



# Civil Resolution Tribunal

Date Issued: December 20, 2018

File: SC-2018-002580

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services LTD v. Muir*, 2018 BCCRT 890

B E T W E E N :

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

**APPLICANT**

A N D :

Allan Sandy Muir

**RESPONDENT**

A N D :

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

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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## **INTRODUCTION**

1. The applicant Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan) provided oil furnace repair services to the respondent Allan Muir.
2. The respondent, Allan Muir (Mr. Muir) did not pay in full for Aslan's services. Aslan seeks an order that Mr. Muir pay it \$4,923.36 which includes \$1,362.75 for tow truck charges.
3. Mr. Muir says that Aslan did not fix his furnace after 5 service calls and he should not have to pay for unnecessary labour and furnace parts. Mr. Muir had to hire another company which he says was able to repair his furnace in less time and for less money than Aslan charged. Mr. Muir counterclaims for the \$559.00 that he paid to Aslan.
4. Aslan is represented by its principal, Mark Williamson. Mr. Muir is represented by his daughter Joanna Muir who is not a lawyer.

## **JURISDICTION AND PROCEDURE**

5. 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.

6. 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.
7. 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.
8. 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**

9. The issues in this dispute are:
  - a. Does Mr. Muir owe Aslan \$4,923.36 for furnace service?
  - b. Does Aslan have to refund \$559.00 to Mr. Muir?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this, Aslan, and Mr. Muir on his counterclaim, bear the burden of proof, on a balance of probabilities. While I have reviewed all of the materials provided, I have only addressed the evidence and submissions as necessary to explain and give context to my decision.

### ***First service visit February 8, 2018***

11. On February 8, 2018, Mr. Muir's oil furnace stopped working. He called Aslan.
12. Aslan's work order says under "problem reported: OIL FURNACE KEEPS HAVING TO PRESS RESET".
13. Aslan's technician got stuck in the snow in Mr. Muir's driveway. A towing company was called and extricated the van. Aslan's technician inspected the furnace, replaced the oil nozzle and filter, and recorded 4.5 hours for this service. Aslan includes travel time to and from its shop in its technician's time charges. Aslan also charges mileage.
14. The furnace was working when the technician left. Aslan charged Mr. Muir \$559.13 for this service. Mr. Muir paid this invoice on March 20, 2018 after Aslan threatened legal action. This service visit is the basis for Mr. Muir's counterclaim.

### ***Subsequent service visits***

15. Aslan's work orders show that it returned to Mr. Muir's home on February 13, 16, 20, 23, and 24, 2018. These documents show that Aslan's employees worked the following hours (which include travel time) and delivered the following services:

February 13: 3.5 hours (@\$98/hour), check furnace, replace thermostat and high voltage transformer.

February 16: 3.5 hours, install new eye (photo cell), ignition module (oil primer control).

February 20: 4.5 hours (invoice is dated February 19), among other things, redo all connections, redo thermostat wires, check repowering from ignition module to fan control, check operation.

February 23: both the technician and Mr. Muir got stuck in the snow in the respondent's driveway. Aslan charged 2.5 hours plus 3 hours of overtime (@\$147/hour) for the technician to dig snow plus 1.5 hours of overtime for another employee to pick up the technician.

February 24: 4.5 hours of overtime for two employees to go to Mr. Muir's home to recover Aslan's van from the snow.

16. Aslan's technicians did no work on Mr. Muir's furnace on February 23 or 24, 2018.
17. Aslan's total \$4,923.36 invoice dated February 24, 2018 shows charges of \$2,474.50 for labour, \$521.06 for materials, \$330.60 for mileage \$1,362.75 for tow truck charges (February 8 and February 24 tow services) plus \$234.45 for GST.

