



Civil Resolution Tribunal

Date Issued: October 2, 2018

File: SC-2018-001180

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Gasfitting, Refrigeration & Sheetmetal Services LTD v. Ken Piper*, 2018 BCCRT 585

B E T W E E N :

Aslan Electrical, Gasfitting, Refrigeration & Sheetmetal Services

APPLICANT

A N D :

Ken Piper

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Salima Samnani

INTRODUCTION

1. This dispute is about payment for plumbing services. On November 8, 2017, the applicant, Aslan Electrical, Gasfitting, Refrigeration & Sheetmetal Services, attended the respondent Ken Piper's residence. The respondent requested the

applicant's services to fix a blockage that was causing a back up from the toilet and floor drain.

2. The applicant says that they repaired a leak, augured 50 feet through an interior floor drain, and when nothing came back, augured 100 feet through the floor drain, but there was still a blockage. The applicant then augured from the exterior, hit the blockage, and resolved the drainage issue. The toilet was then replaced.
3. The respondent does not dispute that his issue was resolved. However, the respondent claims that he should not have pay for any of the applicant's services because the applicant should have determined whether the blockage was on the outside or inside before commencing work.
4. Both parties agree that one of the applicant's tools got stuck and had to be retrieved. The respondent claims he should not have to pay for the time it took to retrieve the equipment. The respondent also claims that the applicant damaged the cleanout on the outside of the residence.
5. The applicant is represented by Lisa Anderson, a principal or employee, and the respondent is self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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

10. The issue in this dispute is to what extent, if any; the respondent must pay the applicant for plumbing services.

EVIDENCE AND ANALYSIS

11. 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.
12. As stated above, there is no dispute that the applicant performed the work requested by the respondent. The respondent argues that he should not have to pay the invoice because the location of the blockage should have been diagnosed before work commenced. I reject the argument that none of the invoice should be paid because the respondent argues the work could have been done quicker. There is no evidence that diagnosing the location of the blockage would have been

a quick process or that it would have been possible to locate the blockage before commencing the work.

13. Turning to the argument that the wrong tools were used, there is no evidence provided by the respondent on this point. The applicant is a plumbing company and as such has expertise in this area. Without any evidence from the respondent I accept the applicant's evidence that the right tools were used and the correct series of steps were followed to diagnose the issue.
14. Both parties agree that a tool got stuck and had to be removed. The applicant claims that it is common for tools to get stuck. The respondent argues that he should not have to pay for the time it took to retrieve the stuck tool. The law requires that service providers provide their service to a reasonable standard, not a perfect standard. It is not unreasonable that in trying to remedy the respondent's issue, there were some glitches. The respondent has not argued that the applicant spent an unreasonable amount of time retrieving the stuck tool. Without this evidence, I must reject the respondent's argument on this point.
15. The respondent also claims that he should not have to pay the invoice because the applicant damaged a cleanout on the outside of the house. The respondent claims it was negligence. The applicant does not dispute there was damage but explains that it was not caused by negligence, but because the pipe was old and brittle. The applicant also says that they offered to fix the damage but were told by the respondent not to do so. The respondent does not dispute this. I have not been provided with detail from the respondent about the cost of fixing the damage. Given the lack of evidence, I cannot make any findings on the damage to the cleanout.
16. In summary, I find that the applicant provided the service they were hired to provide and the respondent has not made any persuasive argument or provided any evidence that this is not the case.

17. In accordance with my findings above, I find that the applicant proved their case on a balance of probabilities and the respondent must pay the full amount of the invoice that includes interest for \$958.87.
18. Under the *Court Order Interest Act*, the applicants are entitled to pre-judgment interest. However, as the applicant has applied contractual pre-judgment interest, this will stand in the place of pre-judgment COIA interest.
19. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

20. Within 15 days of the date of this order, I order the respondent, Ken Piper, to pay the applicant, Aslan Electrical, Gasfitting, Refrigeration & Sheetmetal Services, a total of \$1,083.87, broken down as follows:
 - a. \$958.87 for payment of the outstanding invoice; and
 - b. \$125 in tribunal fees.
21. The applicant is entitled to post-judgment interest, as applicable.
22. 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.
23. 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.

Salima Samnani, Tribunal Member