



Civil Resolution Tribunal

Date Issued: December 6, 2018

File: SC-2018-001691

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services LTD v. Cousins*, 2018 BCCRT 816

B E T W E E N :

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

APPLICANT

A N D :

Paul Cousins

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services LTD, claims \$346.55, plus interest, for an outstanding invoice for plumbing work done at the home of the respondent, Paul Cousins.

2. The respondent says the bill is too high for the repairs done, and for the time the applicant's technician spent on site.
3. The applicant is represented by Amanda Gelter, an employee or principal. The respondent is self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
6. 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.

7. 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.

ISSUES

8. The issue in this dispute is whether the respondent must pay the applicant \$346.55, plus interest, for plumbing work.

EVIDENCE AND ANALYSIS

9. 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.
10. The parties agree that the respondent called the applicant on January 13, 2018 about a plumbing leak, and the applicant's technician attended the respondent's home on that date. The applicant says that when the respondent telephoned, the dispatcher told him that because it was Saturday, the hourly rate would be at time-and-a-half. The applicant also says the dispatcher told the applicant that he would be billed for travel time ("shop to shop") plus mileage 65 cents per kilometer.
11. The respondent says the applicant's technician provided him with a phone number to contact him directly to install an on-demand hot water heating system, rather than hiring the applicant. This fact is not determinative of the issues in this dispute, so I make no findings about it. I also place no weight on the respondent's website evidence showing online complaints about the applicant. These complaints are unverified hearsay, and they do not refer to the specific work performed for the respondent, and so they are not useful in assessing this billing dispute.
12. The respondent relies on section 19 of the *Business Practices and Consumer Protection Act* (BPCPA). However, those provisions relate solely to direct sales contracts, future performance contracts, and time share contracts. The contract

between the parties in this dispute was none of those things, as it was entered into over the telephone rather than in person, and it was not a contract for the provision of goods or services at a later date.

13. Based on the evidence before me, I find that the respondent is obligated to pay the applicant. In particular, he does not dispute that the applicant's technician attended his home and successfully fixed the leak, as requested. While he says the work was simple and he could have purchased the necessary hardware at Home Depot for less, he opted not to do that when he hired the applicant.
14. The respondent says that until he received the work order form at the end of the service call, he was unaware that the applicant would bill 2 hours minimum for labour. The respondent also says the applicant padded its charges for travel time, supplies, and time on site.
15. I agree that from the content of the telephone call, which was recorded by the applicant and provided in evidence, the dispatcher did not clearly tell the respondent about the 2 hour minimum labour charge. He said the Saturday labour rate would be \$147 per hour, and he said "2 hours, that's \$300 bucks plus parts or whatever." The dispatcher then said it might be an hour, or an hour and a half. Thus, the dispatcher never clearly said there was a 2 hour minimum charge, and in fact suggested it might be less.
16. However, I find that that omission is not determinative. The dispatcher told the respondent about the Saturday overtime rate, and said "so its \$147 per hour, plus 65 cents per kilometer each way, and that goes from shop to shop." Also, when the respondent asked how much the call-out would cost, the applicant first asked him where he lived. This evidence supports the conclusion that the respondent knew or reasonably ought to have known that the applicant would charge for travel time.
17. Finally, the respondent signed the applicant's work order form, which says he agreed to pay for time and materials starting when the technician left the shop until his return to the shop. The respondent says he signed this form at the end of the

service call rather than at the beginning. While the applicant disputes this assertion, they provided no contrary evidence such as a statement from the technician. For that reason, I accept the respondent's evidence on this point. However, the fact that the respondent signed the form indicates his agreement to pay for travel time.

18. In all the circumstances, I find it is reasonable for the respondent to pay the applicant for its services. While he now says the repair was simple and should have been cheaper, the evidence shows that he wanted an urgent repair on a Saturday, and the applicant provided this service and promptly fixed the leak. I also place some weight on the fact that the dispatcher mentioned a potential bill of "\$300 plus parts or whatever", and the final bill of \$330.05 plus tax is consistent with that amount.
19. The applicant's GPS report shows that its truck travelled 15.8 kilometers, rather than the 17 billed by the applicant. I therefore find that the appropriate mileage charge is \$10.27. This is basically consistent with the respondent's evidence on this point. While I agree that the applicant's travel time seems extremely slow, based on the distance travelled, the GPS report corroborates the claimed time, and I therefore accept it.
20. The GPS report shows that the total amount of time spent on the job, from "shop to shop", was 1 hour and 51 minutes. Since the applicant's labour rate is per hour, and not per "partial hour" or per minute, I find it is not appropriate to discount the 9 minutes of labour time from the invoice. The applicant spent the majority of 2 hours on the job, and is therefore entitled to payment for 2 hours.
21. I find the applicant has not established entitlement to \$10 for "shop supplies". There is no indication that any supplies were used, beyond the half inch cap that was billed separately. The applicant says it includes this amount on all bills, to cover items such as glue, flux, and work order forms. I find this amount is unjustified, as no extra supplies were used and there is no suggestion that the 1 work authorization provided in evidence cost \$10. I therefore do not order this amount.

22. For all of these reasons, I conclude the applicant is entitled to payment of \$335.23. The applicant's work authorization and invoice both state that overdue accounts would be charged a 1.5% service charge (19.6% per year) so I find the applicant is entitled to 19.6% interest from February 13, 2018. This equals \$53.10.
23. 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. As the applicant was substantially successful, I find the applicant is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

24. I order that within 30 days of the date of this order, the respondent pay the applicant a total of \$513.33 broken down as follows:
 - a. \$335.23 for the outstanding invoice,
 - b. \$53.10 in contractual interest, and
 - c. \$125 for tribunal fees.
25. The applicant is entitled to post-judgment interest, as applicable.
26. 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.
27. 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.

Kate Campbell, Tribunal Member