



# Civil Resolution Tribunal

Date Issued: November 15, 2018

File: SC-2018-001108

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rather Be Plumbing Ltd. v. Schaerer*, 2018 BCCRT 711

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

Rather Be Plumbing Ltd.

**APPLICANT**

**A N D :**

Angela Schaerer

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Darrell Le Houillier

## **INTRODUCTION**

1. The applicant, Rather Be Plumbing Ltd., seeks payment for rough-in plumbing work it did for the respondent, Angela Schaerer, in December 2016. The respondent says she should not pay because of problems with the applicant's work, including unnecessary damage caused by unauthorized work. The owner of the applicant represents the applicant. 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. 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.
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 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**

6. The issue in this dispute is whether the respondent should reimburse the applicant for work done and materials used to install rough-in plumbing in her home in December 2016?

## EVIDENCE AND ANALYSIS

7. In late December 2016, the applicant sent one of its plumbers to do work at the respondent's home. The owner of the applicant went to the respondent's home a short while later and also helped with the work. No contract or estimate was provided to the tribunal. Neither party described what the work was to be done, how much it was to cost, or how the amount owing was to be calculated.
8. The applicant completed some but not all of the rough-in plumbing work. Another licensed plumber finished the work. According to the respondent, there were three problems related to the work done by the applicant, which led the respondent to fire the applicant from the job. Those problems are described in turn.
9. First, due to an error in measurement, a hole was drilled through the ceiling of the respondent's bedroom. The applicant does not disagree. It says it repaired the damage related to the hole drilled in the wrong place and deducted four hours of work to compensate the respondent for the error.
10. Second, the respondent says an upgrade to the size of the vent pipe was unnecessary. The plumber who finished the rough-in work wrote a letter to the respondent, saying that the existing vent did not need to be upgraded in size because the respondent's house was not in an area at risk of frost. The applicant responded that its owner thought the respondent's house could be at risk for frost. In support of this position, the applicant provided an excerpt from the National Plumbing Code of Canada. It addresses the required diameter of vent piping, based on the length of the vent pipe and the hydraulic load it is to serve.
11. Third, the respondent says floor joists were needlessly cut without her permission, affecting the structure of the house. A carpenter wrote an email to the respondent, stating it took him "a couple of days" of work and roughly \$200 in material to repair the damaged floor joists. The plumber who finished the rough-in work stated in a letter to the respondent, saying he spent roughly four hours undoing work so that the floor joists could be repaired. The applicant does not remember being told not to

cut the floor joists and says it offered, before any joists were cut, a plumbing solution that did not require cutting the floor joists. The respondent was not interested in that solution.

12. The applicant and respondent disagreed on certain points that do not help me to decide this appeal. These points include the demeanour of the plumber and the owner of the applicant, their conduct unrelated to the plumbing work at issue in this appeal, and how much work they did. The stress the respondent reportedly experienced likewise does not help me decide the claim. Settlement discussions also do not help me decide the claim.
13. On December 23, 2016, the applicant provided the respondent with an invoice. The invoice detailed that work done involved roughing in two bathrooms, running a three-inch vent from the roof into the stack, running water lines and drain/vent/waste conduits. The invoice included 20.75 hours of work at \$60 per hour, for a total of \$1,245.00. The invoice did not break down the labour by task. The invoice also included \$412.80 in materials, \$124.76 of which pertained to three-inch diameter piping, \$135.00 of which pertained to venting supplies, and \$153.04 of which related to neither of those. The invoice also lists a \$10.00 fuel surcharge and 12% tax. The total amount invoiced was \$1,867.94.
14. The applicant seeks reimbursement of the labour and material expenses associated with the rough-in plumbing work, plus interest at 24% per annum. The applicant also seeks \$575.00 to compensate for the effort in filing with the tribunal.
15. On July 10, 2018, a licensed electrician wrote a letter on behalf of the respondent. The electrician confirmed information provided by the applicant and the plumber who finished the rough-in plumbing job. The electrician stated the applicant managed the plumbing work in an unprofessional manner.
16. Because the applicant is relying on the contract between itself and the respondent, the applicant must prove the terms of that contract. To be enforceable, a contract must reveal to an objective third party that there was agreement on certain essential

terms. This typically includes price, or at least a method by which price can be determined.

