



# Civil Resolution Tribunal

Date Issued: May 13, 2024

File: SC-2023-005581

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Craig v. M T K AUTO WEST LTD. dba MINI RICHMOND*, 2024 BCCRT  
447

B E T W E E N :

EDWARD CRAIG

**APPLICANT**

A N D :

M T K AUTO WEST LTD. doing business as MINI RICHMOND

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. The applicant, Edward Craig,<sup>1</sup> took his vehicle to the respondent, M T K Auto West Ltd. dba Mini Richmond (MTK) for repairs. Mr. Craig says they paid MTK more than the amount shown on MTK's invoice. Mr. Craig requests a refund of \$727.04.
2. MTK says Mr. Craig is not entitled to any refund. MTK says it charged Mr. Craig an additional amount because Mr. Craig lost the key for MTK's courtesy loaner car. MTK says that even though Mr. Craig returned the key the next day, MTK had already incurred non-refundable key replacement charges.
3. Mr. Craig is self-represented in this dispute. MTK is represented by an employee.

## JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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. 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.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

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<sup>1</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT addresses them respectfully. Edward Craig indicated their pronouns are "they/them", and their title is "Mr.", so that is what I have used in this decision.

## **ISSUE**

7. Is Mr. Craig entitled to a refund of \$727.04?

## **EVIDENCE AND ANALYSIS**

8. In a civil proceeding like this one, Mr. Craig, as the applicant, must prove their claim on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
9. The parties agree that MTK repaired Mr. Craig's vehicle. Mr. Craig made some assertions about the quality of the repairs, but did not include this issue in the Dispute Notice, and did not provide evidence about repair quality or request a refund based on deficient repairs. So, I make no findings about repair quality in this dispute.
10. The issue in this dispute is whether MTK was entitled to charge Mr. Craig for the loaner car key replacement, and if so, how much.
11. Mr. Craig agrees that MTK provided a loaner car.
12. Text messages in evidence show that an MTK employee texted Mr. Craig on April 28, at 2:02 pm, stating that their car would be ready for pickup before 5:00 pm that day. Mr. Craig texted back, stating that they could not find the key for the loaner car, and might have misplaced it or dropped it.
13. MTK replied that an employee would bring Mr. Craig the spare key for the loaner car so Mr. Craig could drive it back to MTK's shop. The text said, "we will look into a remote key replacement when you arrive."
14. Further text messages in evidence show that Mr. Craig texted MTK at 9:30 pm on April 28, stating that they had found the loaner car key, and would bring it to MTK the following morning. Mr. Craig says they returned the key at 8:30 am on April 29. MTK does not dispute this, so I accept it is true.

15. MTK replied by text at 11:12 am on April 29, stating that MTK's manager would update Mr. Craig next week "to verify if cancellation is authorized."
16. In May 2023, the parties exchanged further text messages about the key charges. On May 11, 2023, MTK said that as a goodwill gesture, it would provide a partial refund of the key replacement charges, including the key programming labour charge and part of the key replacement fee.
17. In a May 15, 2023 text message, MTK wrote that the moment an order is submitted into BMW's key ordering system, it cannot be reversed or refunded.
18. Mr. Craig says they paid MTK a total of \$8,180.18. MTK agrees Mr. Craig paid this amount, but also says it refunded \$331.51 in key charges to Mr. Craig's Visa card. This refund is confirmed in MTK's payment statements, and in a text message. It is also consistent with MTK's revised invoice. So, I accept that MTK provided a \$331.51 refund. I also find that after the partial refund, Mr. Craig ultimately paid \$395.53 for key replacement, including tax.
19. Mr. Craig says they should not have to pay anything for key replacement, as they never lost the key, and returned it as required under the loaner car agreement.
20. I am not persuaded by Mr. Craig's argument that they never lost the key. I find the text messages in evidence show that during the afternoon of April 28, when MTK wanted Mr. Craig to pick up their vehicle and return the loaner car, Mr. Craig admitted that they could not find the key, and might have misplaced it or dropped it. The fact that Mr. Craig found the key later that evening does not mean it was never lost.
21. Mr. Craig argues that on April 28, they did not want MTK's employee to bring the spare key or order a replacement key. Mr. Craig said MTK "insisted" on sending its employee to deliver the spare key. Having reviewed the text messages in evidence, I find they do not support Mr. Craig's position. Mr. Craig did not say in the texts that they did not want the MTK employee to bring the spare key. Rather, when MTK texted that the employee was "ready to go now", Mr. Craig replied 5 minutes later, stating

“thank you.” Mr. Craig then wrote that they would keep looking for the key and contact the building manager to see if they found the key.