***Furnace repaired by another company***

18. Aslan did not return to Mr. Muir's home after February 24, 2018. The furnace still did not work. Mr. Muir hired Rays Burner Service. On March 21, 2018, the new technician, Gary Brown, spent about 1.5 hours and replaced the furnace burner motor and 'relay', i.e. the ignition module or oil primer control. Aslan had installed an oil primer control on February 16, 2018. Mr. Brown provided a statement that "the previous company had installed an incorrect oil primer control". Mr. Muir says that the furnace has been working fine ever since Mr. Brown's repair. The total charge for this service was \$672.00. Aslan does not respond specifically to the statement that it installed the wrong part. Aslan says simply that it stands by the work that it did. I accept the evidence of Mr. Brown that Aslan installed the wrong oil primer control.
19. Mr. Muir argues that the 'standard' for repair of the furnace is set by Mr. Brown. That is, it should only have taken Aslan 1 visit and 1.5 hours to see that the burner motor was not working and replace it. Mr. Muir has not provided any expert evidence to prove that the problem with the furnace was that the burner motor needed replacing. Mr. Muir has not provided any expert evidence to prove that if Aslan had replaced the burner motor at the first visit, it would have solved the problem. Mr. Brown did not provide an opinion about the work or parts installed by Aslan other than to say that "unnecessary equipment" had been installed and Aslan installed the incorrect oil primer control. Mr. Muir has not provided any expert evidence to prove that it was the burner motor and not the oil primer control that caused the problem. In the result, I am unable to find what the real cause of the

furnace problem was or whether there was more than one cause. Mr. Brown did not specify what 'unnecessary equipment' had been installed or that it included all of the parts installed by Aslan. Therefore, I cannot find from his evidence that all of the parts installed by Aslan were unnecessary.

### ***The Contract***

20. Aslan has a form called "Work Authorization Form Including Intermittent Equipment Failure" (WAF). Aslan relies on the WAF as a valid contract between it and Mr. Muir. The WAF does not apply to the February 8 visit. Mr. Muir did not sign this form until February 13, 2018. It is one page and contains a number of general terms as well as a description of the scope of work. The scope of work simply said "oil furnace not working".

21. Aslan's claim relies on the general terms of the WAF which include:

I/we realize this could entail numerous visits and part replacements. I/we acknowledge responsibility for all labour and parts used until such time as the equipment is repaired to my satisfaction or this contract is terminated. (my underlining)

22. There is nothing to say how the contract can be terminated or how much time Aslan has to repair the furnace to Mr. Muir's satisfaction. I find that Aslan's obligation under the agreement is to repair Mr. Muir's furnace within a reasonable time. It was wintertime and Mr. Muir did not have a working furnace for about 6 weeks. Aslan did not return after February 24 and another company fixed the furnace in March. As a result, I find that Aslan breached its agreement to repair the furnace to Mr. Muir's satisfaction. In any case, I find that Aslan's failure to return amounts to its termination of the contract.

23. Does Aslan's breach or termination of the contract support its claim to be paid \$4,923.36?

24. The WAF allows for the possibility of numerous visits and part replacements before Aslan carries out a satisfactory repair. By signing the WAF on February 13, 2018, Mr. Muir agreed to pay for Aslan's time and materials for visits and replacements on February 13 and following. He also agreed to be personally liable for the debt.
25. However, on February 16, 2018, Aslan installed the incorrect oil primer control. It did not solve the problem. Aslan had to return on February 20, 2018 to carry out further investigation on the furnace. The work order indicates that this work was focused on the oil primer control. The technician redid some of Aslan's previous work.
26. I find that the February 16 and 20 visits were wasted visits as a result of Aslan installing the incorrect oil primer control. Aslan installed a photo cell but there is no evidence that this part had to be replaced. I find that Mr. Muir received no benefit from these visits. As a result, I dismiss Aslan's claim for the costs relating to these visits which I have calculated at \$1,260.05 (136 km @ .95/km = \$129.20 + 8 hours @ \$98 = \$784 + parts \$286.85 + GST\$60).
27. The evidence shows that during the February 23 visit, because of the snow problem, Aslan did no work on the furnace. The February 24 visit was not related to the furnace repair but to the snow problem. Except for the snow clearing charge, I find that Mr. Muir did not agree to be liable for costs unrelated to repair of his furnace. As a result, I dismiss Aslan's claim for the costs relating to these visits (except for the Bobcat charge on February 24) which I have calculated at \$1,554.52 (144 km @ .95/km + \$133.00 + 2.5 regular hours @ \$98 = \$245 + 7.5 overtime hours @ \$147 = \$1,102.50 + GST\$74.02).
28. With respect to the February 8 and 13 visits, there is insufficient evidence to show these were wasted visits. On February 8, the work order shows that Aslan's technician did a full service and inspection on the furnace and installed a new oil filter and nozzle. The furnace was running when he left. There is no evidence that the service was of no value to Mr. Muir. Mr. Muir agreed on February 13 in the WAF that it could take more than one visit for Aslan to repair the furnace. The furnace

