



# Civil Resolution Tribunal

Date Issued: March 18, 2019

File: SC-2018-006326

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zafarani v. EXPERT PLUMBERS LTD.*, 2019 BCCRT 333

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

Roya Zafarani

**APPLICANT**

**A N D :**

EXPERT PLUMBERS LTD.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

### **INTRODUCTION**

1. The applicant Roya Zafarani says the respondent EXPERT PLUMBERS LTD. provided unsatisfactory work when installing her furnace and tankless water heater. She claims \$3,555.88 for the re-installation that needed to be done by another plumber and \$400 for charges the respondent issued to her for thermostat adjustments and duct cleaning that she says were unnecessary.

2. The respondent says it completed the furnace and tankless water heater in a satisfactory manner. It says if there was a problem, it may have been due to the applicant's spouse making an alteration to the venting system after the installation. The respondent denies charging the applicant for changing the thermostat or cleaning the ducts. The respondent asks that the dispute be dismissed.
3. The applicant is self-represented. The respondent is represented by employee or principal Max Vovchenko.

## **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 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
6. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

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 issue in this dispute is whether the respondent's installation of a furnace and tankless hot water heater for the applicant was substandard, such that the respondent owes the applicant \$3,555.88 for "re-installation". As well, there is a question of whether the respondent provided thermostat adjustments and duct cleaning to the applicant at a charge of \$400, when they were not needed.

## **EVIDENCE AND ANALYSIS**

10. This is a civil claim where the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but only refer to them to the extent needed to explain my decision.
11. To succeed in her claim in negligence, the applicant must prove that the respondent fell below the standard of care for a reasonable plumbing technician in the circumstances, and that the failure caused her loss. For the reasons below, I find that she has not proven either aspect of her claim.

12. On April 7, 2017, the applicant hired the respondent to supply and install a New York Latitude furnace and a Navien NPE2405 tankless hot water heater, and to dispose of the old appliances.
13. The applicant paid \$3,100 as a deposit with \$3,200 to be paid at completion of the job. It is undisputed that the payment was made in full.
14. In June 2017, the respondent's plumbing technicians AS and AO, attended at the applicant's home to complete the installation. The applicant was not home. Her daughter was there in her stead.
15. AS provided a statement that all work completed by him and AO was in accordance with the BC Plumbing Code and the Natural Gas and Propane Installation Code.
16. Several weeks later, AS was at the applicant's home on couple of occasions to service the furnace and hot water heater. When he attended, he noted that the venting from the appliances had been modified after he and AO installed it. When the respondent explained to the applicant that these modifications would create problems, the applicant did not allow the respondent to fix them.
17. AO provided a similar statement, saying that when he attended several weeks after installing the furnace, he observed the vents that he had installed stemming from the furnace and hot water heater had been modified. He asked the applicant about it, and she told him her husband had made the changes. AO told the applicant that this was an unauthorized modification to his work that voided the warranty provided by the respondent. AO also told her the modification was illegal because of the way the vents were modified. However, the applicant did not authorize him to re-do the venting.
18. The vent modification is corroborated by a letter written by the respondent to the applicant in July 2018, which details the modification that the plumbing technicians observed and says it created risks for the applicant.

19. The applicant generally denied that her husband altered the venting but did not provide any statement from him to this effect. Given this, I accept the respondent's evidence about what happened.
20. On July 11, 2017, the applicant's home flooded in the upstairs bathroom. The water travelled to areas below, including the mechanical room where the furnace and hot water heater were installed. Despite the flood, the applicant refused AO's advice that she should replace the furnace, citing concerns about her insurance rates. The applicant did not address this issue in any detail and I prefer the respondent's evidence on this point as well.
21. In June 2018, the applicant hired a second company, Ashton Service Group (Ashton) to assess her furnace and hot water heater. Ashton's invoice of July 13, 2018 shows that they repaired the venting issue and moved the hot water heater "for serviceability and bring up to code." The applicant paid their \$3,555.88 invoice for these services.
22. With regard to the venting, I have found, based on the statements of AO and AS, and due to the fact that most of Ashton's work was to re-do the venting, that the applicant's husband made changes to the venting after the respondent's installation. As a result, I find that the changes to the venting are not the respondent's responsibility. I also find that the electrical upgrades are not something the respondent should have to pay the applicant for, as they did not do electrical work in her home.
23. In text messages sent by Ashton employee MA to the applicant, he offers his view that there were many deficiencies at the applicant's home. Most of these deficiencies have to do with the venting set up and some electrical work. The only other criticism is of the gas lines. MA says they are undersized for the instant tank, and then he adds something about solid piping that is not fully legible in the text message.

24. In a later text message MA adds that the furnace was “inoperable”. However, he does not explain whether this was due to the venting issue, or damage from the flood.
25. Given the informality of these text messages, and given that the criticisms they contain were not stated in the formal invoice or a statement from Ashton, I prefer the statements given by AO and AS. AO says the gas lines were not undersized but were ½ inch diameter lines that accord with the Navien Installation manual that was filed in evidence. I find that the gas lines the respondent used to install the hot water heater were appropriate. If the initial installation was somehow not to code, the applicant could have had Ashton comment specifically on that in a brief statement or on their invoice. It was not proven that the initial installation, as distinct from the alteration of the venting system or the damage to the appliances in the July flood, was substandard. In the circumstances, I find the applicant has not established negligence on the respondent’s part.
26. The applicant claimed against the respondent for duct cleaning and a thermostat adjustment but I find she did not prove either claim. She filed a receipt showing that she purchased duct cleaning from Home Depot to be completed through a supplier called Steam Dry Canada. This is not the respondent. She provided a receipt for a thermostat but did not provide a document showing she was charged by the respondent for adjustments to it, or anything explaining why such a charge would have been inappropriate. I dismiss these aspects of the claim.
27. I find that the applicant has not proved that the respondent fell below an acceptable standard of care in installing her hot water heater and furnace, particularly given the intervening flood event and the alteration to the venting. I dismiss her claims.
28. 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 unsuccessful, I find she is not entitled to reimbursement for tribunal fees or dispute-related expenses.

## **ORDER**

29. I dismiss the applicant's claims and her dispute.

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Julie K. Gibson, Tribunal Member