



# Civil Resolution Tribunal

Date Issued: November 7, 2018

File: SC-2018-002311

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services LTD v. Mulholland*, 2018 BCCRT 696

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

Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal  
Services LTD

**APPLICANT**

**A N D :**

Garth Mulholland

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. The applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services LTD, claims \$306.86, plus interest, for an outstanding plumbing invoice for work done at the home of the respondent, Garth Mulholland. The respondent denies the alleged work was done, and says the applicant's technician admitted he did not do anything but flush the toilet. The respondent says he owes nothing. The applicant is represented by Amanda Gelter, an employee or principal. The respondent is self-represented.

## **JURISDICTION AND PROCEDURE**

2. 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.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. 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. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the

tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

4. 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.
5. 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.

## **ISSUE**

6. The issue in this dispute is whether the respondent owes the applicant \$306.86, plus interest, for plumbing work.

## **EVIDENCE AND ANALYSIS**

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
8. The respondent did not submit any evidence. The applicant submitted one piece of evidence, a "Work Authorization Form" dated January 6, 2018 which sets out "Grinder pump for toilet not working" as the scope of work. The job was marked as "time and materials" with labour at \$147 per hour of overtime, per "man". The form also sets out a 2-hour minimum "labour charge out", with 19.6% interest applicable to outstanding accounts. The form states customer agrees to pay for time and materials, including time and mileage to and from the applicant's shop. The form states the customer agrees to be personally liable for the debt. The form is signed by someone, but the space for the "printed name" was left blank. The respondent denies that he signed it, and the applicant did not provide any reply submission

despite being given the opportunity to do so. I find the applicant has not proved the applicant signed this form or agreed to its contents, and therefore I find the applicant has not proved the respondent is bound by its terms.

9. The applicant says its technician checked the respondent's plumbing and the pump in response to the grinder pump issue. The applicant says the technician got the toilet flushing and then found the tank required pumping. The applicant says the technician cycled the pump 4 times, and the system worked every time. When the applicant left the respondent's home, the system was working properly.
10. The applicant says as the January 6, 2018 call-out was on a Saturday, the overtime rate applied, "as well as the location was a ways out of town for a total of 95 kms". The applicant says that while the contract provided for 2 hours minimum, it only charged the respondent 1.5 hours of overtime. This would total \$220.50, at \$147 per hour of overtime. There is no explanation before me as to the discrepancy between \$147 and the claimed \$306.86.
11. The applicant's claim is that the respondent failed to pay its "invoice" of \$306.86, plus interest. Yet, there is no invoice in evidence. The applicant is not unsophisticated and is or should be aware of the evidence required to prove its claim, which at minimum includes the invoice at issue.
12. The respondent says the toilet was not working again when he returned home later. The respondent clearly submits that he was not present at the time the applicant attended his home. The respondent says he personally later determined there was a loose connection that he repaired and the system has worked properly ever since. Again, the respondent provided no reply submission despite being given the opportunity.
13. On balance, I find the applicant has not proved its claim. First, I find it has not proved its agreement was with the respondent, based on the indecipherable signature on the Work Authorization Form and the respondent's denial he signed it. Second, even if the respondent is responsible for work done on the toilet, the

applicant did not address the respondent's evidence that the toilet was not working when he returned home and that he fixed it himself after finding a loose connection. Third, as noted above, the applicant has not provided a copy of the invoice in question and as noted there are discrepancies in the figures referenced in the applicant's submission. Even if there is a minimum call-out charge, because I find the applicant has not proved it did work of reasonable value, I find the applicant is not entitled to any payment.

14. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful in this dispute I find it is not entitled to reimbursement of tribunal fees or dispute-related expenses.

## **ORDER**

15. I order that the applicant's claims, and therefore this dispute, are dismissed.

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Shelley Lopez, Vice Chair