



Civil Resolution Tribunal

Date Issued: April 24, 2020

File: SC-2019-009374

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Skulsky v. Bricor Mechanical Ltd.*, 2020 BCCRT 449

BETWEEN:

JOEL SKULSKY and ELAINE SKULSKY

APPLICANTS

AND:

BRICOR MECHANICAL LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about damages resulting from a water leak.
2. The applicants, Joel Skulsky and Elaine Skulsky, say the respondent, Bricor Mechanical Ltd., caused a water leak in their vacation property and refuses to pay

for remediation. The respondent admits it caused the leak and owes for remediation costs, but says the applicants are seeking payment of unrelated expenses.

3. The applicants seek \$2,925.18 in remediation costs, plus \$1,154.20 in hotel expenses and \$450 in legal fees.
4. The applicants are self-represented. The respondent is represented by its president.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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.

ISSUE

- 9. The issue in this dispute is to what extent the respondent is liable for \$2,925.18 in remediation costs, \$1,154.20 in hotel expenses, and \$450 in legal fees, as a result of its admittedly faulty plumbing work.

EVIDENCE AND ANALYSIS

- 10. In a civil claim such as this, the applicant bears the burden of proof 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.
- 11. It is undisputed that on February 19, 2018, the respondent attended at the applicants' vacation home to cap the fridge water line. On February 27, 2018, Ms. Skulsky noticed water had leaked onto their floor and into the subfloor around the fridge due to the cap failing. The applicants notified the respondent, who dispatched a remediation company, TR. The parties agree the respondent paid the emergency remediation costs of \$2,388.64.
- 12. The applicants say the respondent failed to pay for the subsequent restoration costs. It is undisputed that once the applicants sent the respondent a bill for hotel costs, the respondent ordered TR to stop work under its authorization. The respondent advised the applicants it felt it was being taken advantage of, and to proceed with the restoration on their own.
- 13. TR provided the applicants a \$2,925.18 restoration quote, the amount claimed in this dispute. This quote included repairing and replacing kitchen cabinets, tile flooring, walls and baseboards, and cleaning carpet and replacing some carpet underlay. TR's final restoration invoice for work completed was \$2,599.41, which is

\$325.77 less than its initial quote. This is because instead of repairing the area of carpet, the applicants decided to upgrade to all new carpet, at their own expense. The applicants say it was their opinion “the carpet could not be restored to its original condition”. The applicants seek the total quote amount, \$2,925.18, because they say if they had not arranged for all new carpet, the respondent would have had to pay for that amount anyway. The respondent states it is willing to pay the \$2,599.41 final invoice, but refuses to pay the extra \$325.77 for work not done.

14. In the circumstances, I find the respondent must pay TR’s \$2,599.41 final invoice. I find the respondent is not responsible for the additional \$325.77 for carpet repairs. I say this because the carpet repairs were not completed, and because the evidence is that it was the applicants’ sole choice to completely replace the carpets, at their own cost.
15. The applicants are entitled to pre-judgment interest under the *Court Order Interest Act* on the \$2,599.41. Calculated from October 23, 2019, the approximate date the invoice was paid, this amounts to \$25.69.
16. I turn then to the \$1,154.20 claim for hotel costs. The applicants say that because of Ms. Skulsky’s health, it was unsafe for her to remain in the home while it was being dried and preventatively treated for mould and bacteria. The applicants say Ms. Skulsky and her adult son, J, rented a nearby two-bedroom hotel room with kitchen, from February 27 to March 4, 2018, a total of 5 nights. After their stay, the applicants sent the invoice to the respondent, who refused to pay. The respondent says it refused to pay because there had been no prior discussion about hotel costs, and says the applicants were trying to take advantage of the situation.
17. In support of their position, the applicants provided a letter from Ms. Skulsky’s doctor, Dr. L. Dr. L states that he saw Ms. Skulsky on February 28, 2018 and noted she had active respiratory symptoms. Dr. L advised he recommended Ms. Skulsky not return to her home until those symptoms resolved.

18. In response to the claim for hotel costs, the respondent first says it is not responsible for Ms. Skulsky's pre-existing health condition. Further, the respondent says the applicants should not have incurred any hotel costs, as Ms. Skulsky could have returned to her home in another province, instead of staying in a local hotel, as the respondent says a flight home would have been cheaper. Although this may have been the case, there is no evidence before me as to the availability or cost of flights at that time. In any event, I find it was reasonable for Ms. Skulsky to have remained in the area to ensure the remediation was proceeding before flying home.
19. The respondent also says the hotel costs are excessive. It says the remediation was only to take 3 days, but they stayed in a hotel for 5 nights. The evidence is that the remediation equipment was brought into the applicants' home on February 27, 2018 and remained there until March 16, 2018, for a total of 16 days. The respondent says the equipment was not running for that entire period, but did not provide any evidence in support of that assertion. In the circumstances, I find the 5 night stay was not unreasonable.
20. I find the hotel costs were reasonably incurred as a result of the respondent's negligent plumbing services. I find they were a reasonably foreseeable expense. It does not matter that the parties did not expressly discuss hotel costs in advance. Contrary to the respondent's submissions, I also find the amount paid was not excessive. I find the respondent must reimburse the applicants \$1,154.20 for hotel costs. From March 4, 2018, the date the hotel invoice was paid, pre-judgment interest amounts to \$42.55. I order the respondent to also pay this amount.
21. Next is the applicants' claim for reimbursement of \$450 in legal fees. The applicants say that due to the respondent's failure to pay the restoration costs, they had to hire a lawyer to send a demand letter. I find the fees were paid for the purpose of pursuing and resolving the same issues that are the subject of this dispute. Tribunal rule 9.5 says that in a small claims dispute, except in extraordinary cases, the tribunal will not order one party to pay another party's legal fees. I find this rule

applies here, and this is not an extraordinary case. Therefore, I decline to order reimbursement of the applicants' legal fees.

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 applicants were generally successful, I find that they are entitled to reimbursement of the \$175 they paid in tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

23. Within 60 days of the date of this decision, I order the respondent, Bricor Mechanical Ltd., to pay the applicants, Joel Skulsky and Elaine Skulsky, a total of \$3,996.85, broken down as follows:

- a. \$3,753.61 in debt for leak-related expenses,
- b. \$68.24 in pre-judgment interest under the *Court Order Interest Act*,
- c. \$175 in tribunal fees.

24. The applicants are also entitled to post-judgment interest, as applicable.

25. 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.

26. 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