



Civil Resolution Tribunal

Date Issued: June 5, 2024

File: SC-2023-006853

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dark v. 561075 B.C. Ltd. (Doing Business As Kia Victoria)*, 2024 BCCRT
507

B E T W E E N :

BRIAN DARK

APPLICANT

A N D :

561075 B.C. LTD. (Doing Business As KIA VICTORIA)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about vehicle repairs.

2. Brian Dark says 561075 B.C. Ltd. (doing business as Kia Victoria) negligently misdiagnosed a problem with their vehicle and caused them to pay for unnecessary repairs. Mr. Dark claims \$978.40 as a refund for the allegedly unnecessary repairs and \$503.69 for the cost of renting a replacement vehicle for 1 week, for a total of \$1,482.09.
3. Kia denies that it was negligent. It says a different mechanic incorrectly installed a part in Mr. Dark's vehicle. It says that because of the vehicle's age and mileage, it was difficult to diagnose the problem. Kia also says it discounted its services so that Mr. Dark did not pay any more than they would have if Kia had diagnosed and repaired the problem immediately. It says it does not owe Mr. Dark anything.
4. Mr. Dark is self-represented, and Kia is represented by an authorized employee or principal.

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.
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 court. 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 whether Kia was negligent, and if so, whether Mr. Dark is entitled to \$1,482.09 as a refund for unnecessary repairs and for the cost of renting a replacement vehicle.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Dark must prove their claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss Mr. Dark's claims.
11. Mr. Dark owns a 2003 Kia Sedona. In November 2022 Mr. Dark paid a mechanic to install a new timing belt in their vehicle. At that time the vehicle had over 288,000 kilometers on the odometer. Mr. Dark says that after the repair the vehicle's check engine light was still on, and it was indicating multiple misfire codes. Mr. Dark says the mechanic advised them that the head gaskets needed replacing, but Mr. Dark disagreed, so they sought a second opinion from Kia.
12. Mr. Dark first brought their vehicle to Kia on November 29, 2022 and Kia adjusted the timing belt. Mr. Dark paid \$955.93 for this diagnosis and repair. Mr. Dark's car ran well for about 2 weeks before the check engine light came back on. Mr. Dark brought their vehicle to Kia for a second time on December 14, 2022, and Kia replaced the timing belt tensioner. Mr. Dark paid \$978.40 for this repair. During that second visit

Mr. Dark paid a rental car company \$503.69 to rent a replacement vehicle for 1 week. At no time did Kia agree to provide or pay for Mr. Dark's replacement vehicle.

13. After Kia's second repair, Mr. Dark's vehicle ran well for a week or two before the check engine light came back on. Mr. Dark brought their vehicle to Kia for a third time on January 3, 2023, and Kia removed and reinstalled the timing belt, which ultimately resolved the issue. Mr. Dark did not pay Kia anything for this third repair, though they paid Kia \$191.47 for unrelated repairs and a key fob.
14. Although they do not use these words, Mr. Dark alleges that Kia negligently failed to diagnose and repair their vehicle's problem during the first and second visits. However, I find that whether Kia's repairs at those visits were substandard is beyond common knowledge, so expert evidence is required unless Kia was obviously negligent (see *Bergman v. Guliker*, 2015 BCCA 283). Mr. Dark did not submit any expert evidence to support their claim.
15. Kia says that the symptoms Mr. Dark's vehicle was displaying at the first visit could have had multiple different causes. Kia says that because the vehicle's value was very low, it attempted the simplest and most cost-effective solutions first to avoid having the repair costs escalate beyond the vehicle's value. Kia says that since the vehicle ran properly after the first 2 repairs, it was unable to determine the ultimate cause of the problem until the third visit. Kia says the ultimate cause of the problem was the previous mechanic's improper installation of the timing belt.
16. I find the evidence is generally consistent with Kia's version of events, and I find Kia's explanation is reasonable. I find Kia was not obviously negligent. Without expert evidence, I find Mr. Dark has failed to establish that Kia was negligent, and I dismiss this claim.
17. 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. I see no reason in this case not to follow that general rule. Since Mr. Dark was unsuccessful, I find they are not entitled to reimbursement of their

CRT fees. Kia did not pay any CRT fees, and neither party claimed any dispute-related expenses.

ORDER

18. I dismiss Mr. Dark's claims and this dispute.

Sarah Orr, Tribunal Member