



Civil Resolution Tribunal

Date Issued: May 22, 2020

File: SC-2019-008883

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tian v. Trotter and Morton Facility Services Inc.*, 2020 BCCRT 561

BETWEEN:

LEI TIAN

APPLICANT

AND:

TROTTER AND MORTON FACILITY SERVICES INC.

RESPONDENT

AND:

LEI TIAN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about alleged plumbing work deficiencies. The applicant and respondent by counterclaim is Lei Tian, also known as Susy Tian. The respondent and applicant by counterclaim is Trotter and Morton Facility Services Inc. (Trotter).
2. Ms. Tian hired Trotter to fix a bathroom leak and slow kitchen drains. She says Trotter's work was substandard and caused property damage. She requests a refund of the \$500 deposit she paid to Trotter, reimbursement of \$881.65 for the cost of hiring another contractor to fix the work deficiencies and property damage, and \$1,618.35 for a combination of financial loss, mental distress and suffering, overcharges, and other property damage. Trotter denies it did anything wrong.
3. Trotter counterclaims \$677.95 for the balance owing for work done. It also claims \$2,072.05 as compensation for administrative costs due to time spent on this dispute. Ms. Tian does not dispute the invoice balance owing but disagrees she should pay given her claims. Ms. Tian also says Trotter should not be compensated for any time spent on this dispute because it made no reasonable efforts to settle matters.
4. The applicant is self-represented. Trotter is represented by its employee or principal.

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. Most of the argument in this dispute amounts to a “she said, he said” scenario. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me without holding an oral hearing. I have considered the tribunal’s mandate that includes proportionality and a speedy resolution of disputes. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is an issue.
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. 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.

ISSUES

9. The issues in this dispute are as follows:
 - a. Was Trotter’s work deficient and if so, what is the appropriate remedy?
 - b. Is Trotter entitled to the balance owing under its July 22, 2019 invoice?
 - c. Is Trotter entitled to compensation for time spent on this dispute and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Ms. Tian and Trotter must each prove their claims on a balance of probabilities. I have reviewed all the evidence and submissions and only reference them as necessary to give context to my decision.
11. I will start with the undisputed background facts. On July 2, 2019, Trotter sent its worker, JM, to a condominium building to assess water damage to a unit's kitchen ceiling. As shown in a work order, JM traced the source of the water damage 2 floors above to Ms. Tian's unit. JM entered her unit and concluded that Ms. Tian's shower cartridge needed replacement.
12. Emails show Ms. Tian called Trotter 2 days later for repair work. She asked Trotter to fix a leaking shower faucet in her bathroom and the slow draining of her kitchen sinks. On July 12, 2019, Ms. Tian paid Trotter a \$500 deposit for the anticipated work.
13. JM returned to Ms. Tian's apartment on July 15, 2019. A work order shows he installed a new shower cartridge (twice, as the first one was defective). I find it likely this stopped the leak identified on July 2, 2019. Although Ms. Tian identified other issues described below, she did not say the July 2, 2019 leak persisted. JM also replaced a portion of the brass drain pipes under the kitchen sink with plastic pipes and used a drain snake to clean out a clog.
14. The next day Ms. Tian emailed Trotter to advise that her bathroom faucet and showerhead now leaked or dripped for some time after each use. Some days later she also complained of noise when using the faucet and showerhead. Trotter replied by email that the shower faucet and showerhead leaks were preexisting issues caused by an aged shower diverter valve. It said the valve was not part of its repairs. Trotter also wrote the sound was caused by grit disturbed by the repairs, which would go away with repeated use.
15. The parties exchanged further correspondence about the work done and the breakdown of Trotter's invoice. Trotter emailed Ms. Tian a July 22, 2019 invoice for

\$1,381.65 on July 23, 2019. Ultimately Ms. Tian was dissatisfied with Trotter's explanations and did not pay the \$881.65 balance owing. In this dispute, Trotter seeks \$677.95. This equals the invoice amount less the \$500 deposit and a \$203.70 discount Trotter offered to Ms. Tian in a July 31, 2019 email.

Issue #1. Was Trotter's work deficient and if so, what is the appropriate remedy?

