



Civil Resolution Tribunal

Date Issued: July 24, 2019

File: SC-2018-002771

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Watson v. Fletcher*, 2019 BCCRT 905

B E T W E E N :

Erik Watson

APPLICANT

A N D :

Dale Fletcher

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a dispute about chimney sweeping services.
2. The applicant Erik Watson says he hired the respondent Dale Fletcher to chimney sweep and remove a squirrel's nest from his chimney.

3. The applicant says that, within 2 hours after the service was provided, the bedroom, closets and bathroom of his basement level were covered in soot. The applicant claims \$5,000 to restore the property to its condition before the soot incident.
4. The respondent says the applicant hired him to remove a large squirrel's nest and clean one flue of the chimney. He was not hired to clean the main floor flue. The respondent says the chimney was in poor condition, with cracks between the bricks and a need for repointing.
5. The respondent says he completed the service as agreed to a reasonable standard and is not responsible for any soot damage that occurred. He says the damage is likely due to the poor condition of the chimney. The respondent asks that I dismiss the dispute.
6. The applicant is represented by Darcee Morck, an employee of his insurance company. The respondent is self-represented.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.
9. 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.

10. 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

11. The issue in this dispute is whether the respondent must reimburse the applicant for the remediation of soot that fell into the basement after the respondent's chimney work.

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.
13. The parties agree and I find that the applicant hired the respondent to remove a squirrel's nest and clean a double flue chimney at the applicant's home.
14. The respondent completed the services on June 8, 2017. The invoice prepared on that date shows that the applicant asked for a limited scope of work involving removal of the squirrel's nest and cleaning the chimney and flue downstairs only. I find that this was the scope of work agreed to.
15. While it was originally a wood-burning fireplace, by the time the respondent performed the work, the applicant's fireplace operated using gas.

16. The respondent proceeded to examine the chimney using a ladder and headlamp. He observed a large squirrel's nest in the basement flue, with live squirrels in it.
17. It is uncontested, and I find that, the respondent observed cracks in the brickwork of the chimney and that the general condition of the chimney was poor.
18. The respondent then discussed the situation with the applicant. It was uncontested, and I find, that the applicant wanted the respondent to "do the minimum" to keep costs down. I say this because no statement from the applicant to the contrary was provided. An agreement was reached for the respondent to remove the nest and clean a single flue, for \$195 plus tax.
19. The respondent then sealed the fireplace with black polyethylene and tape, placed drop sheets in front of the fireplace and covered a mattress and box spring with a drop sheet. He then used a squirrel pole to disturb the nest, but allowing the squirrels to climb out unharmed.
20. Once the squirrels left, the respondent removed the nest, coming down to the basement 5 times to remove the nest pieces. He then brushed the flue and removed any waste.
21. Having cleaned up, the respondent then informed the applicant that additional work was recommended on the chimney, as follows:
 - a. Repointing - \$525
 - b. Top vent - \$575
 - c. Wire screen installed - \$175
22. I accept the respondent's evidence that he explained that installation of a top vent was necessary to prevent a down draft, and that installation of a wire screen was urgent because it would prevent the squirrels from re-entering the chimney.
23. The applicant declined to complete any of the additional work.

24. The parties agree that neither the respondent nor the applicant saw any soot immediately after the respondent completed his work.
25. The applicant provided the respondent with a cheque in the amount of \$204.75 immediately upon the completion of his work. The cheque later bounced, meaning the respondent was not paid for the chimney sweep and nest removal service. The respondent did not bring a counterclaim.
26. At some point later, the applicant contacted the respondent to report soot had come out of the chimney and spread through the basement. The applicant says he contacted the respondent later the same day, while the respondent says the applicant called him the next day. I find that the difference is not significant. I accept that the soot fell from the chimney close in time to the work being completed.
27. Contrary to the applicant's submission, there is no absolute or automatic liability on the respondent's part if I find that soot caused damage to the applicant's belongings. In particular, the doctrine of *res ipsa loquitur* ("the thing speaks for itself") is no longer the law in Canada (see *Fontaine v British Columbia (Official Administrator)*, 1998 CanLII 814 (SCC)).
28. For a respondent to be liable in negligence the applicant must show that (1) the respondent owed the applicant a duty of care; (2) the respondent breached the applicable standard of care; and (3) that the breach caused the applicant's loss or damage. The damage caused must also have been foreseeable.
29. The applicant did not file any evidence from a qualified person, for example a chimney sweep, to say that the respondent's work fell below a reasonable standard for the scope of work the applicant requested.
30. The applicant disputes that the flue was cleaned properly, because the soot came out so close in time to the job's completion.
31. I have reviewed the documents filed by the applicant showing the remediation work that was required, and the costs associated with it. I find that these documents

neither establish a standard of care for chimney sweeping, nor prove a breach of any such standard by the respondent. I find that the respondent owed a duty of care to provide the chimney sweep services to the applicant in a reasonable way, given the limits of the contract.

32. I find that because there were other problems with the chimney, such as the need for repointing, the need to install a top vent and the need for a wire cover to prevent the squirrels from returning, the fact of the soot entering the home cannot itself prove that the applicant fell below the standard of care. I find that the applicant has not proven that the respondent failed to do the work reasonably. As well, I have found that the scope of work was limited and that there were other possible causes of the soot problem, including reappearance of the squirrels or a down draft. These other problems would have been address by the additional work recommended by the applicant, but which the respondent declined to have completed.
33. For these reasons, I dismiss the applicant's claims and this dispute.
34. 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 the respondent did not pay any tribunal fees nor claim dispute-related expenses, I make no order in this regard.

ORDER

35. I dismiss the applicant's claim and his dispute.

Julie K. Gibson, Tribunal Member