

BETWEEN

**EI
APPLICANT**

AND

**UR LTD
RESPONDENT**

Date of Order:

29 October 2015

Referee:

Referee Blyth

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] EI agreed to leave her car in Henderson overnight in the workshop of UR Ltd. That night the workshop burnt down and EI's car was damaged.

[2] EI is claiming that UR Ltd is liable to repair her car.

Issue

[3] The issue to determine is whether UR Ltd is liable to repair EI's car.

Is UR Ltd liable to repair EI's car?

[4] The relevant law in this case is the law of bailment. The law of bailment provides that a bailee (the person holding on to possession of the goods) is not liable for damage to goods without negligence on his part such as by accident or act of a third party. The mere loss or destruction of the goods while in the bailee's custody casts an onus upon the bailee to show that he did not cause the loss or destruction. This onus will be discharged if the bailee can show he was not at fault, and that the damage took place despite his taking all reasonable precautions.

[5] I find that URI, on behalf of his company, has been able to show that he was not at fault and that the damage took place despite his taking all reasonable precautions. The evidence (including the Fire Report) indicates that the cause of the fire was through arson and I am advised that the previous owner of the business has been arrested as the prime suspect for the arson attack.

[6] I considered whether URI was in some way at fault because he knew that the security cameras on his workshop had been stolen a week before the fire and he had not replaced them. However, I find that this is not sufficient for me to find URI at fault for the resulting fire, because there is insufficient evidence that replacing the cameras would have stopped the arson attack. It is well known that people starting a fire are usually aware of where the security cameras are and will usually either wear balaclavas or will break the cameras before starting the fire.

[7] I have had regard to EI's view that this does not seem fair. However, that is how the law of bailment operates. If EI had wanted to guard against this type of risk (when she agreed

to leave her car in the possession of someone else) then she could have arranged insurance cover on her car.

Conclusion

[8] Based on the above reasons, I am dismissing the claim.