



Civil Resolution Tribunal

Date Issued: February 18, 2020

File: SC-2019-006724

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ashton Mechanical Ltd v. Cui*, 2020 BCCRT 184

Default decision – non-compliance

B E T W E E N :

ASHTON MECHANICAL LTD

APPLICANT

A N D :

WEI CUI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, Wei Cui, due to the respondent's non-

compliance with the tribunal's mandatory directions as required, as discussed below.

2. This dispute is about 5 unpaid invoices for heating, ventilation, and air conditioning (HVAC) repairs. The applicant, Ashton Mechanical Ltd, says the respondent failed to pay its invoices, totaling \$4,047.39.
3. The respondent filed a Dispute Response. They say the applicant misdiagnosed the respondent's HVAC problems and didn't complete the parts installation.
4. The applicant is represented by an employee or principal. The respondent is self-represented.

JURISDICTION AND PROCEDURE

5. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to the tribunal for resolution and the tribunal may:
 - a. Hear the dispute in accordance with any applicable rules.
 - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
6. The case manager has referred the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I ought to refuse to resolve this dispute or dismiss it.

7. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 118 of the 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.
8. For the reasons that follow, I have allowed the applicant's claim.

ISSUES

9. The first issue is whether I should proceed to decide the applicant's claim, without the respondent's further participation, given their non-compliance.
10. The second issue is to what extent I should order the respondent to pay the applicant \$4,047.39 in debt.

EVIDENCE AND ANALYSIS

Non-compliance

11. My February 5, 2020 summary decision to hear the dispute without the respondent's participation due to the respondent's non-compliance was previously communicated to the parties by email through the case manager. The details supporting that decision are set out below.
12. The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA and tribunal rules 1.4(1), 5.1 to 5.4, and 7.1 to 7.4, despite multiple attempts by the case manager to contact them with a request for a reply.
13. The respondent filed its Dispute Response on September 24, 2019, which included their email address and phone number to be used for this dispute. The case

manager then made the following attempts at contact. The respondent did not reply to any of these attempts:

- a. On January 16, 2020, the case manager emailed facilitation directions to the respondent. The case manager requested the respondent confirm attendance at a facilitation teleconference (with all parties) scheduled for January 27 by January 20, 2020.
 - b. On January 21, 2020, the case manager emailed the respondent to say that she had not heard back by the above-mentioned deadline and needed a response by January 22, 2020. She warned that without a response the dispute could proceed, and orders could be made without their participation.
 - c. On January 27, 2020, the applicant attended the teleconference and the respondent did not. The applicant made a settlement offer.
 - d. Later that day, the case manager phoned and emailed the respondent. In her voicemail, the case manager explained the consequences of non-compliance and asked for a return call by January 28, 2020. The case manager also emailed a “final written warning”. She asked the respondent to provide times for a call and a response to the settlement offer by January 28, 2020. The case manager warned she might refer the dispute to a Tribunal Member to hear and decide the dispute without the respondent’s participation, citing CRTA section 36.
14. The case manager then referred the matter of the respondent’s non-compliance with the tribunal’s rules to me for a decision as to whether I should hear the dispute without the respondent’s participation.

Should the tribunal hear the applicant’s dispute without the respondent’s participation?

15. I find the case manager made a reasonable number of contact attempts. As referenced above, the respondent filed a Dispute Response which included both an

email address and phone number. The case manager attempted both without success.

16. The respondent has provided no explanation about why they failed to communicate with the tribunal as required. The respondent was informed in writing at the beginning of the facilitation process that they must actively participate in the dispute resolution process and respond to the case manager's communications, including emails. I find it is more likely than not that the respondent knew about the case manager's contact attempts and failed to respond.

