



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *BC Outdoor Flooring Inc. v. The Owners, Strata Plan BCS 435, 2023*
BCCRT 11

B E T W E E N :

BC OUTDOOR FLOORING INC.

APPLICANT

A N D :

The Owners, Strata Plan BCS 435

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about responsibility for vehicle damage.
2. The applicant, BC Outdoor Flooring Inc. (BCOF), says its truck was damaged when entering a parkade owned by the respondent, The Owners, Strata Plan BCS 435

(strata). BCOF says the parkade gate lowered onto the truck's roof and scratched the truck's paint and metal. BCOF claims \$1,117.99 in damages for truck repairs and paint.

3. The strata denies it is responsible for BCOF's truck damage. The strata does not deny that the gate lowered onto BCOF's truck roof, but says the gate itself did not damage BCOF's truck. The strata says BCOF's driver moved the truck when the gate was down instead of waiting for the gate to re-open, which caused the damage. The strata also questions whether the Civil Resolution Tribunal (CRT) has jurisdiction over this dispute because it says it is a matter for the Insurance Corporation of BC (ICBC).
4. BCOF is represented by a person I infer is an authorized employee or principal. The strata is represented by a person I infer is a strata council member.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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. 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 in the interests of justice.
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.

ICBC matter

9. As noted, the strata says this dispute is an “ICBC matter”. I infer the strata argues that BCOF should seek compensation for the truck damage from its insurer, ICBC. BCOF says it is not pursuing a claim with ICBC. In any event, the CRT has jurisdiction to resolve a claim for damages under its small claims jurisdiction, as set out in CRTA section 118. There is no legal requirement for BCOF to pursue an insurance claim. So, I find the CRT has jurisdiction to consider BCOF’s claims in this dispute.

ISSUES

10. The issue in this dispute is whether the strata was negligent in maintaining the parkade gate, and if so, whether it should pay BCOF \$1,117.99 in damages.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant BCOF must prove its claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties’ submissions and evidence but refer only to what I find relevant to provide context for my decision.
12. It is undisputed that the strata’s parkade gate lowered onto BCOF’s truck roof. It is also undisputed that BCOF’s truck roof was damaged. Photographs in evidence show small areas of paint damage and scratches to BCOF’s truck roof.
13. BCOF alleges that the strata was negligent and is solely responsible for BCOF’s truck damage. It says that either the strata’s parkade gate sensors were mounted too low

and did not detect its truck stopped under the gate, or the gate malfunctioned. BCOF says the gate lowering onto its truck roof caused the damage.

14. The strata denies any negligence and says the sensors were mounted correctly and the gate functioned properly. The strata says BCOF's driver caused the damage by moving the truck while the gate was lowered instead of waiting for the safety reverse sensor to re-open the gate.
15. To prove negligence, BCOF must show that the strata owed BCOF a duty of care, the strata breached the standard of care, the BCOF suffered damage, and the damage was caused by the strata's breach.
16. I find it clear the strata owed BCOF a duty to ensure the parkade gate was correctly installed and operated as intended. However, for the following reasons, I find that BCOF has not proved the strata breached the applicable standard of care.
17. Apart from alleging that the sensors were too low, BCOF did not provide further details of how the gate otherwise malfunctioned, so I find this allegation unproven.
18. As for the gate sensor heights, I find that the appropriate height for parkade gate sensors is a matter outside ordinary knowledge that requires expert evidence. See *Bergen v. Guliker*, 2015 BCCA 283.
19. The strata provided a June 16, 2021 invoice from Elite Door Services Inc. that indicates the sensors were mounted 18 inches from the ground. BCOF says the sensors are set too low to detect vehicles with higher ground clearances such as its truck, and says 18 inches is not an optimum height setting. BCOF says the sensors should have been set higher to detect all types of vehicles. However, BCOF did not provide any expert evidence to support this allegation.
20. As the applicant, BCOF bears the burden of proving its claims. In the absence of expert evidence that shows the gate sensors were mounted incorrectly, I find BCOF has not met its burden of proving the strata breached the standard of care.

21. Further, even if the strata was negligent and solely responsible for BCOF's truck damage, which I find unproven, BCOF has not proved the value of its claimed damages. BCOF did not provide any quotes, estimates, or invoices to support its claim for \$1,117.99 in truck repairs.
22. I find BCOF has not met its burden of proving it is entitled to \$1,117.99 in damages, or any other amount. I dismiss BCOF's claim for damages.
23. 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. As BCOF was unsuccessful, I dismiss its fee claim. The strata did not pay CRT fees and neither party claimed any dispute-related expenses, so I award none.

ORDER

24. I dismiss BCOF's claims and this dispute.

Leah Volkers, Tribunal Member