



Civil Resolution Tribunal

Date Issued: September 7, 2018

File: SC-2017-002899

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wesley v. Kalum Plumbing and Heating*, 2018 BCCRT 504

B E T W E E N :

Brenda V. Wesley

APPLICANT

A N D :

Kalum Plumbing and Heating

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a sewer pipe that needed repair. The applicant, Brenda V. Wesley, hired the respondent, Kalum Plumbing and Heating, to repair the pipe. The applicant says the respondent did not repair the pipe properly.

2. The applicant says the respondent failed to change or repair several feet of the sewer pipe. She seeks a refund of \$280.00, and \$1,516.31 in additional repair costs.
3. The respondent says it completed its work and is not responsible for a different obstruction in the pipe that needed to be addressed separately, at a later time.
4. The applicant is self-represented. The respondent appears through its principal Brian Fugere.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;

- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issue in this dispute is to what extent, if any, the applicant is entitled to
- (a) a refund for plumbing services provided by the respondent; and/or
 - (b) payment for additional repair costs to a sewer pipe.

EVIDENCE AND ANALYSIS

10. In this civil claim, the applicant can succeed only if she establishes either that the respondent breached its contract with her, or was negligent in addressing the sewage pipe obstruction. 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.
11. A contract is an agreement between the parties that sets out the rights and obligations of each party. It is an implied term that services be performed in a good and professional manner.
12. A claim in negligence requires the applicant to show that the respondent: had a duty of care to her, failed in that duty, and that the failure caused the loss.
13. The applicant says the respondent did not properly repair the sewer pipe in that it:
- (a) did not use an auger to remove the blockage, but used a length of thinner pipe instead,
 - (b) did not replace the five feet of sewer pipe that needed replacement,
 - (c) installed a clean-out when one was not necessary, and

(d) told her the blockage was on the city side, so he could not repair it.

14. In its Dispute Response, the respondent says it fixed what it thought was the problem with the sewer line on the applicant's property. It identified a plug in the sewer line, cut the pipe, put in a clean out and replaced the section of pipe. The respondent says it notified the city to come and examine the pipe.
15. The parties agree that the applicant paid \$280.00 for the work that was completed. The respondent says that a few weeks later the same line plugged again, but due to roots farther down the pipe. The applicant disagrees, and says the blockage problem was close to where the respondent completed its work, and would have been avoided had it replaced the sewer pipe.
16. I now turn to chronology of events at the applicant's property.
17. In March 2017, the applicant had a sewage backup at her home. The emails exchanged between the applicant and the City of Terrace Road Foreman in mid-March 2017 establish that she was exploring whether the city's side of the sewer pipe was either filled with gravel or had been impacted by a telephone pole installed by Telus. The applicant noted that she had a plumber in "twice", by that stage, trying to deal with the problem.
18. On March 16, 2017, the Road Foreman replied saying that Telus did not hit the sewer line when installing the telephone pole, nor was there any blockage in the line between the property line and the main to the street. The Road Foreman suggested that whatever problems the applicant was experiencing would be addressed through repair on her side of the property line. The Road Foreman thought the problem was a sewage line with roots in it, on the applicant's side.
19. The applicant acknowledged that, after the city vacuumed out the gravel and put a cap on, the sewer still backed up.
20. I therefore find that, as of mid-March 2017, the precise cause of the sewage backup was unknown.

