



Civil Resolution Tribunal

Date Issued: April 29, 2019

File: SC-2018-005138

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mayea v. Archie Johnstone Plumbing & Heating Ltd.*, 2019 BCCRT 510

B E T W E E N :

Harold Mayea

APPLICANT

A N D :

Archie Johnstone Plumbing & Heating Ltd.

RESPONDENT

A N D :

Harold Mayea

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for repairs to an on-demand hot water system.
2. The applicant (and respondent by counterclaim), Harold Mayea, hired the respondent (and applicant by counterclaim), Archie Johnstone Plumbing & Heating Ltd. (AJ), to repair the hot water system in a house he owned. Mr. Mayea says AJ's repairs were performed incorrectly and negligently. He seeks to have the outstanding invoices of \$2,175.21 reduced to \$700.
3. AJ denies Mr. Mayea's claims, and says it was not negligent. In its counterclaim, AJ seeks an order that Mr. Mayea pay a total of \$2,796.51 for outstanding invoices, including contractual interest of 2% per month.
4. Mr. Mayea disputes the amount claimed by AJ for the invoices, and says he should not have to pay for faulty work.
5. The applicant is self-represented. The respondent is represented by an employee.

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* (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, 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.

8. 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.
9. Under tribunal rule 9.3(2), 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

10. The issues in this dispute are:
 - a. Was AJ negligent in repairing Mr. Mayea's hot water system?
 - b. How much must Mr. Mayea pay AJ for the repairs?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Mayea bears the burden of proving his claims on a balance of probabilities, and AJ bears the burden of proving its counterclaim on the same basis. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. In March 2017, Mr. Mayea hired AJ to repair an on-demand hot water system, which was located in a rental house Mr. Mayea owned. AJ did not supply or install the hot water system initially.

13. Mr. Mayea admits the hot water system initially worked after AJ's technician fixed it in March 2017. The invoice for that repair shows that the technician attended the home on March 28 and 29, 2017, and that the problem was with the "check valve off recirc pump". AJ says Mr. Mayea complained about the bill at their office on May 4, 2017, so it discounted \$96 for 1 hour of labour, and Mr. Mayea paid the balance of \$493.47. This transaction is confirmed by a credit card receipt.
14. Mr. Mayea says that a month later, his tenant reported that the hot water system was not working, so he called AJ again because he thought the work was under warranty, but the problem turned out to be due to a different part than that March 2017 repair.
15. I find, based on the evidence provided, that Mr. Mayea's timeline is inaccurate. AJ's second service call was on July 17, 2017, and there is no indication that any problems were reported before that. The July 2017 invoice shows that an AJ technician attended on July 17 and 19, 2017, and that the problem was with the "thermistor", which they replaced. The bill for that visit was \$428.40.
16. There was a third set of service calls on September 5 and 8, 2017. The invoice for those calls says the unit was off because the ignitor needed to be replaced. The invoice says the technician replaced the ignitor, the wall controller, and the "flame rod assembly", and programmed the pump. The bill was \$473.30.
17. A fourth set of service calls occurred on October 6, November 2, and November 6, 2017. The November 6, 2017 invoice does not set out a total cost for this work, but indicates 10.25 hours of labour at \$101 per hour, plus \$177.62 for materials. The invoice says the venting needed to be correctly sloped back to the hot water system, the hangers needed to be installed properly, regulators needed to be installed on the gas fireplace piping and onto the hot water system piping, the gas pressure sensor and gas check port packing needed to be replaced.

Negligent Repairs

18. AJ says that each of the service calls was to fix a separate and unrelated issue with the hot water heater, and each time the system was operational when the technicians left. Mr. Mayea does not particularly dispute that, but says because the on-demand hot water system was 6 years old when AJ first fixed it in March 2017, the technician should have told him then that it would be prudent to replace other parts that were wearing down while the system was disassembled. Mr. Mayea says that because AJ did not do this, he was charged unnecessary labour costs for the repeat visits. Mr. Mayea says he should only have to pay \$700 towards AJ's outstanding invoices, with no additional interest or service charges.
19. AJ submits that its first invoice advised Mr. Mayea to have his hot water unit serviced, which involves looking at the whole unit and its parts, and they would likely have caught the other issues that were subsequently fixed. AJ says Mr. Mayea failed to follow this recommendation. I disagree. AJ's March 29, 2017 invoice says, "Recommend to be serviced once a year." This statement is vague, as it is unclear whether it means immediately, and then once a year thereafter, or in one year from March 2017. I therefore place no weight on this recommendation, as it is ambiguous, and all of the subsequent repairs Mr. Mayea complains of occurred within 8 months of March 2017.
20. However, I am not persuaded by Mr. Mayea's argument that AJ should have proposed replacing all potentially problematic parts in March 2017. While in retrospect this would have been beneficial to Mr. Mayea, there is no indication that he requested a full assessment of the hot water unit, or any kind of remedial or preventative maintenance other than a repair of the immediate problem (which was identified as a check valve).
21. There are four elements to a negligence claim: the respondent must owe a duty of care, the respondent must have failed to meet the minimum standard of care, the applicant must have suffered a loss, and the loss must result from the respondent's failure to meet its minimum standard of care.

