Civil Resolution Tribunal

Date Issued: March 6, 2020

File: SC-2019-007317

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Archibald v. Qureshi*, 2020 BCCRT 262

B E T W E E N :

GLENN ARCHIBALD

APPLICANT

A N D :

INAM QURESHI

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. This is a debt claim over non-payment of plumbing services.

2. The applicant, Glenn Archibald, performed plumbing services on 2 steam radiators for the respondent, Inam Qureshi. The respondent undisputedly paid $210 for the

radiator job. The applicant says the respondent still owes him a total of $1,586.23 for the radiator job.

3. The respondent denies the debt claim. The respondent says the applicant agreed to perform the radiator job for under $500. The respondent also says the applicant damaged the piping during the repairs and argues that he should not have to pay the applicant's hours to fix the damaged piping. Further, the respondent says the applicant broke some floor tiles and that he had to pay someone to reset the tiles. The respondent did not file a counterclaim.

4. The parties are each self-represented.

5. I have allowed the applicant's debt claim for the following reasons.

JURISDICTION AND PROCEDURE

6. 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.

7. 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, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a tribunal proceeding appears to be the 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 assess and weigh the documentary evidence and submissions before me.

8. 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 BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

9. 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.

10. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

11. The issue in this dispute is to what extent if any, the respondent must pay the applicant the claimed $1,586.23 for the plumbing work.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities.

13. The parties agree to the following background facts:

    a. The applicant is a plumber and gas fitter.

    b. The respondent hired the applicant for a radiator job in the respondent's residence.

    c. The parties had no written agreement for the radiator job.

d. On September 26, 2018 the applicant disconnected 2 old radiators and capped off the pipes feeding the radiators.

e. The applicant completed the radiator disconnection and removal job on September 26, 2018. The respondent paid the applicant's October 23, 2018 invoice of $210 on February 28, 2019 for this work.

f. On April 12, 2019, the applicant returned to the respondent's residence to reconnect the old radiators but was unable to do so because the connective pipe was broken.

g. The applicant repaired the broken pipe between April 12 and 19, 2019. During this repair work, the applicant damaged an additional pipe. Based on the parties' submissions, I find it is undisputed that the applicant repaired this additional pipe as well.

h. On April 29, 2019, the applicant reconnected the radiators.

i. The respondent has not paid the applicant for his April 23 and May 6, 2019 invoices.

14. The applicant charged the respondent $885.88 on the April 23, 2019 invoice and $700.35 on the May 6, 2019 invoice. This is a total of $1,586.23, the claimed amount. As I just mentioned, the parties agree this amount is outstanding. However, the respondent disputes that he owes the applicant anything more on the radiator job.

15. I pause to note that there is a 7-month gap between the radiator disconnection and reconnection work. The respondent says he was doing other construction work. There is no suggestion that the applicant delayed in returning to reconnect the radiators.

16. The parties do not need a written contract for an agreement to be enforced. I find under the terms of the parties' verbal agreement the applicant agreed to perform the radiator job and the respondent agreed to pay the applicant for the job.

17. The parties submitted a statement of facts agreeing they had “no clear agreement” on the cost of the radiator job. However, at the same time the respondent also stated that they agreed on a price of under $500, which the applicant denied. The parties’ contemporaneous texts in evidence make no mention of the $500 price agreement. On balance, I find it unlikely the parties agreed to a $500 maximum price.

18. The applicant invoiced the respondent at 3 stages on a time and material basis. I find it clear on the invoices that the applicant was charging the respondent $90 per hour plus materials. The respondent paid the first invoice and then asked the applicant to perform more work. After the applicant invoiced the respondent for the repair work, the respondent had the applicant return to perform the reconnection. I find on the invoices that the respondent reasonably knew the applicant was charging him hourly at a rate of $90 plus materials for the radiator job. Even if it was not expressly agreed as a term in the parties’ verbal contract, on a *quantum meruit basis* (value for work done), I find $90 per hour plus materials is reasonable given the past invoices.

