



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as : *Mah et al v. Wah Fai Plumbing & Heating Inc.*, 2018 BCCRT 466

B E T W E E N :

Cindy Mah and Lily Mah

APPLICANTS

A N D :

Wah Fai Plumbing & Heating Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a \$1,260 bill for a boiler service, which the respondent, Wah Fai Plumbing & Heating Inc., did at the home of the applicant Lily Mah. The

applicant Cindy Mah is Lily Mah's daughter. The applicants say the respondent overcharged for the boiler's repair and its technician unnecessarily replaced parts despite their objection.

2. For clarity and ease of reference, and without intending any disrespect, I will refer to Cindy Mah as Cindy, and to Lily Mah as Lily. The applicants are represented by Cindy and the respondent is represented by Sing Ng, who is the respondent's manager.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.
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 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

7. The issue in this dispute is to what extent, if any, the applicants are entitled to a refund for the boiler repair done by the respondent at the applicant Lily's home.

EVIDENCE AND ANALYSIS

8. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, generally speaking the applicants bear the burden of proof on a balance of probabilities. However, as discussed below, the respondent bears the onus of disproving an allegation of deceptive practices.
9. Lily's Viessmann brand boiler was showing an "F4 error code", and the respondent attended to fix it on January 9, 2018. The respondent's January 9, 2018 \$1,260 quote (initially \$1,400, but Cindy negotiated a 10% discount), became the parties' contract and the respondent's invoice. The quote does not set out a cost breakdown between parts and labour. However, it details the following:
 - a. 1 ignitor
 - b. 1 boiler combustion chamber seal
 - c. 1 ignition cable
 - d. Job description: "boiler has F4 error code, Replace broken ignitor and clean combustion chamber".
10. The applicants say the only reason they accepted the respondent's \$1,260 quote was because the technician told them the parts were expensive, costing around \$1,000. The applicants say the technician told them the labour was \$120 for the

first hour (minimum charge), plus \$45 for each half hour afterwards. Significantly, the respondent does not dispute either of these allegations. Equally significant, is the fact that the respondent has provided no explanation of the cost breakdown as between its labour and parts charges on the invoice.

11. The applicants also say they disagreed with replacing parts to just open up the boiler to assess the situation. On this issue, the respondent submits the boiler service was complex given the F4 error code. However, it is undisputed that the respondent's technician completed the service in 2 hours. I accept the respondent's labour rate was quoted as alleged by the applicants, and therefore the applicable labour charge should be \$210. The respondent's technician had the relevant parts in his vehicle and there is no suggestion by the respondent that the technician's travel time was billable.
12. Despite the applicants' objection to replacing parts just to open the boiler, the applicants say the technician insisted the parts required replacement. Because the technician said the boiler would not work and there would be no heat if he did not change the parts, the applicants say they had no way to determine if this was true, and so they "took his word for it".
13. The applicants say the technician asked for immediate payment, and Cindy says that her mom Lily, as an elderly senior citizen, felt pressured by the technician so she paid him in full. While Lily signed the invoice above the line "I acknowledge the satisfactory completion of the above work", Cindy says Lily could not read it because it was written in English. I accept this evidence, which is undisputed. Cindy says Lily was pushed to sign it, and she did not sign it because she was happy with the service. At the time the technician worked on Lily's boiler, Cindy was at work and spoke to him on the phone. I place no weight on the boilerplate acknowledgement on the invoice.
14. Later, suspicious about the \$1,000 cost of the parts to service the boiler, Cindy obtained a quote from a local distributor that the ignitor cost only \$103.64, and thus says the technician's statement that the parts were expensive was a lie. This

is supported by Cindy's audio recording of her call with the boiler manufacturer's representative. I agree it was not true, and find it was a material misrepresentation. As discussed further below, I find that the misrepresentation was a deceptive practice under the *Business Practices and Consumer Protection Act* (BPCPA). As for the combustion seal and the cable, based on the call with the manufacturer, and the quote obtained by Cindy for all 3 parts installed by the respondent, all 3 parts would have cost the respondent around \$117, not \$1,000.

15. The applicants say they should only have to pay \$220.50, being 2 hours of the respondent's labour time. Thus, the applicants claim a refund of \$1,039.50.
16. Why the applicants say they should not have to at least pay something for the parts, such as their cost to the respondent plus a reasonable mark-up, is not explained. Based on Cindy's call to the boiler manufacturer, I find that the applicants have not proved the respondent unreasonably replaced the 3 parts that are in the quote, which the applicant did accept by giving instructions to proceed.
17. The respondent says its quoted \$1,260 price was not just for parts, but included the servicing of the boiler, the boiler system, flushing the entire system and zones, and cleaning the boiler's heat exchanger. Again, this is true, but I have already accepted above that the respondent's technician spent only 2 hours that only should have amounted to a \$210 labour charge to the applicants.
18. The respondent's central submission is that if the applicants felt the respondent's quote was too expensive, Cindy could have asked the technician to leave and get another company to do the service. The respondent says it only started the job after its quote was accepted. The respondent says it charges less for labour and parts than many other licensed companies. I disagree, because I find that the respondent's technician misrepresented the parts cost to the applicants as being \$1,000 when in fact the cost was substantially less, in the range of \$120, plus a reasonable mark-up to the applicants. The applicants submitted evidence from both the boiler manufacturer and another plumbing company, and the F4 error

code repair for the applicants was estimated to be roughly between \$250 to \$400 including parts and labour.

