



Civil Resolution Tribunal

Date Issued: March 26, 2019

File: SC-2018-006566

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Babak Food Equipment Ltd. v. 1122879 B.C. Ltd.*, 2019 BCCRT 375

B E T W E E N :

Babak Food Equipment Ltd.

APPLICANT

A N D :

1122879 B.C. Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Babak Food Equipment Ltd. says it installed kitchen equipment for the respondent 1122879 B.C. Ltd. in October 2017 and was not paid in full. The applicant claims \$2,253.62 it says the respondent owes on the original \$22,253.62 invoice.

2. The respondent says the applicant's installation of kitchen appliances was unsatisfactory. It says the ice machine was installed incorrectly. The respondent says it withheld \$2,200 and told the applicant it wanted to return the ice machine and microwave.
3. The applicant is represented by principal or employee Mohammad Pour Younas. The respondent is represented by principal or employee Saman Hassan Nia.

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. 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.
6. 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.
7. 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

8. The issue in this dispute is whether the respondent owes the applicant the claimed \$2,253.62.

EVIDENCE AND ANALYSIS

9. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
10. In October 2017, the applicant installed various kitchen appliances for the respondent. The applicant invoiced the respondent a total of \$22,253.62. It is undisputed, and I find, that the respondent paid all but \$2,253.62 of the invoice.
11. This dispute centers on the ice machine and microwave.
12. The applicant says it told the respondent that the ice machine needed to be on a stand to that it would drain properly. It says the respondent did not want to buy an appropriate stand, and instead put the machine on a stack of wood. The applicant says it is probable that the wood was not stable, and the drain pipe ended up leaking.
13. The respondent says the applicant used the wrong hoses and connections to install the ice machine. The respondent says it called another company to fix the ice machine without changing the wood stand. The respondent says this other company used “red tape” to install the ice machine. The respondent offers this as proof that the wood stand was not the problem.
14. The respondent did not provide evidence from the company it says repaired the ice machine. The respondent did not file any invoice, statement or photographs to prove that another company worked on the ice machine. The respondent also failed to file emails to the applicant about the ice machine and microwave, which it said were “available”. The burden is on the respondent to prove some deficiency in the ice machine to warrant a set-off of the applicant’s outstanding invoice. On the evidence, I find it has not done so.
15. The respondent filed a photograph showing what appears to be a leak from the ice machine. There is a wood stand shown at one side of the photograph. The respondent did not provide an explanation for how or when the leak occurred.
16. I find that the applicant’s account is more consistent with the whole of the evidence. I find that the ice machine’s stand was a makeshift wood pile, which likely contributed to problems the respondent had with its function. I also find that the applicant told the respondent the machine needed a proper stand in order to function properly, but the respondent chose the wood pile instead.

17. The respondent argued that he needed the applicant to fix his wall. The respondent made no counterclaim and provided no details as to the mechanism of damage to the wall, nor the extent of repair needed. As such, I dismiss this argument as there is no evidence to warrant a set-off.
18. The other disputed appliance was a microwave. The respondent reported that the microwave did not heat. Although the microwave was under a manufacturer's warranty, which would usually require the customer to call the manufacturer, the applicant says it contacted the manufacturer to relay the respondent's complaint.
19. The parties agree, and I find, that the manufacturer replaced the microwave with one that worked. It was undisputed, and I find, that the respondent still has the functioning microwave.
20. The respondent still refused to pay it the balance owing on the applicant's installation invoice.
21. Given that the respondent has the microwave, which is functional, and the ice machine, which may have problems due to the stand being used and which the applicant has offered to service if it is paid in full, I find the respondent owes the claimed \$2,253.62 to the applicant.
22. 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 in tribunal fees.

ORDERS

23. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,421.58, broken down as follows:
 - a. \$2,253.62 in payment of the outstanding invoice,
 - b. \$42.96 in pre-judgment interest under the *Court Order Interest Act* from October 15, 2017 to the date of this decision, and
 - c. \$125 for tribunal fees.
24. The applicant is entitled to post-judgment interest, as applicable.
25. 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.

26. 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.

Julie K. Gibson, Tribunal Member