19. The applicant charged the respondent to fix the pipe that he broke. This is not in dispute. The respondent says the pipe was copper, copper does not easily break, and he should not have to pay the applicant for his time to fix this pipe. The applicant says the pipe was not copper but iron. It says the pipe was also 100 years old and brittle. The photograph of the broken pipe in evidence is not copper. The pipe is also covered with what looks like white corrosion and rust and looks very old. On balance, I prefer the applicant’s evidence that the pipe was a brittle iron pipe.

20. There is no evidence to show the old pipe was broken due to the applicant’s negligence. Also, the applicant had sent the respondent a text about the broken pipe, and the respondent asked the applicant to “proceed with the repair”. There was no text discussion about fault or the applicant reducing his time. I find the cost to fix the broken pipe was part of the radiator job and the applicant was entitled to

charge the respondent for the repair. I find no basis to reduce the applicant's invoiced hours for the broken pipe.

21. Next, the respondent says one of the radiators leaks water and the other makes a "clanking noise as they left parts in it". On the video in evidence, I accept the radiator makes noises and is dripping. However, I find insufficient evidence that the noise and the sound were caused by the applicant's work.

22. The respondent does not say exactly when the radiator started leaking and the video is undated. The respondent did not mention the leak in the Dispute Response submitted in October 2019. So, I find it likely started after that date. The respondent also does not say how the radiator drip is related to the applicant's work 6 months earlier. I have insufficient evidence that the drip was caused by the applicant or otherwise, related to the applicant's radiator job.

23. It is undisputed that the radiators themselves were cleaned and worked on by someone other than the applicant and the applicant only did the connection. The respondent provided no objective evidence showing parts left inside the radiator. Further, the respondent's building manager's statement in evidence describes the noise as an ongoing issue related to the building's steam heating system. The applicant's employee gasfitter says the sound is a "systemic occurrence caused by 'flashing' which occurs when water from condensed steam meets fresh steam in the system and is common in these old systems". On this evidence, I find the noise is likely unrelated to the radiator job.

24. I find the applicant's invoices clearly set out the hours worked, rate, nature of work, and the materials. The text messages show that the parties communicated about the job while in progress and the applicant had to request building access from the respondent, who had the key. I find it more likely than not that the respondent roughly knew the time it took the applicant on the job. I find the applicant's invoices match the time records on his time sheets in evidence. I accept the applicant worked the billed hours. I find the applicant has established that the respondent

owes him the total invoiced amount of $1,586.23 for the radiator job, subject to an equitable set off, which I discuss next.

25. As mentioned above, the respondent says the applicant broke floor tiles. The applicant says that he had to break 1 tile to remove the pipe. The respondent says he had to pay "extra" for his tile setter to fix the tiles. The respondent has the burden to prove that he is entitled to an equitable set off. This means that if the respondent can prove that the applicant owes him compensation that is reasonably connected to the applicant's claimed debt, the respondent can deduct it from the amount he owes the applicant. Without explanation, the respondent does not say how much it cost him to replace the tiles. He also provided no receipt or objective evidence, such as a statement from a tile setter, proving that the applicant broke more than 1 tile or that he paid someone "extra" to repair floor tiles. Therefore, I make no deduction for the broken tile or tiles.

26. I find the respondent must pay the applicant the claimed $1,586.23 for the radiator job debt.

27. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the $885.88 debt from the April 23, 2019 invoice date and on the $700.35 debt from the May 6, 2019 invoice, to the date of this decision. This equals a total of $26.55.

28. 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 the $125 he paid in tribunal fees. The applicant claimed no dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $1,737.78, broken down as follows:

a. $1,586.23 for the debt,

b. $26.55 in pre-judgment interest under the *Court Order Interest Act*, and

c. $125.00 in tribunal fees.

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

31. 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.

32. 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.

Trisha Apland, Tribunal Member