



Civil Resolution Tribunal

Date Issued: April 14, 2020

File: SC-2019-007540

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rather Be Plumbing Ltd v. 0906978 B.C. Ltd.*, 2020 BCCRT 393

B E T W E E N :

RATHER BE PLUMBING LTD.

APPLICANT

A N D :

0906978 B.C. LTD.

RESPONDENT

A N D :

RATHER BE PLUMBING LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about an unpaid plumbing invoice.
2. The applicant, and respondent by counterclaim, is Rather Be Plumbing Ltd. (RBP). The respondent, and applicant by counterclaim, is 0906978 B.C. Ltd. (090).
3. 090 hired RBP for plumbing work. RBP claims \$3,970.87, the full amount of its September 12, 2018 invoice. RBP also claims contractual interest at 24% per year.
4. 090 says RBP's incomplete or defective work caused damage to 3 newly constructed houses. In the counterclaim, 090 seeks \$4,000 or the cost of the invoice as compensation for the damage. Additionally, it seeks \$416 for time its representative took off work and \$450 for the cost of hiring a representative to help with this dispute.
5. RBP is represented by an employee or principal. 090 is represented by Marty Fyfe, whom I infer is a principal.

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. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

8. 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.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something or pay money. The tribunal may also order any terms or conditions the tribunal considers appropriate.
10. In RBP's claim against 090, it identified itself as "Rather Be Plumbing Inc", whereas in 090's counterclaim, RBP is identified as "Rather Be Plumbing Inc.", with a period after the "Inc.". Given the documents in evidence, I find the omission of the period was an error and I have amended the style of cause accordingly.

ISSUES

11. The issues in this dispute are:
 - a. Does 090 owe RBP for its \$3,970.87 invoice?
 - b. Does RBP owe 090 for deficiencies or damage? If so, how much?
 - c. Is RBP entitled to contractual interest?
 - d. Is 090 entitled to reimbursement for its principal's time spent or for help in this dispute?

EVIDENCE AND ANALYSIS

12. In a civil dispute like this one, the applicant RBP must prove its claims on a balance of probabilities. 090 must prove its counterclaims to the same standard. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

13. It is undisputed that 090 hired RBP to perform plumbing work on 3 new homes (471, 473 and 475), and that 090 agreed to pay RBP \$70 per hour plus material costs.
14. The only invoice at issue was dated September 12, 2018, but said it covered RBP's work performed between August 7 and September 13, 2018. The content of the invoice is not disputed so I find that one of the September dates was entered incorrectly. The invoiced amount is \$3,970.87 for work on 471 and 473. 090 did not pay anything towards this invoice.
15. The invoice was itemized with each material cost and the hourly labour of 2 plumbers. 090 does not allege that RBP's plumbers did not do the work identified in the invoice. 090 also does not dispute any of the material costs. Accordingly, I find RBP has established its entitlement to \$3,970.87, subject to any reduction for proven deficiencies or damage.
16. 090 says RBP caused water damage at 471, and did substandard work at 473 and 475.
17. For 471, 090 says the damage was due to a lack of appropriate strapping and connections on a hot water tank, which allowed a drainage line to come loose. A photo of the hot water tank shows wet towels on the floor. Some nearby framing also appears wet.
18. RBP says Mr. Fyfe did much of the plumbing work himself. 090 does not dispute this. RBP says when it installed the water lines, there was no water to the houses, so it could not test the lines. It says Mr. Fyfe must have conducted testing when RBP was not on site. 090 does not dispute this, so I find 090 bears some responsibility for the leak given it knew RBP did not have the opportunity to test the water lines.
19. 090's counterclaim is either in breach of contract or negligence. To prove negligence, an applicant must show that the respondent owed the applicant a duty of care, the respondent breached the standard of care, the applicant sustained damage, and the damage was caused by the respondent's breach.

