



# Civil Resolution Tribunal

Date Issued: November 2, 2018

File: SC-2018-002176

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *KJ Real Estate Inc. v. Tri West Integrated Solutions Inc.*, 2018 BCCRT 685

**B E T W E E N :**

KJ Real Estate Inc.

**APPLICANT**

**A N D :**

Tri West Integrated Solutions Inc.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Helene Walford

## **INTRODUCTION**

- 1) This dispute is about whether the respondent Tri West Integrated Solutions Inc. installed a faulty fob-access-alarm system (alarm system) for the applicant KJ Real Estate Inc. The applicant says that the alarm system was never fully set up and was only partially functional. The applicant wants a refund of \$2,765 paid in May 2016.

- 2) The applicant also wants the respondent to cancel a subsequent invoice dated September 30, 2017 of \$562.49 (the 2017 invoice).

## **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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons requiring an oral hearing.
- 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 make one or more of the following orders:
  - 1) order a party to do or stop doing something;
  - 2) order a party to pay money;
  - 3) order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

- 7) The issues in this dispute are:
- 1) Is the applicant entitled to a refund of \$2,765 for the alarm system?
  - 2) Should the respondent cancel the 2017 invoice of \$562.49 and remove it from the collections company?
  - 3) Is the applicant entitled to its tribunal fees of \$125?

## **EVIDENCE AND ANALYSIS**

- 8) I have only commented on the evidence to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
- 9) There is no dispute that the applicant paid the respondent's invoice dated May 26, 2016 for \$2,205 for the alarm system which included a Bosch 8500 G series alarm/access/fire panel with up to 99 zone points, 32 areas/partition, 8 access doors, onboard Ethernet/USB port, ULC panel. There is no dispute that the applicant paid the May 26, 2016 invoice of \$560, for an order of 25 Bosch EM key fobs for the alarm system. The combined \$2,765 total is the applicant's first claim in this dispute.
- 10) The 2017 invoice of \$562.49 includes an amount due of \$471.45 for invoice #1742 dated September 22, 2016 in the amount of \$471.45 plus finance charges up to September 30, 2017 in the amount of \$91.04. Invoice #1742 indicates that it was based on the approval and setup of a monitoring agreement no less than 3 years with the applicant. Invoice #1742 indicates that additional alarm hardware was installed and connected to the existing on site alarm hardware. The applicant wants the 2017 invoice reversed and removed from collections.
- 11) The applicant says that the alarm system was only partially functional and that the respondent was not able to install its software on the applicant's computer. The

applicant says that it could not disarm any lost or non-returned fobs, leaving the company open to potential break-ins by disgruntled former tenants or their associates. The applicant says that the alarm system for intruders was never set up to be functional and the respondent did not respond to requests for assistance for long periods of time. The applicant says that the respondent did not deliver the second batch of 25 fobs until 2017.

- 12) The applicant says that it received the 2017 invoice for a second alarm system that they did not want as they had already purchased the alarm system. The applicant says that it asked the respondent to waive the 2017 invoice and remove it from the collections company. The applicant says that the respondent agreed to waive the 2017 invoice after it came to remove the alarm system and cabling. The applicant says that it agreed on the condition that no other functionality of the building would be affected.
- 13) The applicant says that when the respondent's technician came to remove the alarm system and cabling, he said that all previous installations would be removed. The applicant did not agree, because if the fob access control system were removed, it would leave their building with no security or controlled entrance/exit option for the applicant and its tenants. The applicant also says that if the installations were removed, then the fobs they had purchased would be useless.
- 14) The applicant did not allow the respondent's technician to remove any equipment from the building.
- 15) The respondent filed a field report with two dates of November 1, 2016 and December 28, 2017 detailing the service provided from May 13, 2016 to October 27, 2017 (field report). The field report indicates that during the alarm system installation in May 2016 their technician found multiple splice locations in the wiring throughout the property. The respondent filed photographs of the wiring and the multiple splicing. The respondent says that its technician had to install some new cabling and devices to replace the faulty ones. The field report indicates that the respondent was not able to gain access to the LAN to configure the networking

equipment, but after an additional visit on June 30, 2016 of 8 hours, the equipment was functional. The applicant has not provided any evidence to refute this information.

- 16) The field report indicates that the applicant's information technology (IT) company subsequently changed settings on the applicant's network, which caused the respondent's system to stop working. The respondent says that its technician had to return at least twice because the applicant's IT company made further changes to the network that resulted in their equipment being locked out and not working or communicating.
- 17) The respondent filed a Daily Work Performance Report dated November 1, 2016 (work report) supporting the information in the field report. The work report indicates that the respondent was required to reconfigure the Bosch panel and the applicant's router and modem. The work report indicates that the alarm was tested and passed. The work report also indicates that the service provided would be a billable service call as it was outside the original scope of the service agreement.
- 18) The respondent says that it provided multiple training sessions to the applicant and installed additional security equipment. The respondent says it tried everything to help the applicant and sent technicians to the site several times to teach and train the applicant's representatives to use the alarm system properly.
- 19) The respondent also says that the applicant misplaced the bag that the fobs came in, which had the facility code for the fobs in it. The respondent says that without the facility code the fobs were useless, so they replaced them at no additional cost to the applicant.
- 20) The applicant filed copies of text messages to and from the respondent about the alarm fobs indicating that they were not working and asking the respondent to activate them. However, the messages are undated so it is not clear when the messages were sent. The respondent filed copies of emails dated July 16 to 17,

2017 about the fob programming and the difficulties resulting from the applicant's IT changing the IP settings and address.

- 21) The field report indicates that the respondent's technician attended again on October 27, 2017 to remove all of its equipment but the applicant would not allow them to do so as it required the access control portion of the alarm system to continue working. The respondent filed a Daily Work Performance Report dated October 27, 2017 indicating the time spent of 1 hour to continue installation.
- 22) As noted above, the applicant bears the burden of proof, which I find it has not met. I find that the applicant has not proven that the respondent did not fulfill its contract. I find that the applicant has not proven that the problems with the alarm system were due to the respondent's actions rather than the applicant's IT causing issues with the network, which impacted the alarm system functioning. I find that the applicant is not entitled to reimbursement for the May 2016 invoices of \$2,205 and \$560. I dismiss the applicant's claim for a \$2,765 refund.
- 23) Invoice #1742 indicates that the alarm system was fully tested and with the exception of a few pieces of previous hardware found to be non-working the new system and existing hardware was confirmed to be working. Although the applicant says that that Invoice #1742 was for a second alarm system that they did not order, the applicant has not provided any evidence indicating that the hardware provided was a second alarm system rather than equipment provided as part of the monitoring agreement.
- 24) As invoice #1742 indicates that alarm hardware was installed and provided to accompany an existing system, I find that the applicant has not met the burden of proof to establish that this was a second alarm system rather than part of the existing monitoring agreement. I dismiss the applicant's claim that the respondent reverse the 2017 invoice and remove it from collection.

25) Given my conclusions above, I dismiss the applicant's claims. In accordance with the tribunal's rules, I find that the applicant is not entitled to reimbursements of the \$125 he paid in tribunal fees.

## **ORDER**

26) I order that the applicant's dispute is dismissed.

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Helene Walford, Tribunal Member