis did not provide any evidence in support of his claimed monetary losses, but Dawson did not dispute the vehicle's value or the towing charges, so I accept them. I find Dawson must pay Mr. Ellis \$5,000 for the vehicle damage.
24. Mr. Ellis waived any claim for pre-judgment interest, so I do not order any.
25. 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 Mr. Ellis was successful, I find that he is entitled to reimbursement of \$175 in paid tribunal fees. No dispute-related expenses were claimed.

ORDERS

26. Within 21 days of the date of this decision, I order Dawson to pay Mr. Ellis a total of \$5,175, broken down as follows:
- a. \$5,000 in damages, and
 - b. \$175 in tribunal fees.
27. Mr. Ellis is also entitled to post-judgment interest, as applicable.
28. 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.

Andrea Ritchie, Vice Chair