



Civil Resolution Tribunal

Date Issued: June 12, 2019

File: SC-2018-003440

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refridgeration & Sheetmetal Services LTD. v. Rollo*, 2019 BCCRT 717

B E T W E E N :

Aslan Electrical, Plumbing, Gasfitting, Refridgeration & Sheetmetal Services LTD.

APPLICANT

A N D :

SueMarie Rollo

RESPONDENT

AND:

Aslan Electrical, Plumbing, Gasfitting, Refridgeration & Sheetmetal Services LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about work done on a fireplace. The applicant, Aslan Electrical, Plumbing, Gasfitting, Refridgeration & Sheetmetal Services LTD. (Aslan), says that the respondent, SueMarie Rollo, has failed to pay its invoice. Aslan seeks an order that Ms. Rollo pay it \$538.28.
2. Ms. Rollo says that Aslan performed work she did not agree to and discarded her fireplace without her permission. She says that the unauthorized work caused her damages and loss of rental income. Ms. Rollo denies that she is responsible for Aslan's invoice. By counterclaim, she seeks damages of \$5,000 from Aslan.
3. Aslan is represented by an employee. Ms. Rollo is self-represented.

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* (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 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.

ISSUES

8. The issues in this dispute are:
 - a. whether Ms. Rollo is responsible for Aslan's invoice in the amount of \$538.28; and
 - b. whether Aslan is responsible for the \$5,000 in damages claimed by Ms. Rollo.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, an applicant (whether by claim or counterclaim) bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
10. In November of 2017, Aslan attended at Ms. Rollo's home to perform some work on her gas fireplace. Aslan says it told Ms. Rollo at that time that it was unable to replace a gas valve due to the age of the unit, and that a new fireplace insert would be required. Ms. Rollo says she was told that a valve needed to be replaced but would cost \$500, and she was considering her options given that a new fireplace would cost \$1,200.

11. In January of 2018, Ms. Rollo became concerned that there was gas leaking from the fireplace and her clothes dryer. An electrician and gas technician from Aslan attended Ms. Rollo's home to install a new plug and address the gas issues. The fireplace insert was removed and the gas lines for the fireplace and dryer were capped off. This work was invoiced at \$538.28. The electrician installed new electrical outlets, which apparently required new wiring to be run to the appropriate locations. The invoice for the electrical work amounted to \$1,463.91.
12. Ms. Rollo paid Aslan's invoice for the electrical work but declined to pay for the \$538.28 bill for the gas work. She stated that her friend, David, had made the appointment for a gas technician and electrician, and that she had subsequently cancelled the order for the electrician. Ms. Rollo says that Aslan's personnel arrived at her home while she was asleep and, after being let in by David, performed work that she did not authorize. Ms. Rollo was particularly unhappy that the fireplace insert had been removed, leaving a hole in the wall.
13. Aslan seeks payment of the \$538.28 invoice for gas work, plus interest charges. Aslan says that it performed services at Ms. Rollo's request and she was fully aware of the work. Aslan also says that she was aware of the time that its personnel would be attending the home.
14. The amount of the invoice is not disputed. Ms. Rollo submits that she never agreed to the scope of work, did not authorize the capping of the gas lines, and suggests that the issue should have been addressed in some other way. Ms. Rollo says that the gas technician should have consulted her instead of relying on David's authorization. The Work Authorization Form and work order for the gas work were signed by David. These documents clearly set out work to be done on the fireplace and dryer.
15. Ms. Rollo admits that she wanted an Aslan gas technician to come to her home to stop the leaks. Recordings of 2 telephone calls between an Aslan employee and Ms. Rollo confirm that Ms. Rollo was aware that work would be done in the form of capping the lines in the fireplace and the dryer. The recordings suggest that Ms.

Rollo was aware that both a gas technician and an electrician would be coming to her home in the morning of January 30. There is no indication that she intended for there to be an inspection before the scope of work was determined.

