



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gauthier v. Rob Gajowski (dba Crystal Clear Pool and Spa Services)*,
2019 BCCRT 404

B E T W E E N :

Jeffrey Gauthier

APPLICANT

A N D :

Rob Gajowski (Doing Business As Crystal Clear Pool and Spa
Services)

RESPONDENT

A N D :

Jeffrey Gauthier

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a hot tub pump. The applicant, Jeffrey Gauthier, says on September 1, 2017 the respondent, Rob Gajowski (Doing Business As Crystal Clear Pool and Spa Services), installed a 9 or 10-year old used pump in his hot tub, when the applicant paid for a new pump. The applicant claims \$578.55 as a refund of what he paid Mr. Gajowski plus \$94 that he paid to another technician to diagnose the problem in 2018.
2. Mr. Gajowski denies liability and said the pump he installed was “new in the box” and the applicant first called him back in October 2018, after the 1-year warranty had expired. Mr. Gajowski filed a counterclaim for \$565.95, the amount he says is owed for 2 services to repair the pump (\$154.35 and \$102.90) and 3 hours of his time responding to the applicant’s claim (\$308.70).
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the tribunal’s formal written reasons. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a “he said, he said” scenario. Credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

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: 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

8. The issues in this dispute are a) whether Mr. Gauthier is entitled to reimbursement for the hot tub pump installed by the respondent in 2017 and for hiring another technician in 2018 to diagnose the problem, and b) whether Mr. Gajowski is entitled to payment for the October 2018 service calls and for his time spent on this dispute.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Gauthier bears the burden of proof, on a balance of probabilities. The same applies to Mr. Gajowski in his counterclaim. I have only referenced the evidence and submissions as necessary to give context to my decision.

10. The parties agree Mr. Gauthier was not present when Mr. Gajowski installed the hot tub pump in September 2017. The parties also agree that the tub pump Mr. Gajowski sold him came with a 1-year manufacturer's warranty.
11. Mr. Gauthier says he discovered in October 2018 that the 2017 installed pump was old and had the same errors as before the respondent installed the "new" pump. As discussed further below, Mr. Gauthier provided no supporting evidence of this, such as from a hot tub technician.
12. Mr. Gauthier says he believes the pump was reconditioned, not new. At some point after October 2018, Mr. Gauthier says he was told by the hot tub's manufacturer or the repair technician that the installed pump appeared to be more than 1-year old. Mr. Gauthier inspected further and found the manufacturer's date was 10 years old. I note Mr. Gauthier's supporting evidence does not actually show the pump's age and in one email to Mr. Gajowski the pump's age is shown as "xxxxx". There is no explanation before me as to why Mr. Gauthier did not set out the specific date, if he knew it.
13. That said, Mr. Gajowski does not deny the older manufacturer's date. However, he says the pump he installed on September 1, 2017 was "new out of the box" with a 1-year warranty. He says it is not uncommon to have a pump several years old by the time it is installed. He says, for instance, it can sit on the manufacturer's shelf for 2 years, and then another 2 years on the distributor's shelf, and so on. He says a pump can be several years old but still new in the box with a 1-year warranty. Mr. Gajowski says pumps are not perishable and do not get old or worn from sitting on the shelf. Mr. Gajowski provided an email from one of his pump suppliers confirming this. Mr. Gauthier provided no contrary evidence and I accept Mr. Gajowski's position on this point.
14. It is uncontested that Mr. Gauthier did not contact Mr. Gajowski until October 2018, after the warranty had expired. Mr. Gajowski says he attended on October 5, 2018 and found the filters out and the pump plugged with debris and not turning. Mr. Gajowski repaired the pump and says it was working fine. Several days later, Mr.

Gauthier called him again that the pump was not turning, and when Mr. Gajowski arrived he says the pump was working fine.

15. I find nothing turns on the manufacturer's date. What matters in this dispute is whether the pump installed by Mr. Gajowski on September 1, 2017 was worn and corroded or new, since it is undisputed that Mr. Gauthier paid \$578.55 for a new pump. Mr. Gajowski says it was new "out of the box". I do not agree with Mr. Gauthier that Mr. Gajowski admitted in an email that the manufacturer mixed up old and new pumps. What Mr. Gajowski said in November 2018 was that when he contacted the manufacturer they said they may have mixed up older and new pumps on their shelf. I find this was speculation at that point and in any event is not determinative in this dispute.
16. Mr. Gauthier provided a photo of the pump taken some time in or after October 2018, which shows what appears to be corrosion. However, contrary to Mr. Gauthier's suggestion, I cannot tell from that photo whether the apparent corrosion could not reasonably have come from a pump installed a year prior.
17. Mr. Gauthier also says Mr. Gajowski installed a 120-volt pump, when the tub's specifications called for a 240-volt pump. However, Mr. Gajowski provided evidence from the pump manufacturer that the pump he installed could use 115 or 230 volts. On balance, I find Mr. Gauthier has not proved Mr. Gajowski installed the incorrect voltage pump.
18. As noted above, the applicant Mr. Gauthier bears the burden of proving Mr. Gajowski installed a worn rather than new pump. I find he has failed to meet this burden. I say this because Mr. Gauthier has provided no supporting evidence about the likely condition of the pump when it was installed in 2017. Mr. Gauthier submits the technician in 2018 told him it was unlikely the pump had been new when installed. Yet, Mr. Gauthier provided no statement from that technician. I expect that statement would have been easily obtainable, and Mr. Gauthier provided no explanation of why he did not provide one. Parties are told by tribunal staff to provide all relevant evidence. While the tribunal has discretion to accept hearsay

evidence, I am not prepared to accept Mr. Gauthier's hearsay statement about what the technician said, given the importance of that evidence and because Mr. Gauthier is not disinterested. I also note Mr. Gauthier somewhat mischaracterized other evidence before me, as referenced above about the potential mix-up by the manufacturer.

19. In light of my conclusions above, I find Mr. Gauthier's claims must be dismissed.
20. I turn to Mr. Gajowski's counterclaim. While he claims for services provided in October 2018 for hot tub repairs, he provided no invoice or time sheets or anything against which I could assess his claim. It is also not entirely clear to me, given the limited emails in evidence, that Mr. Gajowski attended on those occasions with Mr. Gauthier's understanding and agreement that he would have to pay for the service rather than it being covered under an extension of the warranty. While I find there was no such warranty extension, I dismiss Mr. Gajowski's claims for payment of his services in October 2018.
21. I also dismiss Mr. Gajowski's claim for 3 hours of "time spent" in dealing with this dispute. He provided no proof of his wage at \$100 per hour. In any event, the tribunal's rules that say parties' legal fees would only be reimbursed in an extraordinary case, given parties are generally expected to be self-represented under section 20 of the Act. This is not an extraordinary case. As legal fees are not generally reimbursable, I find Mr. Gajowski's own time should not be reimbursed for time spent on this litigation.
22. Both parties were unsuccessful. In accordance with the Act and the tribunal's rules, I find each party must bear their own tribunal fees and dispute-related expenses. I dismiss each party's claims for reimbursement of fees and expenses.

ORDERS

23. I order Mr. Gauthier's claims, and Mr. Gajowski's counterclaim, dismissed.

Shelley Lopez, Vice Chair