



# Civil Resolution Tribunal

Date Issued: March 13, 2025

File: SC-2024-000580

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Larkin v. Clover Towing (2015) Ltd.*, 2025 BCCRT 324

B E T W E E N :

KEVIN LARKIN

**APPLICANT**

A N D :

CLOVER TOWING (2015) LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Maria Montgomery

## INTRODUCTION

1. This dispute is about a tow service. The applicant, Kevin Larkin, hired the respondent, Clover Towing (2015) Ltd., to tow his vehicle. Mr. Larkin says that Clover Towing failed to bring his vehicle to the correct location. He claims \$2,000 for tow charges, an increased repair bill and his time spent on the matter.

2. Clover Towing says that it delivered the vehicle to the requested location.
3. Mr. Larkin is self-represented. Clover Towing is represented by an authorized employee.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format, 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. 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. 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.
7. In Mr. Larkin's Dispute Notice, he claims \$2,000 total which includes a refund of the tow fee and \$1,000 in compensatory damages, which I infer means the increased cost to fix his vehicle at a different auto repair shop. He also claims for his time spent at a rate of \$100 per hour. In submissions, he increased his claims to \$1,844.64, the full amount he paid for repairs, and 20 hours of his time at \$100 per hour. However, I find his claim is limited to the \$2,000 amount in the Dispute Notice.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Mr. Larkin have a contract with Clover Towing for towing services?
  - b. Did Clover Towing breach the contract?
  - c. Did Clover Towing fail to take reasonable care of Mr. Larkin's vehicle?
  - d. If there was a breach of contract or failure to take reasonable care, what are Mr. Larkin's entitlement to any damages?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mr. Larkin as the applicant must prove his claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. Mr. Larkin did not provide reply submissions despite the opportunity to do so.
10. The following is undisputed. Mr. Larkin's son CL called Clover Towing and requested a tow from near Costco to Budget Brake and Muffler at 13718 104 Avenue. A recording of this phone call is in evidence. Clover Towing brought the vehicle to Budget and gave the keys to an employee.
11. Mr. Larkin says that the vehicle should have been brought to Mr. Fix Auto at 13704 104 Avenue. Mr. Larkin says that he called Budget for a quote for repairs but subsequently decided he wanted the vehicle repaired at Mr. Fix Auto because it would be cheaper. Mr. Larkin says that when the tow-truck driver arrived to tow the vehicle, he had CL put the tow-truck driver on the phone. In an unrecorded phone call, Mr. Larkin instructed the driver to take the vehicle to Mr. Fix Auto.

12. Clover Towing says that the tow-truck driver changed the tow instructions to 13704 as directed by Mr. Larkin. This is reflected in the log completed by the driver but the log did not state Mr. Fix Auto, only the 13704 address.
13. Clover Towing says that Mr. Fix Auto and Budget share a driveway. I find this undisputed by Mr. Larkin and supported by photos and a Google map screenshot in evidence. Clover Towing says that the tow-truck driver brought the vehicle to 13704 as Mr. Larkin asked and, once there, an employee from Budget stepped forward to take the keys, asking “is this the vehicle coming from behind the Costco?” Clover Towing’s driver said it was and handed over the keys. The tow-truck driver’s log states “vehicle dropped off at Budget shop has keys and vehicle is inside the bay.” In the circumstances, I find it likely the Budget shop came forward to take the keys as described.
14. Mr. Larkin says that Clover Towing breached the contract for tow service because the vehicle was not delivered to Mr. Fix Auto. He says that the repair bill from Budget was twice what Mr. Fix Auto would have charged.

***Did Mr. Larkin have a contract with Clover Towing for towing services?***

15. Even though Mr. Larkin did not contact Clover Towing himself, I find that the contract for towing services was between him and Clover Towing. Under the law of agency, an agent is a person who can enter into contracts on another person’s behalf. Here, Mr. Larkin instructed CL to call the tow company. So, I find that CL acted as Mr. Larkin’s agent and Mr. Larkin had a contract with Clover Towing.

***Did Clover Towing breach the contract?***

16. For the following reasons, I find that Clover Towing did not breach the parties’ agreement.
17. From my review of the parties’ agreement, documented in the recorded phone call and towing log, the parties agreed that the vehicle would be brought to 13704 104 Avenue. Mr. Larkin says that Clover Towing brought the vehicle to 13718 104

Avenue instead. However, as noted both auto shops share a driveway and it is undisputed that Clover Towing brought the vehicle to this driveway. As Clover Towing brought the vehicle to the driveway used by 13704, I find that Clover Towing brought the vehicle to the location Mr. Larkin requested.

18. Mr. Larkin essentially argues that the contract included a term that the vehicle be delivered to Mr. Fix Auto. The problem for Mr. Larkin is that I find he has not adequately proven he informed the tow-truck driver to deliver the vehicle to Mr. Fix Auto. It is undisputed that Mr. Larkin spoke to the tow-truck driver on the phone but as the conversation between Mr. Larkin and the tow-truck driver was not recorded, the only documentary evidence of their conversation is the tow-truck driver's log. The log does not note Mr. Fix Auto, only the change in address to 13704. Overall, the weight of the evidence suggests that the tow-truck driver recorded his new instructions in the log. So, I find Mr. Larkin did not inform the tow-truck driver to deliver the keys specifically to Mr. Fix Auto.
19. Mr. Larkin says that Clover Towing chose to provide the keys to Budget because it wanted to provide the business to a friend. Mr. Larkin gives no further explanation on this. I note that there is no evidence that Clover Towing preferred to give business to Budget.

***Did Clover Towing fail to take reasonable care of Mr. Larkin's vehicle?***

20. I considered whether Mr. Larkin's claim could succeed under the law of bailment. Bailment is about the obligations to one party to safeguard another party's possessions. The bailor is a person who gives the goods or possessions and the bailee is the one who holds or stores them. A voluntary bailee for reward is someone who agrees to receive the goods as part of a transaction where the bailee gets paid. In caring for the bailor's property, the bailee must exercise reasonable care in all the circumstances.<sup>1</sup>
21. Here, Clover Towing undisputedly agreed to take possession of Mr. Larkin's vehicle and deliver it to a repair shop. So, I find Mr. Larkin was a bailor, and

Clover Towing was a voluntary bailee for reward. This means Clover Towing was obligated to take reasonable care of Mr. Larkin's vehicle. I find that Clover Towing did so. There is no indication that the vehicle suffered any damage while in Clover Towing's care. Clover Towing took reasonable care of the vehicle when it handed over its keys to the repair shop that said it was waiting for that specific vehicle. It is unclear what more Clover Towing could have done to reasonably care for the vehicle. So, I find that Clover Towing took reasonable care of Mr. Larkin's vehicle.

### ***Mr. Larkin's entitlement to damages***

22. Ultimately, Mr. Larkin did not provide evidence of any losses as a result of the tow service, so I find his damages unproven in any event. Mr. Larkin did not provide evidence of a difference in cost between Mr. Fix Auto's and Budget's repair services. A receipt in evidence shows Mr. Larkin paid \$255.36 for the tow for which he claims a refund. However, Mr. Larkin does not dispute that he received the benefit of a tow to an auto shop. Finally, under the CRT's rules, compensation for time spent are only made in extraordinary circumstances.
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 Mr. Larkin was unsuccessful, he is not entitled to a reimbursement of CRT fees. Neither party claims dispute-related expenses.

## **ORDER**

24. I dismiss Mr. Larkin's claims and this dispute.

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Maria Montgomery, Tribunal Member

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<sup>1</sup> *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273 and *Person v. North River Towing (2004) Ltd.* 2018 BCPC 229.