22. Then, at 2:54 pm on April 28, MTK texted that the employee would “head out right now” to deliver the spare key. Mr. Craig replied at 2:57 pm, stating, “thank you”, and providing his address.
23. I find these text messages establish that MTK did not “insist” on delivering the spare key. At no point did Mr. Craig say the MTK employee should not come, or suggest an alternative arrangement for returning MTK’s loaner car. There is also no text message in evidence showing that Mr. Craig asked for more time to find the key, or asked to return the loaner car on a different day. Based on this, I find it was reasonable for MTK to immediately order a replacement key once Mr. Craig delivered the loaner car back to the shop without the original key. The loaner car is an asset that MTK could not use for another customer until it was returned, and MTK reasonably needed to have 2 keys for the loaner car.
24. Mr. Craig also relies on the terms of the loaner car agreement. That agreement has no specific provisions about missing keys. It says the customer agrees to assume full responsibility for all aspects of the loaner car’s operation while their own vehicle is being serviced or repaired. I find this term makes Mr. Craig liable for a lost key.
25. Mr. Craig says that under the loaner agreement, they were not obligated to return the loaner car until 24 hours after MTK informed them that their vehicle was ready for pickup.
26. I find the loaner agreement has contradictory provisions about the loaner car’s return. In one place, it says the customer agrees to return the loaner car to MTK “as soon as my vehicle is ready or at [MTK’s] request.” Later in the agreement, it says the customer agrees to return the loaner car “within 24 hours of completion of my vehicle, during normal business hours.” These 2 provisions mean different things.
27. Since the agreement is ambiguous, I find the ambiguity must be resolved in Mr. Craig’s favour. So, I find Mr. Craig had 24 hours after being informed that their car

was ready to return the loaner car. However, as explained above, the text messages in evidence indicate that Mr. Craig never asked to keep the car longer. So, I find Mr. Craig cannot reasonably rely on the loaner agreement's 24-hour deadline for returning the loaner car to avoid liability for the missing key. In making this finding, I note that Mr. Craig was not charged for returning the loaner car late. Rather, they were charged for part of the cost of replacing the key.

28. Mr. Craig says that when they arrived at MTK's shop on April 28, he told MTK's employee that he wanted to keep looking for the key and would return it when they found it. Even accepting that, I find it was reasonable for MTK to order a new key in order to put the loaner car back into service. I find this because MTK had no way to know if, or when, Mr. Craig would find the key.
29. Finally, Mr. Craig argues that MTK should have been able to cancel the replacement key order. Mr. Craig submitted that he thinks it takes at least a few days to process the order and make a new key. He also says he thinks MTK had at least a couple of days to cancel the order.
30. MTK says this is not accurate, and that once a replacement key is ordered, it cannot be cancelled.
31. As explained above, Mr. Craig bears the burden of proof in this dispute. I find Mr. Craig's argument about how key replacement should work is speculative, and not confirmed by any evidence. Put another way, Mr. Craig provided an opinion about what they think is possible. However, Mr. Craig provided no evidence about how BMW key replacement actually works. So, I am not persuaded by Mr. Craig's argument.
32. In summary, Mr. Craig returned the loaner car on April 28 without the original key. At that time, they admitted they did not know where the key was, and could not promise when or if they would find it. In these circumstances, I find it was reasonable for MTK to order a new key, and I find it was reasonable for MTK to charge Mr. Craig \$395.53, including tax, for key replacement.

33. For these reasons, I dismiss Mr. Craig's claim for a refund.

34. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Craig was unsuccessful, I dismiss their claim for reimbursement of CRT fees. MTK is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

## **ORDER**

35. I dismiss Mr. Craig's claims and this dispute.

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Kate Campbell, Vice Chair