



# Civil Resolution Tribunal

Date Issued: July 19, 2019

File: SC-2019-001990

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Frith dba Sun's Mechanical v. Dae-Hwa Enterprises Ltd. et al.*,  
2019 BCCRT 874

B E T W E E N :

TOM FRITH (Doing Business As SUN'S MECHANICAL)

**APPLICANT**

A N D :

DAE HWA ENTERPRISES LTD. and JOON-HWA LEE

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is a partially unpaid invoice for the provision and installation of a water heater. The applicant, Tom Frith (doing business as Sun's Mechanical), says the respondents, Dae Hwa Enterprises Ltd. (Dae Hwa) and Joon-Hwa Lee, owe him

\$3,601 for parts and labour. The respondents say that they should pay less than this amount for several reasons, including the choice of heater used.

2. The applicant is self-represented. The respondents are represented by Joon-Hwa Lee, whom I infer is the principal or employee of the corporate respondent Dae-Hwa.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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**

7. The issue in this dispute is to what extent, if any, the respondents owe the applicant \$3,601 for the supply and installation of a commercial water heater.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. According to a signed September 25, 2018 estimate, the applicant agreed to provide and install a commercial gas water heater for \$9,880. The estimate also provided a model number for the heater.
10. The estimate, and other documents in this dispute, refer to Western Traveler Motel as being the applicant's customer. Mr. Lee and Dae Hwa are respondents in this dispute, whereas Western Traveler Motel is not. Mr. Lee admits to ordering the water heater in question. However, on balance I find that the evidence shows that Dae Hwa contracted with the applicant, and Mr. Lee acted throughout on Dae Hwa's behalf. The water heater appeared to be ordered for the motel business and the invoice was not made out to Mr. Lee himself. There is little evidence that Mr. Lee is personally responsible. I therefore dismiss the claim against Mr. Lee and will proceed to consider the applicant's claim against Dae Hwa.
11. An October 3, 2018 invoice shows that the applicant ultimately charged \$9,880, plus \$494 for GST, and \$227 for a gas permit. The applicant provided a credit of \$7,000 for a paid deposit. The total amount owing was therefore \$3,601. This matches the applicant's claim amount in this dispute.
12. I find that the applicant provided the agreed-upon heater and installation services. In that regard, Mr. Lee submitted a photo of the installed heater's label. It shows a model number and capacity that exactly matches the heater specified in the signed

September 2018 estimate. The applicant's work also passed inspection on November 6, 2018, by Technical Safety BC.

13. Mr. Lee alleged that the heater leaked gas and he had to hire another person to complete the installation. However, as he provided no other specifics or evidence to support this claim, I place little weight on this submission.
14. Mr. Lee submits that the applicant should have included the GST and gas permit amounts in the original September 25, 2018 estimate. However, I find it clear from the estimate that GST and a gas permit fee would be added to the final price. The estimate included these costs as line items, though the exact amount was left blank at the time. The respondent could have asked the applicant to clarify these amounts if he wished.
15. Mr. Lee also says he discussed the gas permit fee with the respondent before work began and did not explicitly agree to pay the gas permit amount. I do not find this to be an appropriate reason to refuse payment of the gas permit fee. The respondent verbally explained the need for such a permit. By providing a deposit and proceeding with the installation Dae Hwa showed that it agreed to pay the gas permit fee.
16. Mr. Lee further submits that he requested a heater with an input of 199,000 BTUs, whereas the installed heater only has an input of 171,000 BTUs. However, the September 2018 estimate does not mention BTU input. Given the absence of any supporting documents, I do not find this to be a term of the parties' contract.
17. Mr. Lee provided an estimate and an invoice for the installation of a second heater by a competitor, to show that the applicant's work was overpriced. I find these documents irrelevant as the second heater has a different model number than the one at issue. Further, regardless of the price paid for the second heater, Dae Hwa agreed to pay the price specified for the first heater.
18. Finally, Mr. Lee submits that the heater was designed for high altitude operation and was therefore unsuitable for its current location. However, according to an October

9, 2018 text message, the applicant attempted to address this. He offered to order a conversion kit and install it. The kit consists of five brass orifices and the applicant submits that this is the only difference between operating the heater at low versus high altitude. The applicant showed that he ordered the conversion kit by providing photos of it. Based on the applicant's text message, I find that he offered to provide and install the conversion kit free of charge.

19. In any event, Mr. Lee refused the applicant access to the heater on October 15, 2018. The applicant then gave the kit to the Mr. Lee. The applicant discussed the matter with Technical Safety BC and its representative concluded there was nothing more to be done. Given that Mr. Lee refused access and the applicant's work has passed inspection, I do not find the conversion kit to be a reason to reduce the amount owing to the applicant.
20. In summary, the evidence shows that Dae Hwa owes the applicant \$3,601. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA). I find that applicant is entitled to such interest from October 3, 2018, given that Dae Hwa was invoiced on that date. I dismiss the applicant's remaining claims against Mr. Lee.

## **TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES**

21. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.
22. The applicant was largely successful in this dispute. I therefore award the applicant \$175 for reimbursement of tribunal fees. The applicant did not claim dispute related-expenses.

## ORDERS

23. Within 30 days of this decision, I order Dae Hwa to pay the applicant a total of \$3,827.35, broken down as follows:
  - a. \$3,601.00 in debt,
  - b. \$51.35 in pre-judgment interest under the COIA from October 3, 2018, and
  - c. \$175.00 as reimbursement of tribunal fees and dispute-related expenses.
24. The applicant is entitled to post-judgment interest under the COIA.
25. The applicant's remaining claims are dismissed.
26. 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.
27. 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.

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David Jiang, Tribunal Member