19. The boiler manufacturer's representative stated in the June 13, 2018 recorded call that the respondent's bill was "on the side of being fraudulent" and "completely ridiculous". The manufacturer said that it provided training for free, and yet Cindy says the respondent said it had to include training costs in its mark-up. The respondent's submissions simply stated that every manufacturer will claim that their boiler is easy and cheap to service and repair. The respondent also submits that parts are not readily available during the heating season, and yet in this case the respondent elsewhere acknowledges that its technician had the necessary parts in his car.
20. I accept that the respondent did the scope of work described in its invoice. I also accept that the respondent installed the parts described in that invoice and its recommendation to do so was reasonable.
21. The difficulty for the respondent however is that it is undisputed that the respondent's technician spent only 2 hours at Lily's home. The fact that the respondent charged other customers similar pricing for an F4 repair is not determinative of whether the respondent fraudulently overcharged the applicants.
22. The respondent submitted a statement from its technician that serviced Lily's boiler. The technician stated he called the office to ask for the quote to: replace the parts, clean the boiler, and service the heating system, and that his manager Sing Ng gave him the quoted \$1,400 price, less the 10% discount. The technician stated that the customer agreed to the price and he proceeded with the repairs and service. The technician's statement does not address the applicants' central allegation that he told them the parts were expensive, costing around \$1,000.
23. The respondent similarly submitted a statement from its manager, Sing Ng. Sing Ng's statement also did not address the allegation that the technician said the parts were expensive, costing about \$1,000. Instead, Sing Ng said that the

technician was able to do the repair with parts he had in his vehicle, and on that basis Sing Ng instructed him to proceed. The respondent submits that the quoted price includes time for parts pick-up, but that pick-up was not necessary here. Even if such time was reasonably included, the respondent does not explain how much additional labour time would be necessary.

24. On balance, I find the applicants have proved the respondent told them the parts were expensive, costing around \$1,000. I find that the 3 parts were in fact inexpensive, altogether costing about \$120. Even with a reasonable mark-up, the cost to the applicants would not come close to \$1,000. I find the respondent misled the applicants about the parts cost, which caused them to agree to the \$1,260 quote. I find this was contrary to the BPCPA, as it amounted to a deceptive act or practice, as alleged by the applicants. Under section 5(2) of the BPCPA, the burden of proof that the deceptive act was not committed is on the supplier, and the respondent has not met that burden here. In the circumstances, I do not need to address the other BPCPA grounds alleged by the applicants.
25. Given my conclusions above, I find that had the applicants known that the parts for Lily's boiler repair were relatively inexpensive, they would not have agreed to the \$1,260 quote, bearing in mind it was only a 2-hour job that would involve \$210 in labour plus tax. I note that while the respondent's invoice set out a GST number and a line for tax, the pricing was simply \$1,400 less the 10% discount, for a net balance of \$1,260. There was no indication of the applicable tax. I find the respondent's misrepresentation about the parts cost amounts to a breach of contract.
26. I find Lily is entitled to a refund, because the evidence is that she is the person who paid the respondent for the boiler service. I dismiss Cindy's claims accordingly.

27. The next question is, how much of a refund? I find a \$210 labour charge is appropriate. As for the 3 parts, on a judgment basis I find a total of \$250 is appropriate, which allows for a reasonable mark-up. This totals \$460, which sum is close to the range described above. The applicants paid \$1,260, and after deducting \$460, this leaves an \$800 refund. Lily is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$800, from January 9, 2018.
28. Lily was substantially successful. Under section 49 of the Act and the tribunal's rules, I find the respondent must also reimburse Lily \$125 in tribunal fees and \$10.50 in dispute-related expenses.

ORDERS

29. Within 14 days of the date of this decision, I order the respondent to pay the applicant Lily Mah a total of \$941.77, broken down as follows:
 - a. \$800 as a refund for the January 9, 2018 boiler repair,
 - b. \$6.27 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees and \$10.50 in dispute-related expenses.
30. The applicant Lily Mah is also entitled to post-judgment interest under the COIA, as applicable. The applicant Cindy Mah's claims are dismissed.
31. 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.
32. 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