



# Civil Resolution Tribunal

Date Issued: June 10, 2019

File: SC-2018-008398

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Weber v. Sommerville & Son Plumbing & Heating Ltd.*, 2019 BCCRT 704

**B E T W E E N :**

Ulrich Weber

**APPLICANT**

**A N D :**

Sommerville & Son Plumbing & Heating Ltd.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. The applicant, Ulrich Weber, paid the respondent, Sommerville & Son Plumbing & Heating Ltd., \$424.20 to repair his furnace. The applicant says the respondent incorrectly diagnosed the problem, unnecessarily replaced a portion of the gas line, and caused structural damage to the furnace. The applicant wants the respondent

to reimburse him \$424.20 and to pay him \$308 for the 6 hours he spent resolving the problem with the furnace on his own, for a total of \$732.20.

2. The respondent says they correctly diagnosed the problem with the applicant's furnace but that they were unable to complete their repair work because the applicant wanted to complete it himself. They say they did not cause damage to the furnace, but that the applicant's subsequent work on the furnace caused further damage to it.
3. The applicant is self-represented and the respondent is represented by a principal.

## **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 "he said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's

process and 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 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.

## **ISSUE**

8. The issue in this dispute is whether the respondent is required to pay the applicant \$732.20 for completing unnecessary repair work causing damage to his furnace.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicant must prove his claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
11. On September 20, 2018 the applicant's furnace was not working. He says the pilot light would turn on and stay lit, but the burner would only function for 15 seconds before it and the pilot light went out. The applicant hired the respondent to investigate and repair the furnace.
12. The respondent inspected the furnace and determined a corroding copper pipe was causing the regulator to fail, and that the pipe and regulator needed to be replaced.

They replaced the regulator and replaced the copper pipe with a flexible gas line. The parties agree that at that point the furnace worked without the front face cover, but that when the cover was closed it still did not work.

13. The applicant says the respondent's work replacing the regulator and gas line did not repair the problem with the furnace, and therefore none of this work was necessary. He provided a photograph of the copper pipe to show that it was not corroded, but the photograph is very dark, and I am unable to determine from the photograph whether or not the pipe is corroded. Regardless, I find there is no evidence that the furnace worked with the front cover removed before the respondent conducted this work. Therefore, I find the applicant has not established that the respondent's work was unnecessary or that it did not at least partially repair the furnace.
14. The respondent says that once the furnace was working with the cover removed they tested the gas line for leaks and found none, according to standard protocol. The applicant denies that the respondent did this. As I explain further below, I prefer the respondent's evidence on this point and I find the respondent tested the gas line for leaks.
15. The parties agree the furnace's combustion chamber was not receiving enough clean air to allow ongoing burning, which is why the furnace functioned with the front face cover removed. The applicant says the respondent told him they had run out of time, so he agreed to finish the repair on his own. The respondent says the applicant told them to stop working because he did not want to spend any more money and his son was a plumber who could help him with the repairs.
16. The respondent submitted its September 20, 2018 invoice for \$424.20 which indicates they replaced the gas line and regulator, the furnace operated with the burner cover off, but the flame went out when the cover was replaced. The invoice states, "owner will clean out and in tube" (quote reproduced as written). The respondent says they only charged for 1.5 hours of labour, but they were at the applicant's home for 2 hours and 3 minutes, and they provided work logs to support

this. It is undisputed that the applicant paid the respondent the amount of the invoice immediately.

17. The applicant says after the respondent left his home he found the furnace's inner exhaust pipe was completely corroded such that when the furnace burned the exhaust gases were being sucked back into the combustion chamber resulting in an inadequate oxygen supply, which caused the burner and pilot light to go out.
18. The applicant says he bought a replacement vent pipe for \$8. He says he then shut off the gas, disconnected the gas line at the regulator, which the respondent had just replaced, and removed the furnace from the wall. He says he removed the corroded exhaust pipe, replaced it with the new one, reassembled the furnace and secured it back in place. He says when he turned on the main gas valve and lit the furnace it worked, but he smelled gas. He says he used soapy water and found gas was leaking at the upper end of the gas line, not the lower end of the gas line where he had disconnected it.
19. The applicant says he shut off the furnace and gas supply and called the respondent. The respondent returned to the applicant's home and removed the newly replaced gas line. The applicant says the respondent determined the leak was caused by a fault in the upper fitting of the line. The respondent says the gas leak was caused by the applicant's removal of the wall unit off the wall to clear the combustion air piping. The respondent replaced the gas line and the furnace worked. However, the applicant says that because of repeated wrenching of the fittings and lines, the gas valve assembly was torn off the side of the furnace and was only supported by the gas lines. The respondent helped the applicant reattach 1 support bolt. The applicant says he later attached the remaining bolts with his wife's help, but it is unclear whether he asked the respondent to help him with these bolts.
20. The applicant says he spent 6 hours repairing his furnace, for which he wants the respondent to compensate him \$308. He did not explain on what basis he is charging \$51.33 per hour.

21. While much of this evidence is the applicant's word against the respondent's, I find it unlikely the applicant would have paid the respondent's invoice immediately if he was not satisfied with the respondent's work and if the respondent cut their time short. I also find it is more likely that the gas leak was caused by the applicant's disconnection of the gas line, than the respondent's replacement of it, as the applicant is not a professional. I also note there is no opinion in evidence from a qualified professional that is critical of the respondent's work. On balance, I find it more likely that the respondent's version of events is the correct one.
22. The applicant is responsible for proving his claims and I find he has not established that the respondent's repair work was unnecessary or that it damaged his furnace. I dismiss his claims.
23. The respondent says they charged the applicant \$189 plus GST for the second visit which took them 43 minutes, but the applicant refused to pay. The respondent's submissions and evidence indicate they planned to bring a counterclaim for the amount of the second invoice and their time spent on this dispute. However, there is no counterclaim before me, and the respondent did not submit the second invoice into evidence. I make no findings of fact about the respondent's potential claim.
24. Under section 49 of the Act, and tribunal rules, since the applicant was unsuccessful I find he is not entitled to reimbursement of his tribunal fees. He has not claimed any dispute-related expenses.

## **ORDER**

25. I dismiss the applicant's claims and this dispute.

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Sarah Orr, Tribunal Member