



Civil Resolution Tribunal

Date Issued: August 2, 2019

File: SC-2018-009082

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rather Be Plumbing Ltd. v. Noquits Property Management Services Ltd.*,
2019 BCCRT 933

B E T W E E N :

Rather Be Plumbing Ltd.

APPLICANT

A N D :

Noquits Property Management Services Ltd.

RESPONDENT

A N D :

Rather Be Plumbing Ltd.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about plumbing services. The applicant, Rather Be Plumbing Ltd. (RBP), claims \$1,668.76: \$1,518.76 in payment for its February 2017 plumbing invoice plus \$150 for a “lien fee”. RBP is represented by Jarod Hughes, its owner.
2. The respondent and applicant by counterclaim, Noquits Property Management Services Ltd. (Noquits), claims \$635.25 in damages against RBP. Noquits says it only agreed to have the existing hot water tank replaced if the total repairs came within its \$1,000 budget, but after the tank’s replacement RBP sent its bill for around \$1,600. Noquits says RBP should pay for the cost of its original hot water tank, because the tank’s replacement was not authorized as it was over budget. Noquits is represented by Irfan Ali, a principal or employee.

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* (CRTA). 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. In some respects, this dispute amounts to a “he said, he said” scenario with both sides calling 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 the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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 section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.
7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: 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 to what extent, if any, the applicant RBP is owed payment for its plumbing services and for a lien filing fee, and whether there should be any set-off related to the allegedly unauthorized hot water tank replacement.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant RBP to prove its claims on a balance of probabilities. Noquits bears the same burden in its counterclaim. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

10. At the outset, I will deal with RBP's claim for \$150 to file a lien, which I infer refers to a lien under the *Builders Lien Act* (BLA). I refuse to resolve this claim for lack of jurisdiction, under section 10 of the CRTA. The BC Supreme Court has jurisdiction over builders' liens, as set out in the BLA, which I find extends to associated expenses such as the lien's filing cost. I turn then to RBP's substantive claim for payment of its plumbing invoice.
11. It is undisputed that on February 25, 2017 RBP installed a 40-gallon electric water heater, repaired a shower valve, and installed 2 sets of taps 'in back suite', replaced 4 shut-off valves, and repaired a bathroom sink drain. The work was done in 2 suites, which apparently Noquits managed as property manager. RBP's detailed invoice for this date reflects this work, for a total balance of \$1,518.76.
12. RBP says the replacement of Noquits' hot water tank with the water heater was based on a verbal agreement. It provided a March 13, 2019 statement from its technician M who did the job, who said he noticed rust and moisture coming from the electrical panel on the hot water tank, and that he recommended replacement. M wrote that he phoned RBP's owner Mr. Hughes, who called Mr. Ali and suggested replacement. M wrote that Mr. Ali agreed.
13. Noquits says that RBP was hired to tighten a shower plastic handle in 1 suite and fix a rattling sound in the bathroom tap in the 2nd suite. In the Dispute Notice for its counterclaim, Noquits said that Mr. Hughes said it had a promotion for installing hot water tanks for \$650. Noquits said it told Mr. Hughes the existing tank was working well and had no issues, and at only 3 years old was still under warranty. Noquits said that Mr. Hughes said he could complete all of the repairs and include a "superior hot water tank" within Noquits' total \$1,000 budget, including all labour and materials. Noquits said that its authorization to replace the tank was conditional on the total job coming in under its \$1,000 budget. As the bill was over \$1,500 (which Noquits has not paid anything towards), Noquits counterclaims for \$635.25, to repay it for the cost of its original hot water tank. Noquits kept the new heater.

14. In contrast, in its later submissions, Noquits repeatedly denies it ever asked RBP to replace the water heater, and that RBP did so without Noquits' knowledge and consent. Noquits submits it only found out about the tank's replacement after it received an invoice. Noquits submits the job was supposed to be limited to the shower handle tightening and the rattling sound fix. Noquits made no mention of the conditional authorization to replace the tank and instead now submits that RBP has failed to show Noquits was even aware the tank was being removed. In its submissions, Noquits makes no mention at all of the \$1,000 budget.
15. I find the unexplained inconsistency in Noquits' evidence damages its credibility. Where inconsistent, I prefer RBP's evidence. Further, Noquits has given no explanation why it has paid nothing towards RBP's February 2017 invoice, despite RBP completing the other undisputed repairs without concerns and Noquits otherwise acknowledging it had an overall \$1,000 budget.
16. In a March 14, 2017 email to Mr. Hughes, Mr. Ali wrote that he had said his budget was \$1,000 and that if the work went over that amount the "water tank should be replaced another time". Mr. Ali wrote that Mr. Hughes had assured him the bill would be "approximately \$1,000 however the invoice amount is close to \$1600". This supports my conclusion that it is at best misleading for Noquits to say that Noquits never asked RBP to replace the hot water tank and that Noquits never knew about it until the invoice. Rather, Noquits clearly did know about the hot water tank replacement, but at least initially took the position that it should not have to pay for it because the total bill exceeded \$1,000. Again, there is no explanation for why Noquits has not at least paid \$1,000 for the total services provided, including the heater.
17. Further, while Noquits said after the job was done that it told RBP its budget was \$1,000, there is no reference to this in the parties' February 2017 email exchanges before the work started. I find this supports the conclusion that there was no such budget discussion. At the same time, I accept RBP's and M's evidence that at the

time the work started M noticed rust and then through a telephone discussion with Mr. Hughes, Mr. Ali authorized the tank's replacement.

18. On balance, I prefer RBP's evidence for the reasons set out above. I find Noquits authorized the tank's replacement as invoiced. There is no evidence before me to support a conclusion the amount of RBP's invoice is unreasonable, and I have rejected the assertion the job was limited to a \$1,000 budget. I find Noquits must pay the \$1,518.76 invoice. RBP is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA), from February 25, 2017. This equals \$46.53.
19. It follows that I dismiss Noquits' counterclaim. It has the newer replacement tank, which I find it authorized. There is no basis to award Noquits \$635 for the cost of its original hot water tank that was removed.
20. In accordance with the CRTA and the tribunal's rules, I find the successful applicant is entitled to reimbursement of \$175 in paid tribunal fees. As Noquits was unsuccessful, I dismiss its claim for tribunal fees. There were no dispute-related expenses claimed.

ORDERS

21. Within 14 days of this decision, I order Noquits to pay RBP a total of \$1,737.29, broken down as follows:
 - a. \$1,518.76 in debt,
 - b. \$46.53 in pre-judgement interest under the COIA, and
 - c. \$175 for tribunal fees.
22. RBP is entitled to post-judgment interest as applicable.
23. Under section 10 of the CRTA, due to lack of jurisdiction I refuse to resolve RBP's claim for reimbursement of the \$150 lien filing fee.

24. 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.
25. 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.

Shelley Lopez, Vice Chair