



Civil Resolution Tribunal

Date Issued: March 19, 2019

File: SC-2018-005339

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fair Business Implements Ltd. v. Nouri*, 2019 BCCRT 342

BETWEEN:

Fair Business Implements Ltd.

APPLICANT

AND:

Mohammad Reza Nouri

RESPONDENT

AND:

Fair Business Implements Ltd.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for 2 gas service jobs the applicant, Fair Business Implements Ltd. (FBI), did for the respondent, Mohammad Reza Nouri. The applicant claims a total of \$1,246.20: \$976 for its invoices plus \$195.20 as a 20% late payment fee.
2. In his counterclaim, Mr. Nouri says FBI failed to reimburse him for a new dishwasher as agreed. Mr. Nouri claims \$992.22.
3. I have amended the style of cause above to reflect the parties' legal names as set out in the Dispute Notice and as amended in the counterclaim Dispute Notice as well as the parties' submissions.
4. The applicant is represented by Soroush Samii, an employee or principal. Mr. Nouri is represented by his spouse.

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 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.
6. 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.

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: 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

9. The issues in this dispute are a) whether FBI is entitled to payment of \$976, plus a 20% late payment fee of \$195.20, for the 2 gas service jobs, and b) whether FBI owes Mr. Nouri \$992.22 for a new dishwasher.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means FBI must prove their claims and Mr. Nouri must prove his counterclaim. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. It is undisputed Mr. Nouri hired FBI to do 2 gas service jobs. The first was done on September 28, 2017 in Mr. Nouri's home, and involved running a hole for a gas pipe adjacent to Mr. Nouri's brand new dishwasher, to Mr. Nouri's new stove. FBI's September 28, 2017 invoice #2302 is for \$850, for "gas piping for gas range + permit". I will deal with Mr. Nouri's liability for this invoice below.

12. The second job was a smaller fireplace repair job at another location, to address loose ignition wiring. FBI's September 28, 2017 invoice #2304 is for \$126 for the fireplace repair. Mr. Nouri does not dispute the validity of this invoice and has provided no explanation for why he has not paid it. I order Mr. Nouri to pay this \$126 invoice.
13. While FBI's submissions are somewhat difficult to follow, it appears they acknowledge their gas work damaged the dishwasher at Mr. Nouri's home. In particular, FBI drilled 2 holes through the dishwasher's drum. The photos in evidence show this damage to the dishwasher, and I accept that FBI caused this damage. FBI's position is that Mr. Nouri did not want his new dishwasher removed to allow the drilling work to occur and that it was his suggestion that FBI use Mr. Nouri's drill and drill at an angle.
14. On balance, I accept that FBI was retained to do the gas work at a professional level and was expected to have the associated knowledge and skill level to accomplish the job without drilling through the dishwasher. Nothing turns on whether Mr. Nouri offered his drill or said he preferred his new dishwasher not be removed. However, there is no dispute the gas line was installed for the new stove, which is the job FBI was hired to do.
15. On balance, I find Mr. Nouri must pay FBI for the \$850 invoice, given the gas range piping work was done and there is no issue raised with the function of the stove or the related piping to it. This means FBI is entitled to \$976. While FBI claims a 20% late payment fee, there is no evidence before me of any agreement about contractual interest or a late payment fee. I will address the net payment after I discuss Mr. Nouri's counterclaim below.
16. FBI provided a copy of his 2018-2019 "contractor's package" insurance policy, which is not the policy that would have covered the 2017 work in question. In any event, the later policy in evidence shows a \$1,000 deductible for property damage coverage and for errors and omissions liability coverage. FBI did not explain why this 2018-2019 policy might be relevant to this dispute.

17. FBI also provided a copy of a brief email from its insurer, stating it had recently come to an “agreed settlement” with Mr. Nouri’s insurers, and asked for FBI’s cheque for \$1,000 to cover the deductible under its policy, which he sent on April 5, 2018.
18. FBI says at Mr. Nouri’s request he made a claim through his insurance and that Mr. Nouri received \$1,000 for the dishwasher and he waived any further claims in respect of it. I find the evidence before me does not support this conclusion. All the evidence shows is that FBI’s insurer asked FBI to pay the applicable \$1,000 deductible under its policy, which FBI paid. FBI’s evidence does not show which damages were covered under the insurance. In particular, FBI’s photos show the wood floor under the fridge, but they do not show the floor under the damaged dishwasher.
19. Mr. Nouri denies that FBI’s insurance paid for the dishwasher replacement, and this is the basis for his counterclaim. In particular, Mr. Nouri says his insurance adjuster advised that FBI’s insurance policy would not cover the cause of damage, namely the new dishwasher. Instead, the insurance only covered damages to the kitchen floor. I accept this evidence, as I find it reasonable and most consistent with the fact that Mr. Nouri paid for an identical dishwasher 10 days after he bought the one FBI damaged.
20. I accept Mr. Nouri’s evidence that the damaged dishwasher caused a flood that damaged his kitchen wood floor. A flood is consistent with the dishwasher having had 2 holes drilled into it. Mr. Nouri submits that the insurance only covered “resulting damages” only, namely the damaged floor, and that it would not cover the dishwasher itself which the insurer considered the cause of the flood. Contrary to FBI’s submission, there is nothing inconsistent in this. The dishwasher did cause the flood, but FBI was the cause of the dishwasher doing so, because FBI drilled 2 holes into it.

21. The evidence before me shows the combined insurance claims under Mr. Nouri's and FBI's policies paid for repairs to the damaged flooring. There is no evidence it paid for a replacement dishwasher. I find Mr. Nouri is entitled to be reimbursed for it.
22. Mr. Nouri provided a Trail Appliances invoice dated September 24, 2017 for the Bosch dishwasher that was damaged by FBI a few days later. He also provided an October 4, 2017 invoice for a replacement dishwasher, same type, for \$785.22. Mr. Nouri paid \$210 to another company to deliver and install the replacement dishwasher. I find Mr. Nouri is entitled to reimbursement of \$995.22.
23. After setting off FBI's invoices of \$976 against Mr. Nouri's award of \$995.22, I find FBI must pay Mr. Nouri \$19.22. Mr. Nouri is entitled to pre-judgment interest under the *Court Order Interest Act (COIA)* on this amount, from October 4, 2017.
24. Both parties were successful in their respective claims. In accordance with the Act and the tribunal's rules, I find each party should bear their own tribunal fees and dispute-related expenses.

ORDERS

25. Within 14 days of this decision, I order FBI to pay Mr. Nouri a total of \$19.59, broken down as follows:
 - a. \$19.22 in damages, after taking into account the set-off from FBI's award, and
 - b. \$0.37 in pre-judgment interest under the COIA.
26. Mr. Nouri is entitled to post-judgment interest, as applicable. The parties' remaining claims are dismissed.
27. 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 decision.

28. 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.

Shelley Lopez, Vice Chair