22. Since it was offering professional repair services for a fee, I find AJ did owe Mr. Mayea a duty of care. However, I find Mr. Mayea has not met the burden of proving that AJ failed to meet the standard of care for a reasonable plumbing technician in the circumstances. Mr. Mayea has also provided no statement or other evidence from an expert, such as a plumber, to establish that the standard of care for hot water repairs would include a recommendation to replace all potentially problematic parts in a 6-year-old system of this type. I am not persuaded by Mr. Mayea's hindsight-based opinion on this matter, particularly since he is not an expert in plumbing, gas-fitting, or hot water systems.
23. For the same reasons, I am not persuaded by Mr. Mayea's assertion that he believes poor workmanship by AJ technicians caused 2 gas leaks. There is no evidence before me to confirm that AJ caused any gas leaks. While Mr. Mayea says Fortis BC was involved and visited the home, he provided no evidence from Fortis. Mr. Mayea provided copies of invoice from 2 other plumbers. The first, from Baker Plumbing, says they were called out for a gas leak on October 4, 2017, and found that the "gastite fitting" on the fireplace was not tight enough. Since there is no evidence AJ worked on the gas fireplace, I find they are not responsible for that leak. Baker Plumbing's invoice also says there was an issue with the hot water system venting, and Mr. Mayea should look into the warranty from AJ. However, this appears to have been written based on a mistaken assumption that AJ installed the hot water system, and its venting. The evidence shows that AJ did not install the system, and had not worked on the venting prior to October 6, 2017. I therefore find AJ is not liable for the venting issues identified by Baker Plumbing.
24. Mr. Mayea also provided an invoice from Goodman Plumbing, dated October 10, 2017. The only work shown on Goodman's invoice is a labour charge for leak-testing the tankless hot water heater and supply lines. There is no indication on the invoice that any problems were identified during the test, so I place no weight on that invoice. While Mr. Mayea said Goodman repaired a leak at the main gas line into the home, there is no evidence about that before me, so I make no findings about it.

25. Mr. Mayea says that the 2 other plumbers he called in told him the settings in the hot water unit were incorrect, and he should go back to AJ because it initially worked on the system. There is no evidence from Baker or Goodman to confirm this assertion, so I place no weight on it.
26. For all of these reasons, I find Mr. Mayea has not proved his claim of negligent repair work by AJ. I therefore dismiss his claim for a bill reduction. I deal with payment of the outstanding invoices below.

Counterclaim

27. In its counterclaim, AJ seeks payment of \$2,796.51 for outstanding invoices and contractual interest. AJ provided no accounting of how it arrived at this amount, and I do not accept it, as it does not match the documents in evidence.
28. I note that AJ provided no invoices, work orders, or other documents to support its claim for payment for work performed. Thus, I have relied solely on the invoice copies provided by Mr. Mayea. The parties agree that Mr. Mayea paid the March 29, 2017 invoice. This leaves 3 other invoices, which Mr. Mayea admits he has not paid:
 - a. July 19, 2017 - \$428.40
 - b. September 8, 2017 - \$473.30
 - c. November 6, 2017 – no total
29. The July 19 and September 8 invoices are complete, and Mr. Mayea does not dispute that the work was performed (although he says he was overcharged, which I have dealt with above). Thus, I find that Mr. Mayea must pay 2 these invoices, which total \$901.70.
30. For reasons that are unclear, neither party provided a completed copy of the November 6, 2017 invoice. Rather, the invoice in evidence shows the following discrete charges, with no total, and no taxes:

- a. 4 hours labour October 6 – \$404.00
- b. 2 hours labour November 2 - \$202.00
- c. 4.25 hours labour November 6 – 429.25
- d. Materials - \$177.62

31. Mr. Mayea does not dispute that work was performed, although he says he should have not have to pay for it. Since AJ did the work at Mr. Mayea’s request, and for the reasons set out above, I find Mr. Meyea must pay the amounts set out on the November 6, 2017 invoice. This, combined with the July and September invoices, totals \$2,114.57.
32. AJ also claims contractual interest on its outstanding invoices. It says its invoices indicate a “service charge” of 2% per month on outstanding accounts. Later in its submissions, AJ says its invoices indicate a 3% late fee per month. I have reviewed all the copies of AJ’s invoices in evidence, and find they do not mention any 2% or 3% late fee. The only service charge mentioned is a \$35 fee for returned cheques, which does not apply here. For that reason, I find AJ has not proved its claim for contractual interest, and I order none.
33. I order that Mr. Mayea must pay AJ \$2,114.57 for the outstanding invoices. AJ is entitled to pre-judgment interest on this amount, under the *Court Order Interest Act* (COIA) from November 6, 2017.
34. 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. Since Mr. Mayea’s claim was not successful, I find he is not entitled to any reimbursement. AJ was substantinally successful in its counterclaim, so I find it is entitled to reimbursement of its tribunal fees, which equal \$125. Neither party claimed dispute-related expenses.

ORDERS

35. I order that within 30 days of the date of this decision, Mr. Mayea pay AJ a total of \$2,283.06, broken down as follows:
- a. \$2,114.57 for outstanding invoices,
 - b. \$43.49 in pre-judgment interest under the COIA, and
 - c. \$125 for tribunal fees and dispute-related expenses.
36. AJ is entitled to post-judgment interest, as applicable.
37. Mr. Mayea's claim is dismissed.
38. 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.
39. 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.

Kate Campbell, Tribunal Member