



Civil Resolution Tribunal

Date Issued: August 30, 2019

File: SC-2018-009559

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chen et al v. Richard McNeill, dba Fortress Technologies*,
2019 BCCRT 1032

B E T W E E N :

LI HUA CHEN and BENJAMIN YU

APPLICANTS

A N D :

RICHARD MCNEILL (Doing Business As FORTRESS
TECHNOLOGIES)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicants Li Hua Chen and Benjamin Yu say the respondent Richard McNeill, doing business as Fortress Technologies, failed to help them get a \$1,300 rebate when they bought their new heating system. The applicants claim \$1,300.
2. The respondent says he provided the applicants with information about how to apply to Fortis BC for their rebate immediately after installing their new furnace. The respondent says it is the property owner's responsibility to apply for the rebate. He asks that the dispute be dismissed.
3. The applicants are represented by primary applicant Li Hua Chen. The respondent 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* (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.
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, this dispute amounts to a "he said, she 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 of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

6. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
7. 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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

9. The issue in this dispute is whether the respondent must pay the applicants \$1,300 for their Fortis BC rebate after the installation of a gas furnace.

EVIDENCE AND ANALYSIS

10. In this civil claim, the applicants bear 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.
11. On November 14, 2017, Mr. Yu agreed to have the respondent supply and install an Amana high efficiency natural gas furnace for \$5,500 plus GST. Mr. Yu paid a deposit of \$1,443.75, leaving \$4,331.25 due on completion. The contract terms

were reached by discussion between Mr. McNeill and Mr. Yu, with the parties using a Chinese interpreter, AH.

12. Text messages filed in evidence show that AH texted the applicants on November 18, 2017 as follows, quote reproduced as written:

There is a new bc fortis grant for gas furnace, you could get \$1,300 rebate! However, you need to upgrade to other model which will cost you \$500 more! So how it work, our new equipment and installation fee will be \$5,500 plus tax; however, you will get a rebate from bc fortis for \$1,300; at the end you will save \$600.00-\$700.00 compare to the current agreement.

13. On November 27, 2017, Mr. McNeill installed the furnace. Mr. McNeill's invoice for that date includes the term "This installation will qualify for the Fortis \$1,300 rebate." The invoice states that the owner should keep the invoice with the furnace instructions.
14. On November 27, 2017, Mr. McNeill completed his portion of a Connect to Gas application, which includes the rebate application information and the serial number for the furnace. Mr. McNeill says he provided this form to the applicants that day, in person, with instructions that they should complete their portion and mail it to Fortis BC.
15. On December 1, 2017, AH emailed Mr. Yu, copying Mr. McNeill, attaching the invoice, and instructing the applicants to complete the rebate form and mail it to Fortis BC.
16. On December 3, 2017, Mr. McNeill sent Mr. Yu a text message saying that the furnace installation was complete, and "Invoice and Fortis grant rebate forms emailed" and requested payment of the amount owing. Mr. Yu replied the same day asking for the balance to be charged to his credit card. The respondent did so.
17. Mr. Yu now argues that the rebate forms were not emailed to him. However, at the time he did not raise a concern about it, such as by replying to Mr. McNeill's text message to say that the forms had not arrived. I find it likely that Mr. McNeill gave

Mr. Yu the necessary forms on November 27, 2017 and received them again by email from AH on December 1, 2017.

