



Civil Resolution Tribunal

Date Issued: October 30, 2019

File: SC-2019-004509

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *High Mark Mechanical Services Ltd. v. Mah*, 2019 BCCRT 1230

BETWEEN:

HIGH MARK MECHANICAL SERVICES LTD.

APPLICANT

AND:

DAVID MAH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant High Mark Mechanical Services Ltd. says it installed a gas fireplace for the respondent David Mah, who failed to pay. The applicant claims \$1,424.48 for the installation.

2. The respondent says the applicant attempted to overcharge his credit card for hours that were not spent on the installation job. When the applicant would not resolve the overbilling, the respondent called his credit card company and asked them to block any further charges by the applicant. The respondent asks that the dispute be dismissed.
3. The applicant is represented by business contact Matt Pitt. 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, 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 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 applicant provided satisfactory gas fireplace installation services to the respondent, such that the respondent must pay the applicant's \$1,424.48 invoice.

EVIDENCE AND ANALYSIS

10. 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.
11. On March 22, 2019, the applicant installed a gas fireplace supplied by the respondent, at his home.
12. That day, the respondent signed a Work Authorization to have the applicant perform some plumbing or gas fitting services for \$99 for a site visit and \$75 per half hour of labour, plus parts, equipment fees, permits and taxes. The Work Authorization does not specify the scope of work.

13. The invoice issued March 22, 2019 details that the person doing the work, DS, took apart the fireplace venting and reinstalled it, picked up flashing and an exhaust diffuser and installed them, caulked and screwed the termination exhaust pipe, picked up a vent for the gas regulator for outside and installed 2 x 3 blocks around the vent wall collar.
14. The invoice charges for 8 hours of labour and a site visit. The \$1,405.34 invoice for this work was processed to the respondent's credit card the same day.
15. The respondent says he did not sign this invoice. However, the handwritten signature on the invoice appears like his signature on the Work Order Authorization. The respondent did not provide any other examples of his signature for comparison. As well, he does not contest that he provided the applicant with his credit card number to process these charges. This is consistent with him signing the invoice. I find that the respondent signed the invoice acknowledging that the work was done to his satisfaction.
16. The invoice says that DS told the respondent he would return March 25 to run the gas line to the fireplace, test it and call for inspection.
17. The respondent says he waited for DS to arrive at the work site on March 23, 2019, but that DS did not arrive. Because it is more consistent with the documentary evidence, I prefer the applicant's version of events, which is that DS planned on return on March 25, 2019, as documented on the invoice.
18. On March 25, 2019, the respondent again signed a Work Order Authorization. Again, the scope of work is not specified.
19. On March 25, 2019, DS again attended at the respondent's home. He completed the installation and pulled the permit for gas inspection.
20. The March 25, 2019 invoice details that DS spent 4.6 hours on labour, plus a site visit charge. The parts used are listed on the invoice.

21. The respondent says he did not sign this invoice either. However, the March 25, 2019 invoice bears a handwritten signature like that on the March 22, 2019 invoice. For this reason, I prefer the applicant's evidence and find that the respondent signed the March 25, 2019 invoice acknowledging that the work described was completed to his satisfaction. The invoice totals \$1,424.48, the amount claimed, which was charged to the respondent's credit card.
22. The invoice included that late payments are subject to a 1.5% per month interest charge, calculated from the date of service. The invoice did not express the interest charge as an annual rate.
23. The applicant also filed photographs which show that the work was completed.
24. On March 29, 2019, DS returned to test the gas fireplace unit. The unit was found to be working normally. Although the work was valued at \$184.28 on the invoice, the invoice notes there was no charge for this visit. This invoice was not signed.
25. It is uncontested, and I find, that at some later point the respondent asked his credit card company to cancel the \$1,424.48 charge. So, the respondent has not paid the March 25, 2019 invoice.
26. The respondent submits that DS took too long completing the job, and that the respondent charged for hours when DS was not on the work site. However, the respondent did not offer proof of this aside from his own assertion. The respondent did not prove a quote from another plumber/gas fitter for the same scope of work, commenting on the amount of time this job should take. The applicant also did not address the issue of travel time or the respondent's need to pick up parts.
27. Where defective work is alleged, the burden of proof is on the party asserting the defects. So, the respondent must prove on a balance of probabilities that the applicant breached their agreement by failing to complete the gas fireplace installation properly: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124.

28. The applicant's March 25, 2019 invoice detailed the work it completed. The photographs show the work completed as described. The respondent did not file any opinion, quote or invoice from another plumber to prove how the applicant's work was defective, either in the amount of time it took to complete or otherwise.
29. For these reasons, I find that the applicant's work was completed as described and in satisfactory manner. I find that the respondent must pay the \$1,424.48 owing.
30. The applicant did not claim contractual interest.
31. The *Court Order Interest Act (COIA)* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$1,424.48 from March 29, 2019 to to the date of this decision. This equals \$16.36.
32. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,565.74, broken down as follows:
 - a. \$1,424.48 as payment of the March 25, 2019 invoice,
 - b. \$16.26 in pre-judgment interest under the COIA, and
 - c. \$125 for tribunal fees.
34. The applicant is entitled to post-judgment interest, as applicable.
35. Under section 48 of the CRTA, 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.

36. Under section 58.1 of the CRTA, 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.

Julie K. Gibson, Tribunal Member