



Civil Resolution Tribunal

Date Issued: January 31, 2019

File: SC-2018-004740

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Urban Fireplaces Ltd. v. Yoon*, 2019 BCCRT 124

B E T W E E N :

Urban Fireplaces Ltd.

APPLICANT

A N D :

Jin Yoon

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about a fireplace installation. The applicant, Urban Fireplaces Ltd., says that the respondent has not paid \$1,049.47 for his fireplace or \$262.50 for a damaged switch, for a total of \$1,311.97. The respondent, Jin Yoon, says that the applicant did not install the correct fireplace and damaged the switch when removing it.

2. The applicant is represented by an employee, Debbi Ellis. The respondent is represented by a family member, Min Yoon.

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 118 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 that might require 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:
 - 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

7. The issues in this dispute are:
 - a. whether the respondent must pay the applicant \$1,049.47 for the fireplace or allow the applicant to remove the unit; and
 - b. whether the respondent must pay \$262.50 for the damaged wall switch.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities. The parties provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer only to that which is necessary to provide context to my decision.
9. The respondent purchased a fireplace insert from the applicant in 2018. After the applicant installed the unit in the respondent's home, the respondent advised them that his fireplace was rated at 36,000 British Thermal Units (BTUs), but the invoice identified the unit as having 70,000 BTUs.
10. The applicant says that the invoice provided to the respondent contains a typographical error. The unit purchased by the respondent is not available in 70,000 BTUs and such a unit does not exist for the respondent's circumstances. The applicant says it offered to remove the unit at no cost to the respondent, but he declined. The applicant asks for an order that the respondent either pay the outstanding balance for the fireplace or return it.
11. The applicant says that it also installed a wall switch for the fireplace. The respondent requested that the applicant remove it, but the switch was damaged. According to the respondent, this damage was an unavoidable part of the removal process. The respondent asked for a credit for the switch, but the applicant says it cannot resell damaged goods.

12. The respondent does not dispute that he purchased a fireplace from the applicant. The respondent says the applicant installed the wrong fireplace and accuses it of engaging in unethical business practices. The respondent says he cannot pay the full amount for a product with almost half the capacity. The respondent also says that the wall switch was included in the original invoice. His position is that the applicant installed and uninstalled the switch and, if it is damaged, then the applicant is responsible for it.
13. I will deal with the fireplace and the switch separately.
14. The applicant admits that the fireplace installed in the respondent's home does not match the specifications listed on the invoice, and that it made an error in this regard. I accept the applicant's uncontroverted evidence that the product specified on the invoice does not exist and the error was typographical in nature. I do not find that the evidence supports the conclusion that there was anything unethical about the applicant's conduct. In particular, I find that the evidence does not establish that the respondent was overcharged for the fireplace that was installed in his home. Further, there is no indication that the fireplace unit is defective or that it was installed incorrectly.
15. The parties contracted for the sale of an item that does not exist. It is open to the respondent to decide whether or not to keep the fireplace unit that does not meet his expectations. I find that the fact that the applicant made an error does not permit the respondent to keep the product without paying the associated costs. The March 17, 2018 invoice indicates that the respondent paid \$1,049.48 of the total \$2,098.95 cost for the fireplace unit, with an outstanding balance of \$1,049.47. If the respondent wishes to keep the fireplace unit, he is responsible for the outstanding amount.
16. If the respondent does not wish to pay the outstanding amount, then he must allow the respondent to remove the fireplace unit. Given the error made by the applicant, there should be no fees charged to the respondent by the applicant for the removal of the unit, or a restocking fee.

17. Turning to the issue of the switch, I do not agree with the respondent's position that the switch was included in the invoice for the fireplace unit. The March 17, 2018 invoice for the fireplace unit states "Note: install switch instead of remote", but there is no cost associated with this notation. There is a separate March 5, 2018 invoice for a "Wall Switch Kit" for \$262.50. This invoice contains the notation "no refunds or exchanges after installation".
18. I am satisfied that the switch was the subject of a different transaction from the fireplace unit. In addition to being the subject of a separate invoice, the respondent had the applicant remove the switch although he kept the fireplace. The evidence does not suggest that the installation or removal of the switch was related to the applicant's error in describing the fireplace unit. Based on the policy identified on the invoice, I find that the respondent is responsible for the cost of the switch, and is not entitled to any sort of credit for this item.
19. The applicant is also entitled to pre-judgement interest of \$15.00 under the *Court Order Interest Act* (COIA).
20. 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. I find the applicant is entitled to reimbursement of \$125.00 in tribunal fees and \$10.50 in dispute-related expenses.

ORDERS

21. Within 30 days of the date of this order, the respondent must either:
 - a. pay the applicant \$1,049.47 in satisfaction of the invoice for the fireplace unit;
or
 - b. subject to a mutually convenient arrangement, permit the applicant to attend at his home within the applicant's business hours to remove the fireplace unit, unless the parties otherwise mutually agree in writing. Should the respondent

choose this option, there shall be no restocking fees or removal costs charged to him by the applicant.

22. In addition, the respondent must, within 30 days of the date of this order, also pay the applicant a total of \$413.00, broken down as follows:
 - a. \$262.50 for the switch,
 - b. \$15.00 for pre-judgment interest under the COIA, and
 - c. \$135.50 for \$125.00 in tribunal fees and \$10.50 for dispute-related expenses.
23. The applicant is entitled to post-judgment interest under the COIA, as applicable.
24. 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.
25. 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.

Lynn Scrivener, Tribunal Member