17. Tribunal rule 1.4(2) states that if a party is non-compliant, the tribunal may:

- a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
- b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
- c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
- d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

18. Tribunal rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the tribunal will consider:

- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
- b. The stage in the facilitation process at which the non-compliance occurs,
- c. The nature and extent of the non-compliance,

- d. The relative prejudice to the parties of the tribunal's order addressing the non-compliance, and
 - e. The effect of the non-compliance on the tribunal's resources and mandate.
19. In the circumstances of this case, I find it is appropriate to hear the applicant's dispute without the respondent's further participation, relying on the information and evidence provided by the applicant and in the respondent's Dispute Response form. My reasons are as follows.
20. First, this dispute does not affect persons other than the named parties.
21. Second, the non-compliance here occurred early in the facilitation process, and the respondent has provided no evidence or submissions. The respondent effectively abandoned the process after providing their Dispute Response.
22. Third, given the case manager's attempts at contact and the respondent's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant.
23. Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of their non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy, which would be unfair to it.
24. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.
25. In deciding to hear the dispute, I find the applicant's claim should be heard. In deciding to hear the dispute, I have put significant weight on the following factors:

- a. The extent of the non-compliance is significant,
- b. The need to conserve the tribunal's resources, and
- c. There is no counterclaim.

Should the respondent pay the applicant \$4,047.39 in debt?

26. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
27. Where a respondent filed a response but has since failed to comply with the tribunal's directions, an adverse inference may be drawn against them. This means that if the respondent refuses to participate, it is generally reasonable to assume that the applicant's position is correct on the issue at hand. This concept is similar to where liability is assumed when a respondent has failed to provide any response to the dispute and is in default.
28. Having said that, I reviewed the Dispute Response, because it was filed before the respondent's non-compliance.
29. The applicant says the respondent hired it to diagnose and repair heating equipment that was installed by a third party. The applicant visited the respondent's house 5 times to work and invoiced the respondent as follows:
- a. December 20, 2018 for \$701.51,
 - b. January 2, 2019 for \$479.60,
 - c. January 21, 2019 for \$321.42,
 - d. February 25, 2019 for \$1,470.00, and
 - e. March 11, 2019 for \$1,074.85.
30. The invoices total \$4,047.38, which is a penny less than the claim amount in the Dispute Notice. The invoices summarize the work done and are addressed to

“Wayne Cui” at the respondent’s address, as noted in the Dispute Notice. I find that nothing turns on the different name and that these invoices are meant for the respondent.

31. In arguments the applicant says it performed its work and explained the price and scope of work beforehand. The applicant says the respondent had no reason to dispute its invoices.
32. The respondent does not dispute it hired the applicant or that the applicant’s technicians performed HVAC repairs on separate occasions. They say they should not pay anything for the following reasons:
 - a. The applicant made errors that lengthened repairs (in particular, repairs should have been limited to replacing an ignition transformer),
 - b. The applicant’s work took longer than it should have,
 - c. The applicant provided poor service by arriving late, rescheduling, and not providing updates, and
 - d. The applicant’s delay was burdensome because the respondent had to pay for accommodations while repairs were conducted.
33. When defective work is alleged, the burden of proof is on the party asserting the defects: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124. The respondent has not provided any evidence to show poor work by the applicant. Further, I draw an adverse inference against the respondent due to their non-compliance.
34. I find the applicant has proven it adequately performed HVAC repairs for the respondent, as documented in the 5 invoices in evidence. I find these invoices remain unpaid and that the respondent must pay the applicant \$4,047.38 in debt for repairs.
35. The applicant did not claim for pre-judgment interest of any type in the Dispute Notice or in arguments. I therefore do not order any.

36. Under section 49 of the CRTA, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.
37. The applicant was successful in this dispute. I therefore award the applicant \$175.00 for reimbursement of paid tribunal fees. The applicant did not claim for dispute related-expenses.

ORDERS

38. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$4,222.38, broken down as follows:
- a. \$4,047.38 in debt, and
 - b. \$175.00 in tribunal fees.
39. The applicant is entitled to post-judgment interest, as applicable.
40. 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. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

41. As set out in 58.1(3) of the CRTA, a party may only enforce this order if the time for making a notice of objection has passed and a Notice of Objection has not been filed. The non-compliant party has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.

David Jiang, Tribunal Member