



Civil Resolution Tribunal

Date Issued: June 14, 2024

File: SC-2023-003718

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dutt v. ICBC*, 2024 BCCRT 547

Default decision – non-compliance

BETWEEN:

RAKESH DUTT

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner, Vice Chair

INTRODUCTION

1. This final Civil Resolution Tribunal (CRT) decision was made without the participation of the applicant, Rakesh Dutt, because he failed to comply with the CRT's mandatory directions.

2. The applicant made an insurance claim with the respondent insurer, Insurance Corporation of British Columbia, for damage allegedly caused to his vehicle during an act of vandalism and theft. His vehicle was undisputedly written off as a total loss. The applicant says the respondent improperly denied coverage. He claims \$5,000 for his vehicle's value.
3. The respondent says the applicant provided false and misleading information to it about the vehicle's condition at the time of loss. It says that it was entitled to deny coverage because the applicant made a wilfully false statement.
4. The applicant is self-represented. The respondent is represented by an authorized employee.

JURISDICTION AND PROCEDURE

5. The CRT has jurisdiction (meaning "legal authority") over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA).
6. Section 36 of the CRTA applies if a party fails to comply with the CRTA, its regulations, the CRT rules about case management, or a CRT order made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for to decide whether to:
 - a. Hear the dispute,
 - b. Dismiss the non-compliant party's claims, or
 - c. Refuse to resolve the non-compliant party's claims.
7. A CRT case manager referred the applicant's non-compliance with the CRT's rules to me for a decision.
8. As explained below, I dismiss the applicant's claim.

ISSUES

9. The issues are:
 - a. Is the applicant non-compliant with the CRTA and the CRT's rules?
 - b. If so, should I dismiss or refuse to resolve this dispute without the applicant's further participation?

EVIDENCE AND ANALYSIS

Non-compliance

10. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to participate in the case management phase and pay the tribunal decision fee, as required by sections 25 and 32 of the CRTA, and CRT rules 1.3(1), 1.9 and 5.1. This is despite multiple attempts by the case manager to contact the applicant with a request for a reply.
11. The applicant applied for dispute resolution on April 1, 2023. He provided his email address and telephone number to be used for this dispute.
12. The case manager provided details of the applicant's non-compliance, as follows:
 - a. On April 29, 2024, CRT staff emailed the applicant and asked him to pay the \$50 tribunal decision fee by May 6, 2024, in order for the dispute to proceed through the tribunal decision process for a final decision. The email included a warning that, if the applicant did not pay the fee, the CRT would give the other party the option to pay. However, if no party paid the fee, the CRT could dismiss or refuse to resolve the dispute.
 - b. On May 7, 2024, CRT staff emailed the applicant that the fee payment was overdue and extended the due date to May 8, 2024. The email contained the same warning as the April 29, 2024 email.

- c. On May 13, 2024, CRT staff called the applicant and left him a voice-mail advising that the decision fee was overdue and extending the due date again until May 15, 2024.
- d. In a May 16, 2024 email, CRT staff gave the applicant a final warning that he could be found non-compliant if he failed to pay the decision fee by May 21, 2024. The email explained that, without further warning, the CRT could dismiss, refuse to resolve, or decide the dispute without the applicant's further participation. The email also asked the applicant to reply to advise whether or not he wanted to withdraw his dispute.
- e. On May 29, 2024, CRT staff emailed the respondent and asked it to pay the \$50 decision fee by June 5, 2024, if it wanted to proceed to adjudication. The email included a warning that, if no party paid the decision fee, the CRT could choose to dismiss or refuse to resolve the dispute.
- f. The applicant did not respond to any of the CRT's emails or the voice-mail.
- g. Neither party has paid the \$50 decision fee.

13. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for failing to pay the tribunal decision fee. As noted above, the applicant was warned, in writing, about the risks of their failure to pay the tribunal decision fee or respond to the CRT staff's communications. Under CRT rule 5.4(3), where neither party pays the tribunal decision fee, the CRT can refuse to resolve the dispute, proceed to hear it, or dismiss it.

Should the CRT hear the dispute without the applicant's further participation?

14. As noted above, the applicant initiated this CRT dispute but has refused to pay the tribunal decision fee. I find CRT staff provided the applicant with a reasonable number of opportunities to pay the fee, through both the email address and phone

number that the applicant provided. I find the applicant knew about the outstanding tribunal decision fee but refused to pay it.

15. Rule 1.4(2) states that if a party is non-compliant, the CRT may:

- a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
- b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
- c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
- d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

16. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:

- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
- b. The stage in the facilitation process at which the non-compliance occurs,
- c. The nature and extent of the non-compliance,
- d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
- e. The effect of the non-compliance on the CRT's resources and mandate.

17. Based on the evidence described above, I find that the applicant had proper notice of the outstanding tribunal decision fee. I further find the applicant knew the consequences if he failed to pay the fee, which was the potential dismissal of his

dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondent in making an order dismissing the applicant's dispute.

18. If I were to refuse to resolve the claim, there would be no finality to this dispute. This is because it would be open to the applicant to make a further request for CRT resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicant for failing to participate, which would be unfair to the respondent.
19. The applicant's non-compliance here also occurred early in the tribunal decision process, and the parties have not provided any evidence or submissions.
20. The CRT's resources are valuable. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where, through a failure to respond as required, the applicant shows they do not want the CRT's assistance in resolving their claim. While not binding on me, I agree with and apply the former CRT chair's reasoning in *Grand-Clement v. The Owners, Strata Plan KAS 2467*, 2017 BCCRT 45, that forcing an unwilling applicant to pursue a dispute with the CRT would be contrary to the CRT's mandate and would impair the fairness of the process.
21. Weighing all the factors, I find the applicant's claims should be dismissed.
22. Given the applicant's non-compliance, I find he is not entitled to a refund of any CRT fees he may have paid. The successful respondent did not pay any CRT fees or claim any dispute-related expenses.

ORDER

23. I dismiss the applicant's claims.

Kristin Gardner, Vice Chair