



# Civil Resolution Tribunal

Date Issued: June 20, 2019

File: SC-2018-008968

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sharp v. Cameo Plumbing 100 Mile House Ltd.* 2019 BCCRT 755

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

Brigitte Sharp

**APPLICANT**

**A N D :**

Cameo Plumbing 100 Mile House Ltd.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. In October 2013 the respondent, Cameo Plumbing 100 Mile House Ltd. installed a wood stove and chimney in the home of the applicant, Brigitte Sharp. Shortly after installation, the chimney began leaking creosote, a by-product of wood combustion.

2. In 2018, the applicant's insurer became aware of the leaking creosote and required the applicant to address the issue and obtain an inspection. After unsuccessfully attempting to negotiate replacement of the chimney and a new inspection with the respondent, the applicant hired another company to replace the chimney. The applicant now seeks to have the respondent pay for the chimney replacement and other costs, totalling \$1,755.02.
3. The applicant is self-represented. The respondent is represented by Jason Mitchell, an employee or 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. In some respects, both parties in this dispute call into question the credibility of the other. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.

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. Is the applicant's claim out of time under the *Limitation Act*?
  - b. If not,
    - i. what caused the creosote leak and who was responsible?
    - ii. what compensation, if any, is appropriate?

## **EVIDENCE AND ANALYSIS**

### ***Limitation period***

9. The *Limitation Act* (LA) applies to disputes at the tribunal. The LA sets out a basic limitation period of two years. A person cannot commence a claim more than two years after discovering the claim. The tribunal issued the Dispute Notice on December 20, 2018, so in order to bring her claim, the applicant must have discovered the claim after December 20, 2016.

10. The respondent says the applicant's claim is out of time because she was aware of the creosote leak in November 2013, and it was caused by her own actions. The respondent bears the burden of proving that the applicant's claim is out of time.
11. Section 8 of the LA states that a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:
  - a. that the injury, loss or damage had occurred;
  - b. that the injury, loss or damage was caused by or contributed to by an act or omission;
  - c. that the act or omission was that of the person against whom the claim is or may be made;
  - d. that, having regard to the nature of the injury, loss or damage, a court or tribunal proceeding would be an appropriate means to seek a remedy.
12. The respondent installed the wood stove and chimney on October 28, 2013. The applicant says she noticed the creosote leak 10 days after first using the stove, and no later than November 21, 2013, when she emailed the respondent about it. However, she says the respondent gave her false information and led her to believe she was responsible for causing the creosote leak. She says she did not discover that the chimney was defective or improperly installed until May 2018 when her insurance investigator noticed the creosote leak and told her that the chimney was installed upside down. The latter observation turned out to be incorrect, which I will explain below, but the applicant says the investigator's comments and the insurer's insistence that she address the leaking creosote started her on the path to discover the cause of the damage.
13. The evidence shows that applicant contacted the respondent immediately upon noticing the leaking creosote in November 2013. The respondent instructed her to send photos showing the arrow stickers on the chimney to confirm the orientation. After confirming that the chimney was installed right side up, the respondent then

told the applicant that the cause of the leaking creosote was the wood she was burning. It said the wood had a moisture content that was too high, and the problem would correct itself if she burned appropriately seasoned wood.

14. In March 2014, the respondent completed a Wood Energy Technology Transfer (WETT) level 1 inspection of its own work. The applicant says that when her stove and chimney passed the WETT level 1 inspection to her insurer's satisfaction, she had no reason to believe that burning wood in her stove was unsafe. The respondent says that during a WETT level 1 inspection the technician is "doing a very straight forward visual inspection and is not to have an opinion on the installation," and says the insurer decides if they accept the installation. There is no dispute that the applicant's insurer accepted the WETT inspection. I find that this dispute relates to the installation of the stove and chimney, not the validity of the WETT inspection.
15. What the limitation issue turns on is whether it was reasonable for the applicant to accept the respondent's explanation that her chimney was leaking creosote because she was burning wet wood. The respondent says that during its site visit in March 2014, it measured the moisture content of the wood the applicant was burning and found the moisture content was 31% and it was improperly stored. The applicant disputes that anyone measured the moisture content of her wood. In her submissions, the applicant denies ever burning wood with a high moisture content. She says that her sole source of wood since the stove was installed has been a gentleman who only cuts down dry jackpine trees, which she splits and stores, covered, for a year before burning.
16. If I accept the applicant's evidence that she was burning wood with a low moisture content, then it was not reasonable for her to accept the respondent's explanation that the creosote leak was caused by her burning wood with a high moisture content. The applicant's photos show that the creosote leak persisted, and the streaks down the exterior of the chimney grew over time. If the applicant was

burning dry wood but creosote continued to leak, she was or ought to have been aware that there was another problem and should have taken steps to investigate it.

17. The applicant also admits that periodically, visitors observed the leaking creosote and told her that her chimney was upside down. Those visitors included the local fire chief. I find that those comments also should have caused the applicant to take steps to address or further investigate the ongoing creosote leaks. In other words, having ruled out the chimney being upside down and high-moisture wood, the applicant was required to take reasonable steps to determine the actual cause of the problem. After taking appropriate investigative steps, the applicant reasonably ought to have known there was a claim against the respondent.
18. I find that the limitation period began to run, at the latest, in March 2014, when creosote continued to leak despite the applicant burning wood with a low moisture content. It follows that the applicant is out of time to bring her claim. I dismiss the applicant's claims and this dispute.
19. My decision to dismiss the dispute is based not on the merits of the applicant's claim, but solely on the fact that the applicant started the dispute too late.
20. 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. The applicant was unsuccessful, and the respondent has not incurred any fees, so I decline to make such an order.

## **ORDERS**

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

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Micah Carmody, Tribunal Member