



Civil Resolution Tribunal

Date Issued: March 4, 2019

File: SC-2018-002563

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lampert v. J.W. Griffiths Limited*, 2019 BCCRT 255

B E T W E E N :

Patsy Lampert

APPLICANT

A N D :

J.W. Griffiths Limited

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Patsy Lampert says the respondent J. W. Griffiths Limited installed a 14-gallon hot water tank by mistake, when she had asked that a 20-gallon tank be installed.

2. The applicant seeks \$1,020.68, which she says is the cost to exchange the 14-gallon tank for a 20-gallon tank without further cost to her.
3. The respondent says it agreed to install a 22-gallon tank for the applicant, but when it arrived at the job site, the 22-gallon tank would not fit into the space available.
4. The respondent says it informed the applicant and she agreed to the installation of a 14-gallon tank instead. The respondent asks that the dispute be dismissed.
5. The applicant is self-represented. The respondent is represented by principal or employee Damon Griffiths.

JURISDICTION AND PROCEDURE

6. 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*. 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.
7. The tribunal has discretion to decide the format of the hearing. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized the tribunal's process, and found that oral hearings are not necessarily required when credibility is in issue. Some of the evidence in this dispute amounts to a "she said, he said" scenario as to what occurred and did not occur. Credibility of interested witness, particularly where there is a conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence.
8. In the circumstances here, I find that I am 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.

9. 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.
10. 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.

ISSUE

11. The issue in this dispute is whether the respondent installed a different capacity of hot water tank than what the applicant agreed to, such that it must either pay the applicant or swap the existing 14-gallon tank with a larger tank.

EVIDENCE AND ANALYSIS

12. The applicant bears the burden of proof, on a balance of probabilities, in this civil claim. I have reviewed all of the evidence but refer to it only to the extent needed to explain my decision.
13. The applicant says she phoned the respondent and explained that she would need approval from the Ministry of Social Development ("Ministry") for a new hot water tank, since the Ministry would be paying for it.
14. The applicant was aware that due to their square shape, most 20-gallon tanks were not going to fit in her space. The applicant says the respondent said it had a 20-

gallon tank that would fit in the space she described because the tank was round. They quoted her \$500 for the tank and \$400 for installation.

15. She says the respondent later came out and measured the space. No one told her the tank was not going to fit. The respondent disagrees and says no one attended to measure the space prior to the date of installation.
16. Because the applicant provided no evidence of this separate attendance to measure her space, such as the date or time at which it occurred or the names of the employees who attended, I find that the respondent did not attend at the applicant's home prior to the installation date.
17. The only evidence filed by the applicant is a series of her own notes of telephone conversations she says occurred. There is no independent evidence supporting her contention that she was unaware of the need to install a 14-gallon tank rather than a 20-gallon tank.
18. On January 31, 2018, the respondent attended at the applicant's home to install a new hot water tank. The respondent discovered that the 22-gallon tank would not fit into the physical space available.
19. Damon Griffiths says he spoke personally with the applicant and told her the tank was not going to fit and obtained her agreement to install a smaller tank.
20. The applicant denies being contacted by the respondent at all about the tank change.
21. About a week later, the applicant contacted the respondent because she was unhappy with the temperature of the water being produced. It is undisputed that the respondent attended to adjust the thermostat on the tank, without cost to the applicant or the Ministry.
22. A few weeks later, the applicant called the respondent and asked about getting a different tank. When she was told what that would cost, she asked if the respondent

would change the tank for free. When the respondent declined, the applicant indicated she would pursue legal action.

23. The respondent filed packing slips in evidence showing that it initially picked up a 22-gallon hot water tank, but later cancelled and returned it. As well the packing slips show that the respondent picked up a 14-gallon tank later the same day.
24. The respondent's invoice to the Ministry confirms that the respondent installed a 14-gallon tank. The cost of \$1,020.68 was billed to the Ministry.
25. The invoice is consistent with Mr. Griffith's evidence that, once the job was completed he spoke with the Ministry and told them that a different tank had been installed. The respondent says, and I accept, that the Ministry approved the additional charges associated with changing the tank to a 14-gallon tank and paid the full amount.
26. The documents, aside from the applicant's own notes, support the respondent's account of events. Based on the respondent's documentary evidence, I find that they attended with a 22-gallon tank, found it did not fit, discussed it with the applicant, and then installed a 14-gallon tank with the applicant's approval. For these reasons, I find the applicant has not proven, on a balance of probabilities, that the respondent installed the wrong hot water tank, unbeknownst to her. I dismiss her dispute.

ORDER

27. I dismiss the applicant's claims and the dispute.

Julie K. Gibson, Tribunal Member