Civil Resolution Tribunal

Date Issued: August 1, 2018

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services LTD v. Fasoli*, 2018 BCCRT 408

B E T W E E N :

Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services LTD

APPLICANT

A N D :

Adam Fasoli

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. This is a dispute about payment for furnace repairs. The applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services LTD (Aslan) says the respondent, Adam Fasoli, failed to pay the full amount owed on an invoice for furnace repairs. The applicant seeks an order that the respondent pay $4,726.93 plus interest.

2. The respondent says applicant charged for unnecessary labour and furnace parts, and the repairs were unsatisfactory.

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 find that there are 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 126, 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 issue in this dispute is whether the respondent must pay the applicant $4,726.93 plus interest 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.

10. The work orders provided by the applicant show that its employee first attended the respondent's home to repair the furnace on September 27, 2017. The documents show that Aslan employees worked the following hours:

- September 27: 6 hours
- October 4: 5.5 hours
- October 6: 6 hours, plus 1.5 hours overtime
- October 16: 7 hours
- November 14: 6 hours

11. The total $4,726.93 invoice, which is undated, shows charges of $2,915.50 for labour, $822.18 for materials, $649.35 for travel, and smaller amounts for freight, combustion analysis, and GST.

Overbilling

12. The respondent says he was overcharged. He says the applicant tried to repair the furnace for 8 weeks, running up the cost of labour and materials by performing

ineffective work, and eventually repaired a kinked line that ought to have been repaired at that outset.

13. The respondent says that although he asked for cost breakdowns as the work progressed, he did not get any information about costs until he received the final invoice on December 1, 2017.

14. On September 27, the respondent had signed a pre-printed work authorization form. It said the respondent realized the diagnostic and repair service could entail numerous visits and part replacements, and he agreed to pay for all labour and parts used, including travel time to and from the applicant's shop, and necessary trips to obtain materials. The form set out the applicant's labour rates, including overtime rates.

15. I find that by signing the September 27 work authorization form, the respondent agreed to the applicant's charges. While I accept that the applicant did not provide periodic updates on the bill, the respondent knew how many service calls the applicant made, and roughly how long they took. He was also aware of the applicant's hourly rates, which account for most of the invoice. The respondent knew and agreed in writing that the applicant would charge travel time plus vehicle mileage for each trip to his home, which was approximately 123 kilometers away from the applicant's shop. These round trips account for a significant portion of the applicant's invoice.

16. For these reasons, I do not accept the respondent's argument that he is not liable to pay because the applicant did not provide periodic cost updates.

17. As argued by the applicant, if the respondent was unhappy after the first few service calls, he could have terminated the agreement at that point. The respondent says that before hiring the applicant, he could not find another company with technicians qualified to work on his diesel oil furnace. He also says he lives in a remote area. I find that these facts support the travel and labour charges on the applicant's invoice.

18. I also reject the respondent's argument that the applicant ought to have diagnosed and repaired the furnace more quickly, with fewer service calls. While the respondent asserts that the applicant's technician was incompetent and performed unnecessary procedures, the respondent is not a furnace expert, and has not provided any expert evidence proving that the furnace diagnosis and repairs were done incorrectly. I do not accept the respondent's lay opinion on furnace repairs, since he admits he could not fix the furnace himself. While I accept that the correspondence from the manufacturer shows that the respondent's furnace was not obsolete, as asserted by the applicant, there is no evidence before me showing that the work should have been done differently.

Calculation Errors

19. There are errors in the calculation of the applicant's invoice. The invoice shows charges for 26 hours of regular labour plus 2.5 hours of overtime labour from September 27 to October 6. However, the work orders and GPS printouts provided by the applicant show only 17.5 hours of regular labour and 1.5 overtime labour in this period.

20. As the applicant has not explained these discrepancies, I find the respondent is not required to pay the excess amounts, which total $980.

Unsatisfactory Work

21. The respondent also says the applicant's work was unsatisfactory, as the furnace did not work properly after the repairs were completed. He provided video footage showing various aspects of the furnace's operation.

22. According to the September 27 work authorization form and the respondent's submissions, when he first hired the applicant the furnace did not work at all. It produced no heat, and the controls were completely locked out so he could not reset them.

23. After the first few service calls, the respondent's wife emailed the applicant on October 12, 2017 and said the furnace was producing smoke. On October 18, the respondent's wife emailed and said the furnace was no longer smoking or smelling, but had started "burping/woofing" during the first few minutes of operation. She said it then levelled out and ran smoothly. Apparently in response to this email, the applicant made a final service call on November 29. According to the work order the technician replaced some piping, and did not charge for the call.

24. I place significant weight on the fact that, based on the evidence before me, the respondent did not mention any concerns about the furnace's operation after the final service call on November 29, until the applicant filed its dispute with the tribunal over payment. After November 29, the only other email from the respondent is dated December 7, 2017, and is a response to the recently-received invoice for $4,726.93. The respondent disputed the list of repairs set out by the applicant, and says the technician failed to check the flow on the first service call. The respondent's email deals solely with his concerns about various charges on the invoice, and does not mention any problem with the furnace's operation.

25. The respondent did not file a claim or counterclaim about unsatisfactory repairs, and there is no evidence indicating that he complained about the furnace's operation after October 18. He provided no evidence about having to replace the furnace, or hire someone else for further repairs. For that reason, I find the respondent's liability for the repair bill is not reduced due to unsatisfactory work.

26. The respondent provided a copy of an internet page showing complaints about the applicant to the Better Business Bureau. I place no weight on this evidence, in part because there is no information about the content or source of the complaints. The respondent also provided copies of online reviews of the applicant. I place no weight on these because they do are not determinative of any facts in this case, and do not relate to the quality or amount of work performed on the respondent's furnace. I also note that if the respondent is persuaded by the reviews, he ought to have relied on them before hiring the applicant.

27. In summary, I find that the respondent must pay the applicant's invoice, minus the excess labour charges of $980 plus GST (equalling $1,029). Thus, the respondent must pay the applicant $3,697.93.

28. The September 27 work authorization form says the applicant will charge 19.6% interest on outstanding balances. However, the evidence indicates that in an attempt to settle the matter, the respondent sent the applicant a cheque for $4,077.58 on December 12. The applicant did not cash the cheque. Since the applicant rejected payment, I find it is not entitled to contractual interest. The applicant is entitled to interest under the *Court Order Interest Act* (COIA), which is mandatory for any monetary judgment.

29. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was substantially successful, but rejected an offer for more than the amount ordered in this decision before the dispute was filed. For that reason, I find the applicant is not entitled to reimbursement of tribunal fees.

ORDERS

30. I order that within 30 days of this decision, the respondent pay the applicant a total of $3,725.36, made up of $3,697.93 as payment for furnace repair services, plus $27.43 for interest under the COIA.

31. The applicant is entitled to post-judgment interest under the COIA, as applicable.

32. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

33. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only

be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member