21. On March 23, 2017, Little Hoe Contracting attended at the applicant's property and excavated down to the sewer pipe, as well as providing back fill afterward and cleaning up. The applicant paid \$500.00 for the excavator services. The documents did not specify the date of the respondent's work. However, the parties agree that the respondent attended on around this date and completed some work on the sewage pipe for \$280.00.
22. The parties dispute the precise nature of the work that was completed by the respondent. The respondent says a block in the pipe was cleared, a clean-out installed and a new section of pipe put in. The applicant says no new section of pipe was installed, but she provided no independent evidence to support her contention. Further, the applicant says she has a "video" showing the section of sewer pipe on her property that the respondent failed to repair. Yet, no video was filed in evidence.
23. I therefore find that the applicant did not prove that the respondent failed to replace an area of pipe, on a balance of probabilities. I accept the respondent's evidence of the scope of repair that occurred.
24. A few weeks later, on a holiday long weekend, the sewage backup occurred again. The applicant says she tried to contact the respondent but could not reach it.
25. On April 19, 2017, the applicant called Acadia Northwest Mechanical about the sewage backup. She paid the invoiced \$186.90 for their visit. The applicant says that Acadia augured and unblocked the sewer line. The applicant contends that they worked on the same part of the line where the respondent did his earlier repair. However, she offered no evidence from Acadia supporting her contention.
26. I cannot find that the blockage was in the same part of the sewer line and, even if it was, the fact of an additional problem at that part of the line does not mean the initial repair was unsatisfactory. The applicant's own evidence about the telephone pole and gravel accumulation suggests that multiple possible causes required investigation here.

27. On May 2, 2017, Aqua Plumbing and Heating attended and used a camera “to identify problem, found that 5’ of piping from city clean out to customer’s house was full of roots.” The camera diagnostic cost \$157.50.
28. The applicant says the video from Aqua Plumbing and Heating shows that there was broken pipe close to where the respondent put in a clean out, and that Aqua’s plumber told her that the respondent should have replaced the broken sewer line. However, the applicant did not file any evidence from Aqua providing an opinion that the respondent’s work was substandard or commenting on it in any way.
29. On June 21, 2017, the Director of Public Works for the City of Terrace wrote an email to the applicant saying that the city’s practice is to “...maintain sewer service laterals from the clean-out to the sewer main”, and that sewer clean-outs are generally located within 1 foot of the property line. The Director also noted that city crews had confirmed the sewer service lateral between the clean-out and the main was clear by running a plumber’s snake and/or video camera through it on several occasions that spring. In summary, by that stage the ongoing problem appeared to be on the applicant’s side of the sewage pipe.
30. On July 31, 2017 the applicant was invoiced \$420.000 for an excavator from Triple H Bobcat Ltd. to “Dig up line for plumber to replace pipe and waterline.”
31. On August 8, 2017, the applicant was invoiced \$536.61 by 101 Industries Ltd. to complete sewer line repair including replacing a section of building sewer and water service pipe.
32. As I understand the applicant’s evidence, this August 2017 repair was successful in fixing the sewage backup. The applicant’s own evidence is that this repair addressed root growth into the sewage pipe “close to the city connection”.
33. Acadia did auguring in April but the problem with the roots was not definitively resolved by that effort, either. The scope of the final repair appears to be beyond the scope of the work the applicant asked the respondent to do initially, and that is reflected in the \$280 paid, as well. If he commented that there may be a problem

on the city side, as the applicant suggests, the respondent is not negligent simply because the problem was ultimately pinpointed on the residential side, close to the boundary. The respondent did not have the benefit of the camera views that led to the August repair.

34. There is no evidence, aside from the applicant's assertions, that the respondent failed to properly assess and address the blockage issues in March 2017.
35. The evidence falls short of demonstrating any breach of contract or negligence in the respondent's work. I have found that the respondent attended, removed a blockage, put in a clean out and a new section of pipe. The fact that a subsequent sewage backup occurred does not, in itself, mean the initial repair was completed negligently.
36. While the applicant is understandably frustrated with the sewer backup, and the associated struggle and costs, the evidence shows only a series of repairs and investigations, ultimately resulting in a definitive repair in August 2017. There is no direct opinion or comment from a plumber or the City establishing any shortcoming in the respondent's work. On this issue, I decline to accept hearsay accounts of what others may or may not have told the applicant.
37. Under section 49 of the Act, and tribunal rules, the successful party is generally entitled to recover their tribunal fees and expenses. The respondent paid no tribunal fees and did not claim dispute-related expenses. I make no order in this regard.

ORDER

38. I dismiss the applicant's claims and this dispute.

Julie K. Gibson, Tribunal Member