



Civil Resolution Tribunal

Date Issued: November 15, 2019

File: SC-2019-005647

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rezai v. DirectBuy Furnace Ltd.*, 2019 BCCRT 1294

B E T W E E N :

SAM REZAI

APPLICANT

A N D :

DIRECTBUY FURNACE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about an air conditioner. The applicant, Sam Rezai, says the respondent, DirectBuy Furnace Ltd., misled him about the functionality of the air conditioner it sold the applicant and installed in his home. The applicant claims \$2,700 in damages: \$2,500 for re-wiring his home to accommodate the air

conditioner and for the air conditioner's alleged reduced efficiency, plus \$200 for a thermostat he says the respondent had him buy unnecessarily.

2. The respondent says the applicant knew he needed different wiring and that the applicant said his friend would assist with that. The respondent also says the applicant instructed it to use his stove's electrical connection for the air conditioner. Further, the respondent says the applicant knew he needed the different thermostat and says the applicant authorized the respondent to install it for \$200. The respondent denies responsibility for the applicant's claims.
3. The applicant is self-represented. The respondent is represented by an employee or principal.

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 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. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, they said" scenario as to what occurred. Credibility of interested witnesses, particularly where there is a conflict, cannot be determined solely by the test of whose personal demeanour in a

courtroom or tribunal proceeding appears to be most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to hear this dispute based on the documentary evidence and written submissions before me.

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 whether the respondent misled the applicant about the functionality of the air conditioner it installed in the applicant's home, and if so, what are the appropriate damages.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant to prove his claims on a balance of probabilities. Although I have reviewed all the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.
10. The parties agree:
 - a. In June 2019, the applicant entered into a contract with Home Depot (HD) for an air conditioner installation, which HD subcontracted to the respondent.
 - b. On June 21, 2019, the respondent installed an air conditioner in the applicant's home.
 - c. During installation, the respondent discovered and reported to the applicant that his existing thermostat was not compatible with the air conditioner and would need to be replaced.

- d. After the installation was done, on June 21, 2019 the applicant signed a completion form indicating he was satisfied with the installation and that it was complete.
 - e. On around June 23 or 24, 2019, the applicant contacted HD with concerns about his electrical panel and HD referred the applicant to the respondent, who contacted the applicant after he started this tribunal proceeding on July 18, 2019. The applicant does not explain why he had concerns 2 days after installation or what brought them to his attention.
11. In this dispute, the applicant claims a total of \$2,700. Of that, \$200 is a claimed refund of what the applicant says the respondent charged for the “extra” thermostat. The applicant says the \$2,500 balance is to “correct the wiring, install similar thermostat as previously had, pay difference for installing lower SEER than promised”. Based on the applicant’s evidence and submissions, his claim is primarily for the respondent to pay for re-wiring his electrical panel to accommodate the new air conditioner. The applicant does not claim a refund of the air conditioner. More on this below.
12. The applicant’s contract with HD and the air conditioner’s catalogue description both show the respondent sold the applicant a Trane air conditioner, model XR14, rated as “up to” 16 SEER (Seasonal Energy Efficiency Ratio). The June 4, 2019 “proposal”, which I find formed the parties’ contract, is for “supply and install” and includes a Nexia XL824 thermostat. The total price was \$6,788.25, with no breakdown for the thermostat.
13. The applicant says that at the time of sale the respondent told him that his Trane model would have 16 to 17 SEER, but after installation he found the air conditioner’s sticker stated it had only 14 SEER, which the applicant says is almost the lowest in the market. The applicant provided no documentary evidence that the respondent said the unit “would have” 16 SEER, and I find the weight of the evidence does not show the respondent said this. Rather, the catalogue photo clearly states the air conditioner would have “up to” 16 SEER, and so 14 SEER fits

within that description. I dismiss the reduced efficiency aspect of the applicant's claim, although I note the applicant did not specify its value.

14. The applicant also says the respondent used "30 AMP wire (#10) that is connected to 40 AMP breaker". The applicant says the respondent did not obtain a permit, and that this wiring is unsafe. The applicant provided an estimate from Highlight Electric that includes a note that "Wiring for AC unit has been done incorrectly and without appropriate permit. Unauthorized person has ... cut the range wire ...". The estimate is for \$1,778.70 and forms part of the applicant's claim in this dispute, along with a \$299.25 invoice the applicant paid to investigate the issue, for a total of \$2,077.95.
15. The applicant submits that the respondent should have told him that his electrical panel could not handle "the AC load". He says if he had known, he would have then been able to choose to decline or postpone the unit's installation because of the extra cost.
16. Yet, the respondent says it did tell the applicant his panel could not accommodate the air condition, and its June 5, 2019 pre-installation 'notes' say:

... Electrical panel full however [customer] said that he does not use the stove and you can convert that. ... Ordered AC cover No [thermostat] necessary ...
17. Earlier, in its Dispute Response, the respondent said the applicant advised he would have a friend deal with the necessary re-wiring.
18. On balance, I find the applicant likely did tell the respondent to use the stove wiring and that he would otherwise deal with the electrical issues. As noted, the applicant did not ask to return the air conditioner for a refund. I find this shows it was more important to him to have the air conditioner and he would not likely have deferred its purchase.
19. The difficulty for the respondent is that in its own installation checklist, it checked off that the equipment was installed "following applicable codes and best practices".

Based on the electrician's evidence submitted by the applicant, I find the respondent did not install the air conditioner according to the applicable electrical code, given the connection to the stove's circuit. However, that is not the end of the matter.

20. The applicant's claimed remedy is to keep the air conditioner and have the respondent pay to have his home re-wired to accommodate it. Yet, it was never part of the parties' contract for the respondent to re-wire the applicant's home. The applicant's contract with HD states on the "terms and conditions" page that the contract does not include any changes to the electrical systems unless specifically noted. On balance, I find it would be unreasonable to require the respondent to pay for the re-wiring, particularly as I have found the applicant did instruct the respondent to use his stove wiring. I find the applicant knew his electrical panel was inadequate, but chose to have the respondent proceed with the installation anyway.
21. So, while I find the respondent should not have installed the air conditioner given the electrical issues, the appropriate remedy would have been for the applicant to return the air conditioner for a refund of its "supply and installation" price, which I note exceeds the tribunal's \$5,000 monetary limit in small claims disputes. Yet, clearly the applicant chose to keep the air conditioner rather than return it. I find the applicant must bear the \$2,077.95 cost associated with re-wiring his home in order to accommodate the air conditioner. I dismiss the applicant's claims related to re-wiring his home.
22. Finally, the applicant also says he should not have had to pay the respondent \$200 for a new thermostat, when the respondent elsewhere indicated no thermostat was required. While the respondent's "pre-installation notes" show the respondent initially told the applicant a new thermostat was not required, it is undisputed that it was during installation that the respondent determined a new one was needed. There is insufficient evidence to support a conclusion that the respondent's advice was wrong, and it is undisputed the applicant agreed to pay the \$200 for the thermostat. I dismiss this claim also.

23. As provided under the CRTA and the tribunal's rules, the successful party is usually entitled to reimbursement of tribunal fees and reasonable dispute-related expenses. The applicant was unsuccessful and the respondent did not pay fees or claim expenses, so I make no order.

ORDER

24. I order that the applicant's claims and this dispute are dismissed.

Shelley Lopez, Vice Chair