



Civil Resolution Tribunal

Date Issued: March 14, 2018

File: SC-2017-002358

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Milani Plumbing Drainage & Heating Ltd. v. Chouhan*, 2018 BCCRT 77

B E T W E E N :

Milani Plumbing Drainage & Heating Ltd.

APPLICANT

A N D :

Sandeep Singh Chouhan

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Milani Plumbing Drainage & Heating Ltd., was hired to repair a furnace in the respondent's home in December 2014. The respondent, Mr.

Chouhan, refused to pay the repair bill because he says the applicant failed to fix the furnace.

2. The applicant seeks an order that the respondent pay \$1,611.75 for the furnace repair.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I found no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a) Is the applicant's claim out of time under the *Limitation Act*?
 - b) If not, is the respondent required to pay the applicant \$1,611.75 for furnace repairs?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Limitation Period

10. The *Limitation Act* applies to disputes before the tribunal. The *Limitation Act* sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed.
11. Section 6 of the *Limitation Act* says that the basic limitation period is two years, and that a claim may not be commenced more than two years after the day on which it is discovered. I find that this two year limitation period applies to the applicant's claim.
12. The applicant performed the disputed furnace repair work in December 2014. The applicant sent the respondent an invoice dated March 27, 2015, which said the respondent was in default of the payment terms. The Dispute Notice was issued by the tribunal on June 8, 2017.
13. Because the applicant filed his claim with the tribunal more than two years after issuing the March 27, 2015 invoice, I asked the parties for their submissions on whether the limitation period had expired. The applicant submitted that the claim

was discovered on June 23, 2015, when the parties met and agreed that the respondent would pay \$600 for the furnace repair work. The applicant says that during a telephone call later on the same day the respondent reneged on the verbal agreement and said “take me to court”.

14. Section 24 of the *Limitation Act* says that a limitation period may be extended if a person acknowledges liability for a claim in writing. Since the respondent’s alleged promise to pay \$600 was not given in writing, section 24 of the *Limitation Act* does not apply.
15. I do not agree that the applicant discovered the claim on June 23, 2015. Section 8 of the *Limitation Act* says a claim is “discovered” on the first day that the person know or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.
16. I find that the applicant discovered the claim by March 27, 2015, when it issued the invoice stating that the respondent was in default. The purpose of the June 23, 2015 settlement negotiations was to resolve the disagreement over the bill, which had been going on since at least March 27, 2015 and did not start on June 23, 2015. I also note that the applicant’s claim before the tribunal is not to enforce the alleged verbal agreement for \$600, but to enforce the March 27, 2015 invoice amount of \$1,611.75.
17. Although the respondent first mentioned court on June 23, 2015, the applicant reasonably ought to have known that a court or tribunal proceeding would be an appropriate means to seek payment of the disputed bill when they issued the default invoice on March 27, 2015.
18. For these reasons, I find that the applicant had discovered the claim by March 27, 2015. Because the tribunal Dispute Notice was issued more than two years later,

on June 8, 2017, I find that the applicant's claim is barred under the *Limitation Act*. The dispute is therefore dismissed.

ORDERS

19. The applicant's claim is dismissed. Because the applicant was not successful, I do not order reimbursement of its tribunal fees.

Kate Campbell, Tribunal Member