



Civil Resolution Tribunal

Date Issued: August 2, 2018

File: SC-2017-006691

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yu et al v. A Happy Home Service*, 2018 BCCRT 415

B E T W E E N :

Peng-Hui Yu and Jackie Hsu

APPLICANTS

A N D :

A Happy Home Service

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a furnace. The applicants, Peng-Hui Yu and Jackie Hsu, say they paid for a new high efficiency furnace, but the respondent, A Happy Home Service, installed the wrong type of furnace, namely a lower efficiency furnace with less power.

2. The applicants are represented by Peng-Hui Yu, and the respondent is represented by Javid Atmani, who is either the respondent's employee or its principal.

JURISDICTION AND PROCEDURE

3. These are the tribunal's formal written reasons. 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.
4. 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 while there are inconsistencies in the evidence about the furnace, I find I can fairly resolve the dispute based on the documentary evidence before me. This conclusion is consistent with the court's observations of the tribunal's processes in the recent decision in *Yas v. Pope*, 2018 BCSC 282.
5. 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.
6. Under the Act and 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.

ISSUE

7. The issues in this dispute are:

- a. did the respondent install the wrong furnace, and
- b. if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

- 8. In a civil claim such as this, the applicants bear 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.
- 9. On November 9, 2016, the respondent sold the applicants a new furnace for \$4,725 including GST. The invoice notes the applicants paid by MasterCard, which was processed on November 10 and 11, 2016. The invoice describes the furnace as follows:
 - 93% - S.S. [which I infer refers to efficiency rating]
 - 100,000 B.T.U.
- 10. It is undisputed that the respondent installed an 80,000 BTU furnace, with 92% efficiency, in the applicants' home. It appears the applicants discovered this when they went to get the permit for the furnace, although nothing turns on what prompted their discovery. The respondent says this type of furnace was appropriate for the applicants' home and relies upon the City of Maple Ridge's March 9, 2017 permit for it. Other than its own declaration of installation, the respondent provided no evidence apart from its brief submission.
- 11. I do not agree with the respondent. The applicant paid for a higher efficiency and more powerful furnace than it received. The evidence before me is that the square footage of the applicants' house warranted a 100,000 B.T.U furnace. There is some evidence that the higher efficiency furnace costs at least \$500 more than the lower efficiency one. There is also evidence before me that a new higher efficiency furnace will cost the applicants about \$5,000.

12. The fact that the City of Maple Ridge issued a permit for the 80,000 BTU furnace installed is not determinative of the applicants' claims under the parties' contract. I note that the respondent told the Better Business Bureau that the installed furnace was the quoted furnace, which is not true. This inaccuracy causes me to question the reliability of the respondent's evidence overall, as discussed further below.
13. On March 16, 2017, the City of Maple Ridge issued an inspection notice. It stated that the furnace was not approved, due to a number of issues relating to the venting and filter, and that the furnace required re-inspection. I accept that the respondent offered to fix these problems. However, I agree with the applicants that the fundamental issue is that the applicants paid for a different furnace than it received and agreed to buy.
14. In its Dispute Response provided at the outset of this tribunal proceeding, the respondent stated it explained the higher capacity furnace would be too big, and that the applicants (perhaps through the applicant's daughter) accepted the respondent's recommendation for the furnace that was installed. However, in its submission for this decision, the respondent only says it installed the proper furnace for the house, and, that the respondent tried to go back and fix a "filter adjustment" issue raised by the City inspector but the applicants would not allow it to make the correction. The respondent says the applicants have had the furnace for "a long time now" and refuses to accept it back or offer a refund.
15. I agree with the applicants. The respondent did not provide the furnace it sold to the applicants and which the applicants paid for. The applicants addressed the problem with the respondent in a timely way as soon as it was discovered. The applicants are entitled to a \$4,725.00 refund, as they will have to spend more than that to replace the furnace with the higher efficiency furnace they had expected. The respondent has not provided a reasonable explanation for why it installed the different furnace. The respondent's evidence and submissions were inconsistent and I therefore find it less reliable. I do not accept that the respondent could not install the higher efficiency furnace as it quoted.

16. The applicants also seek an order that the respondent remove the furnace the respondent installed, which in the circumstances I consider appropriate. I say this because it would be unfair for the respondent not to get the furnace back since it has to provide the refund. I also say this because I find the applicants should not be burdened with the disposal of the furnace installed by the respondent.
17. In accordance with the Act and the tribunal's rules, as the applicants were successful in this dispute I find they is entitled to reimbursement of the \$175 in tribunal fees. I do not make any order for pre-judgment interest under the *Court Order Interest Act* because the applicants have not yet bought a replacement furnace.

ORDERS

18. Within 30 days of this decision, I order the respondent to pay the applicants a total of \$4,900, broken down as follows:
 - a. \$4,725 as a refund for the furnace installed by the respondent, and
 - b. \$175 in tribunal fees.
19. Within 10 days of receiving payment from the respondent as set out in the paragraph above, I order the applicants to make the furnace installed by the respondent available for pick up by the respondent, at a reasonable time to be mutually agreed upon in writing by the parties, with at least 24 hours' notice unless otherwise agreed in writing.
20. The applicants are entitled to post-judgment interest, as applicable.
21. 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 decision.

22. 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.

Shelley Lopez, Vice Chair