20. Given the technical nature of RBP's plumbing work, I find the standard of care in the circumstances is beyond the knowledge and experience of an ordinary person. In such cases, the party asserting a breach of the standard of care must often provide expert evidence to establish the standard of care (*Bergen v. Guliker*, 2015 BCCA 283). In the absence of such evidence, I am unable to determine RBP's standard of care in the circumstances, or whether RBP breached that standard. However, even if RBP's conduct fell below the standard of care, I would not find RBP negligent because, as discussed below, 090 has failed to prove that it sustained damage. For the same reason, RBP's claim for breach of contract must also be dismissed.
21. 090 says flooring had to be replaced at its expense. It says the cost "looks to be around" \$600 to \$700 but it does not explain how it arrived at this figure, and there is no support in the evidence before me.
22. 090 also says it replaced baseboards at its expense during a warranty claim that 471's purchaser made. The warranty claim is set out in a January 28, 2019 letter from the home warranty administrator. The letter enclosed the homeowner's deficiency list and asked Mr. Fyfe to investigate each claim. While I accept that 090 had to address the baseboards under the home warranty claim, there is no receipt or estimate for the replacement baseboards.
23. There is also no receipt or estimate for the replacement flooring. Finally, there are no photos showing damaged flooring, damaged baseboards, new flooring, or new baseboards. As a result, I find 090's claimed damages unproven. I therefore dismiss this aspect of 090's counterclaim.
24. For 473, 090 says there was a leaking bathtub drain. It says the trap was not glued and water leaked through the soffit in the garage. 090 says it repaired the damage for \$50, but it does not explain this figure or provide objective evidence such as a receipt for materials. It says this was a fast fix, and the risk of rot and mould are still to be determined. However, there are no photos and no corroboration of the risk of rot and mould, so I find these concerns unsupported by the evidence. I find this aspect of 090's counterclaim unproven and I dismiss it.

25. For 475 or 473 (the evidence is inconsistent about which home), 090 says RBP cut through the bottom of a truss and ran water lines through the attic without insulation. 090 says it had to add insulation to bring the plumbing up to code. RBP says the plumbing was to code and required no further work. 090 did not provide an inspection report or a copy of the relevant sections of the BC Building Code, so I am unable to determine whether the plumbing complied with the code. There are no photos of the water lines. Additionally, 090 did not claim any specific damages for adding insulation or repairing the truss, if such work was required. I find this aspect of 090's counterclaim unproven.
26. In summary, 090 has failed to prove any deficiencies or damages that would support a reduction in the amount it owes RBP. I find 090 must pay the full \$3,970.87.
27. RBP claims contractual interest at 24% per year based on the rate shown on the invoice. I find RBP is not entitled to contractual interest because the parties came to no agreement on interest rate. A party cannot unilaterally impose a contractual interest rate in a later invoice. I find RBP is entitled to interest under the *Court Order Interest Act*, which applies to the tribunal.
28. 090 argues that it should not have to pay interest on the full invoiced amount because it offered to pay RBP most of the invoice. I find RBP was not obligated to accept 090's offer of partial payment. In any event, it is undisputed 090 did not make a partial payment - the whole balance remained outstanding since late 2018.
29. I find RBP is entitled to pre-judgment interest on the \$3,970.87 from October 1, 2018, when payment was due, to the date of this decision. This equals \$114.22.
30. 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 RBP is entitled to reimbursement of \$175 in tribunal fees. It did not claim any dispute-related expenses.

31. As 090 was unsuccessful in this dispute, it is not entitled to reimbursement of tribunal fees or dispute-related expenses. Even if 090 had been successful I would not have allowed the amounts it claimed. 090 provided no invoice or receipt for the help it received. Additionally, except in extraordinary circumstances, the tribunal will not order one party to compensate another for time spent in a tribunal proceeding.

ORDERS

32. Within 14 days of the date of this order, I order 090 to pay RBP a total of \$4,260.09, broken down as follows:

- a. \$3,970.87 in debt,
- b. \$114.22 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in tribunal fees.

33. RBP is entitled to post-judgment interest, as applicable.

34. I dismiss 090's counterclaim.

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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

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.

Micah Carmody, Tribunal Member