16. I will first consider the bathroom work before moving on to the kitchen drain pipes. The parties take the following positions. Ms. Tian says Trotter's bathroom work was substandard as it caused her shower faucet and showerhead to start dripping and make noise. Trotter disagrees it did anything wrong and says the dripping is a preexisting issue related to Ms. Tian's shower diverter valve.
17. I must now assess which version of events is most likely. The party alleging work is defective has the burden of proof to establish the defects: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124. Where a dispute's subject matter is technical or beyond common understanding, it is necessary to produce expert evidence to help the decision-maker determine the appropriate standard of care: *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 124 to 131.
18. For the following reasons, I find that Ms. Tian has not met the burden of proof for the bathroom repairs.
19. Ms. Tian says her bathroom faucet and showerhead only started dripping after Trotter finished repairs on July 15, 2019. However, as Trotter disagrees, I find evidence is necessary to conclude that Trotter's work is to blame. I find plumbing mechanics is a matter beyond the expected knowledge of an ordinary person, and so expert evidence is required. Ms. Tian submitted no expert evidence and so I am not satisfied that Trotter's work was deficient.
20. Ms. Tian also provided no evidence that she hired anyone to fix the dripping from the faucet and showerhead. I find this inconsistent with her submission that the dripping jeopardized her health and safety or caused any loss or damage. I also

found Ms. Tian's submissions unclear on whether the showerhead and faucet noise persisted. I infer the noise went away with repeated use, as Trotter said it would. I dismiss Ms. Tian's claims about the bathroom repairs.

21. Next, I consider the kitchen drain pipe repairs. Ms. Tian says Trotter broke her original brass kitchen drain pipes when JM used a drain snake and then replaced them with plastic pipes. Trotter denies damaging the pipes. It says it advised Ms. Tian that she had older metal piping that would be damaged by using the drain snake. Trotter says it recommended creating a drain cleanout, which would require replacing some of the brass piping with plastic piping. Trotter says Ms. Tian approved this and Trotter cleared the drain without issue.
22. I find that Ms. Tian has not met the burden of proof for the kitchen drain pipe repairs.
23. First, I am left with an evidentiary tie as to whether Ms. Tian authorized Trotter to replace some of her pipes to install a drain cleanout. I am therefore not satisfied Trotter acted without her consent.
24. Second, there is insufficient evidence that Trotter broke the original brass kitchen pipes, or its work was otherwise defective. I find the drain pipe repairs are a technical matter beyond the expected knowledge of an ordinary person.
25. As evidence, Ms. Tian provided a September 12, 2019 invoice for \$530.27. I infer this invoice is from a plumber, though Ms. Tian redacted who issued it for "privacy [purposes]". I find this invoice does not assist Ms. Tian. It only says that Ms. Tian had her kitchen sink strainers replaced. The invoice does not comment on Trotter's work. There is no indication in the work order summary or correspondence that Trotter did any work on the sink strainers at all.
26. Ms. Tian says she kept the portions of the brass pipes that were replaced but there is no indication she had them examined by a professional. She also did not describe any issues with the new plastic pipes, which I find supports Trotter's position. As

Ms. Tian provided no expert evidence on whether Trotter's drain pipe work breached industry standards, I am not satisfied that Trotter's work was deficient.

27. Regarding both the bathroom and kitchen work, Ms. Tian also says Trotter generally did not use quality materials, took too long, and charged an unreasonable amount. I find these general allegations are of a technical nature that require expert evidence, which Ms. Tian has not provided. Ms. Tian also pointed out that Trotter first installed a defective shower cartridge before replacing it, but I have no evidence that the defect was caused by Trotter. I therefore find these allegations unproven.
28. I also find that the parties agreed in advance how Trotter would charge for its work and Trotter's invoice is consistent with the agreement. In a July 5, 2019 email Trotter advised Ms. Tian that it would not provide a quote or estimate. It said the invoice would be based on an hourly rate of \$125, the cost of materials, and \$69 for a truck site visit fee. In the July 22, 2019 invoice Trotter charged for 8 hours of labour at the described rate, \$184.35 for materials, and \$69 for the truck fee. With tax, these amounts equal the invoice total of \$1,381.65. As noted above, Trotter subsequently offered a discount. The correspondence shows that offer was an attempt to settle the matter rather than an error in the invoice.
29. Ms. Tian also says Trotter was generally unprofessional and showed up 1 hour late. From the correspondence I find that the parties did not agree that Trotter had to strictly comply with the appointment time, nor is there any indication that any lateness resulted in loss to Ms. Tian. I did not find the evidence showed Trotter was otherwise unprofessional or that any such behaviour caused Ms. Tian loss or damage.
30. In summary, I am not satisfied that Trotter's work was deficient. I find that Ms. Tian is not entitled to a refund of the \$500 deposit paid to Trotter and dismiss this claim.
31. I also find that Ms. Tian is not entitled to reimbursement of \$881.65 for hiring another contractor to fix work deficiencies and property damage. Ms. Tian did not explain how she arrived at this figure as she only provided the September 12, 2019

