Civil Resolution Tribunal

Date Issued: October 31, 2019

File: SC-2019-005395

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leskun v. Blacklaw (dba Quesnel Septic Service)*, 2019 BCCRT 1240

BETWEEN:

RON LESKUN

APPLICANT

AND:

BEN BLACKLAW (Doing Business As QUESNEL SEPTIC SERVICE)

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about damage resulting from septic services. The applicant, Ron Leskun, hired the respondent, Ben Blacklaw (doing business as Quesnel Septic Service), to excavate and install a sump pump on his property. The applicant says that the respondent damaged a sewer line in the process. The applicant seeks

$744.98 for plumbing services to investigate the issue, $1,500 for landscaping labour, and $500 for stress and aggravation.

2. The respondent says it was the applicant's choice to leave the damaged sewer line unrepaired, and says the applicant is therefore responsible for his own choices. The respondent denies owing any money to the applicant.

3. The parties are each 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. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

6. 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.

7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted by 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.

ISSUES

8. The issues in this dispute are whether the respondent is responsible for damaging the applicant's sewer line, and if so:

    a. Whether the applicant is entitled to reimbursement for the $744.98 in plumbing charges,

    b. Whether the applicant is entitled to $1,500 for landscaping labour, and

    c. Whether the applicant is entitled to $500 for stress and aggravation.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Is the applicant entitled to reimbursement for the $744.98 in plumbing charges?

10. On June 5, 2019, the applicant hired the respondent to excavate and install a sump pump on his property. It is undisputed that during the process, the respondent's employee inadvertently broke through two pipes. One of the pipes was determined to be the home's perimeter drain line, and was repaired that day. The second pipe

was left unrepaired, for reasons discussed below. The excavation was back-filled and the respondent left the property. The respondent does not dispute that it was negligent in severing the two drain lines.

11. By the next day, the applicant noticed issues flushing his toilets. On June 6, 2019, while the respondent was on-site, the applicant says he informed him about the toilets not flushing properly. The applicant says the respondent recommended to try "CLR" to clear the toilets and that he was not authorized to work on plumbing inside the applicant's home.

12. The toilet flushing issue continued over the next several days. The applicant called a plumber who attended on June 17 and 18, 2019 to diagnose the problem. The plumber discovered the issue was a cut sewer line. The respondent was informed that the pipe it had broken was a sewer line, and on June 19, 2019 the respondent returned to the applicant's property to repair it. The area was again back-filled.

13. The applicant says the respondent should reimburse him for the $744.98 he had to pay the plumber to diagnose the issue with the sewer line. The respondent says it could have repaired the sewer line on the date it was damaged, but that the parties agreed to leave it unrepaired for two reasons. One, because the respondent says the applicant was adamant the pipe was not a sewer line, and two, because the parties collectively believed it was likely a roof drain line that had been illegally connected to the "CRD sewer system". The respondent said that if that was the case, it was not permitted to be reconnected.

14. In response, the applicant says that when he was asked by the respondent what the damaged pipe was for, he responded that he did not know. The applicant denies having any special knowledge about plumbing or sewer systems. The respondent says that initially he suspected the damaged pipe could have been a sewer line and requested the applicant to try flushing his toilet, and that the applicant refused to do so. In contrast, the applicant says that he was never asked to flush the toilet, and questions why he would refuse to do so when the closest toilet was 3 or 4 feet from the damaged pipe.

15. Although the respondent says the applicant was “adamant” that the damaged pipe was not a sewer line and so he did not investigate it further, I do not find that argument reasonable. In the circumstances, I find that even if the applicant had told the respondent the damaged pipe was not a sewer line, the professional respondent had an obligation to ensure that the damage it caused was investigated and repaired. Further, even if the damaged pipe had initially been illegally connected to the “CRD sewer system”, the obligation was on the professional respondent to make that determination. I find the respondent failed to meet these obligations. In fact, the pipe was left damaged until it was later determined by the plumber that it was a sewer line. I find the applicant acted reasonably in hiring a plumber to diagnose the issue, and I find the respondent was negligent in failing to further investigate the damage. As a result, the respondent is responsible for the cost of that assessment as a result of its negligence. I find the applicant is entitled to reimbursement of $744.98, the amount of the plumber’s invoice.

16. The applicant is also entitled to pre-judgment interest on this amount, further to the *Court Order Interest Act* (COIA). Calculated from July 17, 2019, one month after the date of the plumbing invoice, this amounts to $4.26.

Is the applicant entitled to $1,500 for landscaping labour?

17. The applicant says that after the initial excavation on June 5, 2019, he had taken steps to re-landscape his yard, including moving his fence, replacing the cement walkway and preparing the yard for re-seeding. The applicant says that this work had to be done again due to the second excavation on June 19, 2019 to repair the sewer line.

18. The applicant seeks compensation of $1,500 for his labour in landscaping his yard after the second excavation. He estimates it took him 30 hours and that his labour is worth $50 per hour.

19. The applicant did not provide any evidence from a landscaper as to the estimated cost or scope of work required to repair the applicant’s yard after the second

excavation. Further, the applicant did not provide any photos of the yard before or after the excavations. On balance, I find the applicant has not proven his entitlement to compensation for his time re-landscaping his yard. I dismiss his claim in this regard.

Is the applicant entitled to $500 for stress and aggravation?

20. The applicant claims $500 for stress and aggravation due to having to deal with his toilets not working properly and because the respondent refused to acknowledge its wrongdoing.

21. There are some situations, known as “peace of mind” contracts, where damages are allowed for disappointment, mental distress, inconvenience or upset, such as a lost holiday or for damaged wedding photography. However, this is not one of those situations. Although I acknowledge the applicant found the situation stressful, a trivial or minor inconvenience is insufficient to establish a legal claim for damages here. The applicant has not submitted any medical or other evidence to support a claim for mental distress, and I find he is not entitled to such an award.

22. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was partially successful, I find that he is entitled to reimbursement of half of his paid tribunal fees ($62.50). No dispute-related expenses were claimed.

ORDERS

23. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of $811.74, broken down as follows:

    a. $744.98 for plumbing services,

    b. $4.26 in pre-judgment interest under the COIA, and

c. $62.50 in tribunal fees.

24. The applicant is also entitled to post-judgment interest, as applicable.

25. The applicant's remaining claims are dismissed.

26. 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.

27. 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.

Andrea Ritchie, Vice Chair