16. I am satisfied that the work performed by the gas technician was consistent with that discussed by the parties the day prior to the service. Although David signed the forms, I find that Ms. Rollo requested and agreed to the work described therein. As such, she is responsible for the associated \$538.28 invoice.
17. Aslan's January 30, 2018 invoice states that it is due upon receipt and is subject to interest of 1.5% per month or 19.56% per annum. I find that Aslan is entitled to contractual interest in the amount of \$143.65.
18. In her counterclaim, Ms. Rollo seeks reimbursement of \$1,463.91 in "electrical fees" reimbursed, \$1,000 for a replacement fireplace, and financial compensation of \$2,536.09 for the loss of ability to rent the suite in her home. Ms. Rollo later submitted that she had incurred additional expenses to the ones listed in her counterclaim, particularly with respect to the fireplace. Although she incurred losses of more than \$5,000 (which is the tribunal's jurisdictional limit), Ms. Rollo states that she seeks to "re-allocate" these expenses to receive the maximum award possible. I am not able to consider damages in excess of those claimed in the Dispute Notice for the counterclaim. However, given my conclusions below, I find that nothing turns on this.
19. While the initial appointment for the electrical work was arranged by David, I find that the recorded telephone calls confirm that Ms. Rollo was aware of, and agreed to, the scope of the work performed by the electrician. Further, Ms. Rollo signed the work order and the Work Authorization Form. I am satisfied that she acknowledged responsibility for the invoiced amount both by signing these forms and by paying the outstanding balance.
20. Ms. Rollo also suggests that the new plug installed by Aslan's electrician was not to code and there are issues with the breaker box that prevent 2 appliances from

being run at the same time. Aslan says that all the work was passed by an inspector and it never received any correspondence to the contrary.

21. Ms. Rollo provided a quote from an electrician for the installation of “new 200A service beside existing 100A service and subfeed the existing service”. While I acknowledge this evidence, it does not establish that there were problems with the work performed by Aslan. The evidence before me does not include a statement from an inspector, electrician or other tradesperson that confirms the existence of defects in the work performed by Aslan’s electrician. As she has not proven that Aslan’s work was deficient or that she incurred expenses to remedy its deficiencies, I dismiss this aspect of Ms. Rollo’s claim.
22. Ms. Rollo also claims damages for the loss of her fireplace insert. Although Aslan’s technician disconnected and capped the gas supply, he did not remove the fireplace insert from Ms. Rollo’s home. The evidence shows that the fireplace was disposed of by Ms. Rollo’s friend, David, not by Aslan. Accordingly, I do not find that Aslan is responsible for the costs associated with a replacement fireplace. As David is not a party to this dispute, I cannot consider whether Ms. Rollo may be entitled to compensation as a result of his actions. I dismiss Ms. Rollo’s claim with respect to the fireplace insert.
23. Ms. Rollo also claims that she has lost rental income at a rate of \$1,200 per month as damage caused by Aslan prevented her from renting out her suite. Her submissions suggest that she has concerns about safety issues with the electrical work performed by Aslan, which I have found not to be proven based on the evidence before me. She also cites the hole in the wall from the missing fireplace. However, I have determined that this item was discarded not by Aslan but by David. I am unable to conclude that Aslan is responsible for any damages that flow from the missing fireplace insert.
24. I find that Ms. Rollo has not proven that Aslan’s actions resulted in a loss of potential rental income at the rate she claims or at all. This portion of Ms. Rollo’s claim is dismissed.

25. 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. As Aslan was successful, I find that it is entitled to reimbursement of \$125.00 in tribunal fees. It did not claim dispute-related expenses. As Ms. Rollo was not successful, I dismiss her claim in this regard.
26. Ms. Rollo also requested reimbursement of \$400 in legal fees she says she incurred as a result of this dispute. Rule 9.4(3) states that, except in extraordinary cases, the tribunal will not order one party to pay to another party fees charged by a lawyer or other representative. As the circumstances of this case are not extraordinary, I dismiss Ms. Rollo's claim for legal fees.

ORDERS

27. Within 30 days of the date of this order, I order Ms. Rollo to pay Aslan a total of \$806.93, broken down as follows:
 - a. \$538.28 in payment of the January 30, 2018 invoice;
 - b. \$143.65 in contractual interest; and
 - c. \$125.00 in tribunal fees.
28. Aslan is entitled to post-judgment interest, as applicable.
29. Ms. Rollo's counterclaims are dismissed.
30. 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.

31. 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.

Lynn Scrivener, Tribunal Member