18. The applicants then requested that Mr. McNeill complete two additional Connect to Gas applications. Mr. McNeill filled in the installer's portion for these applications, one in Mr. Chen's name and one in Ms. Hua's name, and signed them on May 31, 2018.
19. In July 2018, the applicants texted Mr. McNeill with questions about applying for the rebate. He replied saying they should follow the instructions on the Fortis BC website.
20. On July 5, 2018, Mr. McNeill texted Mr. Yu asking for an "email address to send paper work to". On July 5, 2018, Mr. McNeill also emailed Mr. Yu again with the information needed to apply for the Fortis rebate. I find that Mr. McNeill was responding to a request for an additional copy of the Connect to Gas paperwork, rather than this being the first instance Mr. McNeill sent the documents.
21. On July 26, 2018, the applicants received a letter from Fortis BC saying it was unable to process their application for the rebate because:
 - a. the application was not made within 30 days of the installation date,
 - b. the invoice was missing, and
 - c. the full model number was required on the invoice.
22. In August 2018, the applicants texted Mr. McNeill asking for the furnace's model number. The text messages show that the respondent provided the full model number on August 13, 2018. However, I find that the model number had previously been provided both on the invoice and Connect to Gas application completed by Mr. McNeill in late 2017.
23. In submissions, the applicants say they applied for the rebate on August 10, 2018. This is inconsistent with the letter from Fortis BC they received in July 2018,

showing they had already applied for the rebate by then. I mention this inconsistency because it supports my finding that Mr. McNeill's account of what happened is more accurate than the applicants'.

24. The applicants say Mr. McNeill promised that he would help them get a \$1,300 rebate from Fortis BC. I interpret their argument to be that they would have installed a less expensive furnace, except for Mr. McNeill's representation that they would get a \$1,300 rebate on the model they bought.
25. AH texted the applicants on November 18, 2017, saying in one message both that they "could" get a \$1,300 rebate and that they "will get" get \$1,300 from Fortis. The assurance that they would get the \$1,300 rebate is inaccurate. I find that AH was conveying information to the applicants from Mr. McNeill, in the November 18, 2017 text.
26. Where a person makes a misrepresentation, to succeed in their claim an applicant must prove that the false representation was made knowingly, without belief in its truth, or recklessly, careless as to whether it was true or false. The person must also prove that their reliance on the misrepresentation caused their loss.
27. Here, I find that the statement that the applicants "will get" \$1,300 from Fortis was not accurate. Assuming the translation was accurate, Mr. McNeill expressed the fact of the rebate as a certainty at one point in the text message. In the same text message the word "could" was used, and in that context I find it unlikely that the applicants were misled.
28. As well, I find that Mr. McNeill had an honest belief that Fortis would pay the applicants a \$1,300 rebate. I have found that Mr. McNeill gave the applicants the required information to apply for the rebate. Had they not failed to provide the information to Fortis, they likely would have received it.
29. By November 27, 2017, Mr. McNeill clarified his advice, informing the applicants that they would have to apply to Fortis about the rebate. The representation on the

invoice was then only that the furnace would qualify for the rebate, not a guarantee that Fortis would pay it.

30. Based on the evidence, I also find that Mr. McNeill clarified his advice to the applicants in time for them to apply for the rebate and receive it. So, the applicants did not reasonably rely on AH's text that suggested that the rebate was a certainty.
31. I make this finding in part because the applicants argued that Mr. McNeill promised to "help" with their rebate application. In making that submission, the applicants acknowledge their own understanding that the rebate application had to be made by them and that the decision on the rebate was controlled by Fortis, not Mr. McNeill.
32. I find Mr. McNeill provided the applicants the necessary documents promptly, but that they then failed to apply for the rebate in a timely manner, using the required information. I base this finding largely on Fortis' July 2018 letter specifying that the applicants' delay and the absence of information were the reasons the rebate was refused.
33. The applicants cannot succeed where the damages were caused by their own conduct. The damages here were caused by the applicants' failure to complete their rebate application in a timely way, despite verbal advice from Mr. McNeill and email advice from AH that the applicants should apply for the rebate, in late November and early December 2017. For these reasons, I dismiss the applicants' claims.
34. Under section 49 of the CRTA 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. The respondent was successful. He paid no tribunal fees and did not claim any dispute-related expenses.

ORDER

35. I dismiss the applicants' claims and this dispute.

Julie K. Gibson, Tribunal Member