17. The parties have not provided any information related to the contract. There is not enough information to allow me to determine the scope of work to be done, the price, or how price should be calculated. Without this information, I cannot conclude that the parties agreed to the essential terms of the contract. The applicant has not proven the terms of the contract.
18. However, the fact remains that the applicant did work for the respondent. The respondent has had some benefit from that work. I consider this an appropriate case in which to use the principle of *quantum meruit*. This allows me to try to decide an amount fairly owing to the applicant based on the work it did, even though the amount was not set out in the contract between the applicant and the respondent.
19. The applicant provided an invoice that the respondent took specific issues with. As a result, the applicant's invoice is a suitable starting point for my analysis. The respondent raised three concerns about that invoiced amount. The applicant says the damage done by the error in drilling in the roof of the house was repaired and time was discounted to compensate the respondent. The respondent did not disagree. I consider this matter to have been dealt with reasonably, from a *quantum meruit* perspective.
20. I do not consider the upgraded vent to have been necessary. While the owner of the respondent thought the house was at risk of frost and so needed the upgraded vent, he did not describe his credentials. I do not know what, if any, weight I can put on his opinion. The licensed plumber who completed the rough in work stated the house was not at risk of frost and I rely on his expertise on that point. This also seems likely because the house had a smaller vent originally and the evidence does not support that it became more at risk of frost to require this upgrade. It follows that the unnecessarily upgraded vent does not add value to the respondent's home. None of the material or labour related to the venting should be considered from a *quantum meruit* perspective.

21. The rough in work involved running water lines, venting, and drains. Without any information about the amount of time spent on each, I estimate that one-third of the billed time was spent on each task. This amounts to seven hours or, using the rate of \$60 per hour, \$420.00, for each task. I also estimate that half the three-inch piping related to the venting, as opposed to drains. This amounts to \$62.38. The material related to the vent itself amounts to \$135.00. The total for these figures is \$617.38. Adding 12% tax gives a final amount of \$691.47. I consider it appropriate to deduct this figure from the applicant's invoice, from a *quantum meruit* perspective.
22. I consider the applicant damaged the floor joists despite instructions from the respondent not to. The respondent stated she told the owner of the applicant not to cut any joists. He did not remember that but did not deny it. As such, from a *quantum meruit* perspective, I consider the expenses incurred to repair the damage to the floor joists should be deducted from the value of the work the applicant did.
23. The respondent had to hire a carpenter, who spend roughly two days working and who used roughly \$200.00 in lumber to cure the damage to the floor joists. There was no rate of pay described. The respondent did not provide that information and the carpenter does not recall what he billed. I consider \$150.00 to be a conservative estimate for what a carpenter would charge for one day's labour. I therefore estimate that the carpentry costs amounted to roughly \$500.00. Because a licensed plumber took four hours to undo the rough in plumbing so that the joists could be repaired, I consider another \$240.00 to be an appropriate amount to deduct from the applicant's invoiced amount. I consider this to be a conservative estimate because the plumber who finished the job seemed to do better work than the work done by the applicant. The subtotal to deduct is \$740.00. Adding 12% tax, the overall deduction for the damage to the floor joists is \$828.80.
24. Subtracting the deductions from the invoiced amount, I arrive at a figure of \$347.67. This is the value of the work done by the applicant in this case.

25. The applicant has requested interest calculated at 24% per annum. There is no contract setting out such a rate of interest for non-payment of fees. Instead, the *Court Order Interest Act* applies and sets rates of interest as a function of time. That amount is calculated below, from the date of the invoice: December 23, 2016.
26. The applicant also requested \$575.00 to cover the effort taken to file with the tribunal. The applicant did not provide any particulars for this sum. I do not agree that the applicant should be reimbursed for the effort it took to bring forward this application. The tribunal does not generally order reimbursement for legal fees and I do not see why, in this case, it should order reimbursement for the applicant's time either.
27. Under section 49 of the Act and the tribunal's rules, an unsuccessful party generally reimburses the successful party's tribunal fees. I see no reason not to follow that general rule. I order the respondent to reimburse the applicant for its tribunal fees totalling \$125.00. The applicant has not disclosed any other dispute-related expenses so I order no further reimbursement of expenses.

## **ORDERS**

28. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$479.12, broken down as follows:
  - a. \$347.67 as reimbursement for work done and materials used to install rough-in plumbing in the applicant's home in December 2016;
  - b. \$6.45 in pre-judgment interest under the *Court Order Interest Act* from December 23, 2016, and
  - c. \$125.00 in tribunal fees.
29. The applicant is entitled to post-judgment interest, as applicable.
30. 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.

31. 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.

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Darrell Le Houillier, Tribunal Member