



Civil Resolution Tribunal

Date Issued: May 23, 2019

File: SC-2019-000792

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Davies v. Cameron Contracting Ltd.*, 2019 BCCRT 620

BETWEEN:

KERRY DAVIES

APPLICANT

AND:

CAMERON CONTRACTING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicant, Kerry Davies, says the respondent, Cameron Contracting Ltd., changed the location of the piping and mechanical portion of her home heating system (heating system) during construction without her consent. She says the final location is unsightly and dangerous. The applicant further says the respondent

promised to pay to cover up the heating system with matching cabinetry. The applicant seeks an order for \$2,783.14, the cost of the cabinetry.

2. The respondent says the construction plans did not show where the heating system would be, and that its final location in the utility / laundry room was normal procedure. It denies the heating system pipes are dangerous and denies agreeing to pay for covering up the system.
3. The applicant is self-represented, and the respondent is represented by its principal, Don Cameron.

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. Some of the evidence in this dispute amounts to a “she said, he said” scenario. The 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. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an 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 9.3(2), 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 applicant is entitled to payment of \$2,783.14 for additional cabinetry to cover up her relocated heating system.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The applicant purchased a home from the respondent owner-developer in September 2017. The terms of the purchase agreement are set out in the Contract of Purchase and Sale dated September 17, 2017 and are signed by both parties. One of the conditions of the sale was that the buyer was "to approve the modified floor plan." It was also noted in the agreement that as of the date of the agreement,

construction had not yet started on the home. Attached to the purchase agreement provided by the applicant was a basic floor plan outlining the sizes of the various rooms and the location of various appliances. I note the location of any heating or venting systems is not shown on the attached floor plan. I was not given a document that indicated it was a “modified” floor plan.

11. The applicant provided the MLS listing of her home, which also included the basic floor plan described above. In addition, the description of the home in the listing stated the home “features on demand hot water, [an] HRV system and natural gas radiant in floor heating throughout the house.” The pipes at issue in this dispute, located in the applicant’s utility / laundry room, relate to the radiant floor heating system.
12. The applicant submits that the floor plan shows a hot water tank was to be installed under the stairs on the main floor of the home, but that the radiant floor heating system was actually installed in the “laundry room.” She says this change was made without her consent. I note that although the applicant refers to the room as the “laundry room,” in the floor plans provided it is referred to as a “utility” room. The applicant submits she was not consulted prior to the change in location of the heating system and that it poses a danger and needs to be covered up.
13. The respondent submits the location of the heating system was determined prior to construction and prior to the applicant’s purchase of the home. It submits the construction plans did not detail the location of the heating system under the stairs, or at all. It admits the plans showed a hot water tank under the stairs, but states no hot water tank was installed in the home. The respondent submits that the heating system was installed in the utility room as normal procedure and that the system is not dangerous as constructed. The respondent says the location of the heating system has to do with venting, which is optimal on an outside wall and not through floor joists of the floor above. In other words, the pipes in question relate to the in-floor radiant heating system, which is unrelated to a hot water tank. As noted,

ultimately there was no tank installed in the applicant's home, as it used a tankless water heater system.

14. The respondent further submits that throughout the building process, it was clear to the applicant where the heating system would be located.
15. The applicant provided photographs of the location of her heating system compared with the location of a neighbour's heating system under their stairs. However, I find the homes' floor plans are different, specifically the utility room floor plan, and therefore I find the evidence provided of the neighbour's home to be of no assistance.
16. Given the evidence, I find the applicant has not proven the heating system was relocated without her consent. The heating system at issue is not depicted on the floor plans provided in evidence, either under the stairs or in the utility room. The floor plans were on their face basic in nature, and did not show other venting or piping either, such as from the stove or the bathrooms. As noted, the hot water tank that was shown was ultimately not installed as it was not necessary. Nothing turns on the hot water tank in this dispute. I am not satisfied the respondent unreasonably relocated the heating system, and so I find no breach of contract.
17. I turn then to whether the respondent agreed to pay for covering the heating system with cabinetry. The applicant submits that when she brought the issue to the respondent's attention, an employee of the respondent, KC, told the applicant that it would be "taken care of" and that matching cabinets would be put in to cover the heating system up. The applicant therefore got a quote to have the cabinetry built and installed, which she wants the respondent to pay for.
18. KC provided a statement in evidence. KC stated that she told the applicant the respondent could assist in getting quotes for pricing out cabinetry to cover the heating system, but did not hear back. KC advised that she never told the applicant the respondent would pay for the additional cabinetry, but that as a gesture of good faith, the respondent did offer the applicant a \$500 credit to contribute to any

additions she went forward with. This is consistent with the parties' emails that were exchanged at the time. I note there is no obligation on the respondent to provide the \$500 credit it previously offered.

19. As noted above, the burden of proving the respondent agreed to pay for the cabinetry is on the applicant. After reviewing the evidence, I find that she has not met that burden. Further, there is nothing in the parties' purchase agreement that requires the respondent to pay for the additional cabinetry.
20. For these reasons, I dismiss the applicant's claim for payment for cabinetry to cover up the heating system.
21. Under the tribunal rules, the successful party is generally entitled to the recovery of their fees and dispute-related expenses. I see no reason to deviate from the general rules in this case. As the applicant was not successful, I find that she is not entitled to reimbursement of her tribunal fees or dispute-related expenses. The respondent did not pay tribunal fees or claim expenses.

ORDER

22. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair