



Civil Resolution Tribunal

Date Issued: October 8, 2024

File: SC-2023-007985

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Whaley v. Hertz Canada Limited*, 2024 BCCRT 997

BETWEEN:

LORNE LARRY WHALEY

APPLICANT

AND:

HERTZ CANADA LIMITED

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This dispute is about a car rental.
2. The applicant, Lorne Larry Whaley, reserved a car online with the respondent, Hertz Canada Limited (Hertz). Mr. Whaley says that Hertz did not have a car available for

him. He claims damages for taxis to another car rental company, additional expenses for an alternate car rental, and stress caused by this incident.

3. Hertz says that Mr. Whaley's reservation did not guarantee an available car, so it is not liable for any damages.
4. Mr. Whaley is self-represented. Hertz is represented by an authorized employee.

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.
6. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format. 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.
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.
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 what, if anything, Hertz owes Mr. Whaley for failing to provide him with a rental car.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Whaley must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. I note that Hertz provided no evidence in this dispute despite having the opportunity to do so.
11. The parties agree that Mr. Whaley reserved a car on Hertz's website on June 14, 2023, for pick up the following day. After Mr. Whaley made the reservation, Hertz tried to call him to say that no car was available. Hertz was unfortunately not able to reach Mr. Whaley. No car was available when Mr. Whaley arrived at Hertz. A Hertz employee directed him to another car rental company nearby.
12. Mr. Whaley says that he went to the second car rental company which also had no car available. However, the second company did help him find a third car rental company further away. He took a taxi to the third company and rented a car.
13. Hertz argues that a reservation on its website did not lead to a contractual relationship between the parties. It says that reservations are subject to availability and do not guarantee a car rental. I do not accept this submission. A reservation implies that Hertz set aside a car for Mr. Whaley. It was open to Hertz to provide evidence of its website's policies or a copy of Mr. Whaley's booking to show that his car reservation was subject to availability. As noted above, Hertz provided no evidence in this dispute. So, I draw an adverse inference against Hertz for failing to provide this evidence. I find that Hertz agreed to rent a car to Mr. Whaley on June 15, 2023, and that it broke this agreement.
14. I turn to the question of damages. Damages for breach of contract are intended to put the non-breaching party in the position they would have been in had the contract been carried out as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 219 at paragraph 38).

15. Neither party provided a copy of Mr. Whaley's original booking with Hertz. Mr. Whaley provided a copy of his car rental invoice which shows that he paid \$60 for additional mileage. He says his original reservation with Hertz did not have this extra \$60 charge. Hertz does not dispute this, so I accept it. Mr. Whaley provided receipts for \$59 for taxis to and from the third car rental company. Hertz does not dispute that these were necessary expenses, so I accept them. I find that Mr. Whaley paid these extra costs as a consequence of Hertz breaching the parties' contract. So, I order Hertz to pay Mr. Whaley \$60 for the increased cost of Mr. Whaley's car rental and \$59 for his taxis for a total of \$119.
16. Mr. Whaley claims damages for the stress caused by this incident. He says that Hertz's failure to provide a rental car delayed him four hours. He and two elderly family members were planning to travel that day, but the delay caused them to arrive at their destination too late to see an unwell relative. I infer that Mr. Whaley is claiming mental distress damages.
17. Mental distress damages are generally not available for breach of contract. There are two exceptions. First, a party may get significant compensation when the contract's main purpose was to provide "peace of mind", such as vacations or wedding photography. Second, a party may get more modest compensation where part of the contract's purpose was for a "psychological benefit". In these cases, the party may be compensated for inconvenience and discomfort that goes beyond mere frustration or disappointment (see *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30).
18. I find that the parties' contract did provide Mr. Whaley with a psychological benefit, namely that reserving a car rental would make his travel less stressful. I accept that a four hour delay for three seniors travelling to visit a sick relative caused Mr. Whaley mental distress that went beyond mere frustration or disappointment. I find that this was a foreseeable consequence of Hertz not having a car available. I am mindful of the BC Court of Appeal's comment that damages for mental distress from a breach of contract should be "restrained and modest" (see *Wharton v. Tom Harris*

Chevrolet Oldsmobile Cadillac Ltd., 2002 BCCA 78). On a judgment basis, I find that Mr. Whaley is entitled to \$200 for mental distress resulting from the breach of the parties' contract.

19. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Whaley is entitled to pre-judgment interest on the \$119 from June 15, 2023, the date he paid this money to the date of this decision. This equals \$7.90. Under section 2 of the COIA, Mr. Whaley is not entitled to pre-judgment interest on his \$200 award for non-pecuniary (pain and suffering) damages.
20. 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. Mr. Whaley was successful, so I find that he is entitled to reimbursement of \$175 for his paid CRT fees. Mr. Whaley also claims \$15.62 in postage as a dispute-related expense. I find this was a reasonable expense and order Hertz to reimburse Mr. Whaley \$15.62. Hertz did not pay any CRT fees nor claim any dispute-related expenses.

ORDERS

21. Within 30 days of the date of this order, I order Hertz to pay Mr. Whaley a total of \$517.52, broken down as follows:
 - a. \$319 as damages,
 - b. \$7.90 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$190.62, for \$175 in CRT fees and \$15.62 for dispute-related expenses.
22. Mr. Whaley is entitled to post-judgment interest, as applicable.

23. This is a validated decision and order. 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.

Peter Mennie, Tribunal Member