invoice for \$530.27. I have already found this invoice related to the kitchen sink strainers, which Trotter did not work on. I dismiss this claim as well.

32. I also find that Ms. Tian is not entitled to damages of \$1,617.35 for a combination of financial loss, overcharges, property damage, and mental distress and suffering. Given my earlier finding that Trotter's alleged work deficiencies are unproven, I am not satisfied that Trotter caused or contributed to any of these claims. Ms. Tian also did not describe or provide evidence to support her losses, property damage, or mental distress claims. I find the non-binding decision of *Eggberry v. Horn et al*, 2018 BCCRT 224 persuasive, which states that claims for mental distress must be supported by evidence. The overcharge allegation relates to professional standards, on which I have no expert evidence.

33. I dismiss all of Ms. Tian's claims.

Issue #2. Is Trotter entitled to the balance owing under its July 22, 2019 invoice?

34. As noted above, Trotter invoiced Ms. Tian for \$1,381.65. Trotter claims for this amount, less the paid \$500 deposit and less a \$203.70 discount (equal to 1 hour of labour and the truck site visit fee plus GST). So, the respondent seeks \$677.95 as the balance owing.

35. I have already found that the parties agreed on how Trotter would charge for its work and the invoice is consistent with their agreement. I am satisfied that Trotter performed the work and no alleged deficiencies are proven. I therefore find that Trotter is entitled to \$677.95 in debt from Ms. Tian.

36. The *Court Order Interest Act* applies to the tribunal. Trotter is entitled to pre-judgment interest on the \$677.95 debt from July 23, 2019, the date Trotter sent the invoice, to the date of this decision. This equals \$10.97.

Issue #3. Is Trotter entitled to compensation for time spent on this dispute and if so, what is the appropriate remedy?

37. Trotter claims \$2,072.05 in administrative costs it says it incurred since August 2019. Tribunal rule 9.5 says that reimbursement for legal fees and compensation for time spent are only awarded in extraordinary cases. I see no reason to depart from that practice here. I found nothing extraordinary about the circumstances of this dispute and therefore do not award the claimed administrative costs.
38. I would also decline to award administrative costs because they were not proven. Trotter did not provide any documentation or explanation for how it arrived at the claimed amount.
39. I dismiss this part of the counterclaim.

TRIBUNAL FEES AND EXPENSES

40. 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.
41. I find that Trotter is the successful party. Although I have dismissed its claim for administrative costs, Trotter succeeded on the substantive claims about the alleged work deficiencies and the balance owing on its invoice. I find Trotter is entitled to reimbursement of \$75 in tribunal fees. Aside from administrative costs, which I have already dismissed, Trotter did not claim any dispute-related expenses. I therefore do not order any. As Ms. Tian was unsuccessful, I dismiss her claim for reimbursement of tribunal fees.

ORDERS

42. Within 14 days of the date of this order, I order Ms. Tian to pay Trotter a total of \$763.91, broken down as follows:
- a. \$677.95 in debt,

- b. \$10.97 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$75.00 in tribunal fees.

43. Trotter is entitled to post-judgment interest, as applicable.

44. I dismiss Trotter's remaining claims and dismiss all of Ms. Tian's claims.

45. 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 a Ministerial Order 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.

46. 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.

David Jiang, Tribunal Member