was running when the technician left. Mr. Muir has already paid Aslan's charges for the February 8, 2018 visit. I dismiss Mr. Muir's counterclaim. I allow Aslan's claim for the charges relating to the February 13 visit which I have calculated at \$663.40 (68km @ .95 = \$64.60 + 3.5hours @ \$98/hr = \$343 + parts \$224.21 + GST\$31.59).

### ***Towing charges***

29. Aslan included the February 8 towing charge of \$240.29 in its February 24, 2018 invoice. There is no evidence that Mr. Muir agreed to pay for this charge. The WAF does not address towing charges. I find that Mr. Muir does not have to pay for this charge.
30. Aslan also charged Mr. Muir for the February 24, 2018 towing/snow clearing charges of \$904.42. Aslan says it spoke with Mr. Muir on February 23, 2018 about having his driveway plowed. Aslan says Mr. Muir agreed to have the driveway plowed at his expense. It is only the second invoice from the towing company that refers to the cost of the Bobcat at \$255.00 plus GST (\$12.75 for a total of \$267.75). Mr. Muir does not dispute that the towing company came out to his property with a Bobcat on February 24, 2018.
31. Did Mr. Muir agree to pay for the towing charges on February 23, 2018? Aslan relies on a tape recording that it made of a telephone conversation with Mr. Muir. Aslan says that Mr. Muir authorized the towing invoices in this conversation. Having listened to the recording, I find that the only thing Mr. Muir authorized was the clearing of the driveway so that Aslan's vehicle could be removed. Aslan did not provide any evidence with respect to the specific towing company charges recorded as 'Loaded/Hooked Mileage', 'Recovery' or 'Fuel Surcharge'. As such, I do not accept that these charges relate to snow clearing of Mr. Muir's driveway. Other than the cost relating to the Bobcat, Aslan's claim for the towing charges is dismissed.
32. Based on these findings, I conclude that:
  - a. Aslan is entitled to retain the payment of its initial invoice for \$559.13. The respondent's counterclaim is dismissed,



- b. Mr. Muir does not owe Aslan \$4,923.36,
- c. Mr. Muir does owe Aslan for the charges relating to the February 13, 2018 visit totaling \$663.40,
- d. Mr. Muir does owe Aslan \$267.75 for the Bobcat charge,
- e. Mr. Muir does not owe Aslan for the balance of its February 24 invoice.

33. To summarize, Mr. Muir will pay \$931.15 to the applicant.

34. 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. The respondent was not successful on his counterclaim and is not entitled to reimbursement for tribunal fees. Aslan was successful in only a very minor way in relation to its claim. In this case, I find it is appropriate to deviate from the general rule. I decline to order Mr. Muir to reimburse Aslan for its tribunal fees claimed.

## **ORDERS**

35. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$939.85, broken down as follows:

- a. \$663.40 for the applicant's February 13, 2018 visit including GST,
- b. \$267.75 for snow clearing charges including GST, and
- c. \$8.85 in pre-judgment interest under the *Court Order Interest Act*.

36. I dismiss the remaining part of the applicant's claim.

37. I dismiss the respondent's counterclaim.

38. The applicant is entitled to post-judgment interest, as applicable.

39. 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.
40. 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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Vivienne H. Stewart, Tribunal Member