



Civil Resolution Tribunal

Date Issued: June 16, 2020

File: SC-2020-001075

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Superior Gas Installations & Service Ltd v. James*, 2020 BCCRT 670

BETWEEN:

SUPERIOR GAS INSTALLATIONS & SERVICE LTD

APPLICANT

AND:

JONATHAN JAMES and KELLY SANDERSON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about alterations to a hot water heating system.
2. The applicant, Superior Gas Installations & Service Ltd (Superior Gas), says the respondents, Jonathan James and Kelly Sanderson, have refused to pay its most

recent invoice for work completed. Superior Gas seeks \$2,102.10, the amount of its outstanding invoice. The respondents acknowledge they have yet to pay any amount towards the invoice, but say that Superior Gas overcharged for materials and time.

3. Superior Gas is represented by Charles Frass, its owner. The respondents are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT'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.
5. The CRT 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 CRT'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 British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
6. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. In resolving this dispute the CRT 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

8. The issue in this dispute is whether Superior Gas is entitled to payment of its \$2,102.10 invoice, or whether it overcharged such that it is only entitled to some lesser amount.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Superior Gas 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.
10. It is undisputed that on October 24, 2019, Mr. Frass, on behalf of Superior Gas, performed alterations to the respondents' hot water heating system. Superior Gas's October 25, 2019 invoice notes it supplied and installed a hot water baseboard, drilled holes for fasteners, installed a radiator (supplied by the respondents), completed the heating circuit, filled, flushed and purged the heating loop, and replaced five thermostats throughout the house. The invoice charged 11 hours at \$120 per hour, plus a service call fee of \$88, and materials costs of \$594. Including GST, this equals \$2,102.10, the amount claimed in this dispute. Although there was no written contract or quote, Superior Gas had previously done work for the respondents, each time either under a fixed-price contract or on a time and materials basis, at a rate of \$120 per hour. Here, I find the parties proceeded on a time and materials basis, at an agreed rate of \$120 per hour, which is not disputed.

11. The respondents do not specifically contest Superior Gas's charge out rate, but they take issue with what they say is a 3-hour overcharge for sourcing supplies, and for the cost of the five installed thermostats. For the 3-hour alleged overcharge, the respondents say Mr. Frass showed up to the job unprepared and had to go get additional supplies. They say Mr. Frass should have phoned suppliers instead of physically going to their location, and that they did not consent to him leaving the job site. In contrast, Mr. Frass says he had to source additional parts because the radiator supplied by the respondents was incomplete. He says the parts were specific, and although he tried phoning a supplier, he was on hold for a long time and decided to go into the store. Additionally, Mr. Frass says it only took approximately 1.5 hours, not the 3 hours as suggested by the respondents. Mr. Frass submitted his phone records in evidence, which he says supports the time he called Ms. Sanderson before leaving the job site, and when he spoke to Ms. Sanderson later that afternoon on his way back to site. On balance, I find Superior Gas's time charges were reasonable, including those spent sourcing materials. I find it is entitled to payment for its labour.
12. I note the respondents submitted an invoice from a third party company, PPH, which completed subsequent work for the respondents, and charged \$75 per hour. PPH's invoice is for work specifically not included in Superior Gas's invoice, and it is not critical of Superior Gas's work. I find the fact PPH charged a lower rate is irrelevant to the agreement between Superior Gas and the respondents, which I have found was for \$120 per hour.
13. I turn then to the respondents' argument they were overcharged for the five thermostats. Superior Gas says the respondents agreed to pay \$90 per thermostat, plus labour for installation and testing. The respondents say they sent Mr. Frass an email with a proposed thermostat for \$30 each, and that they should not be charged more than that. The respondents also submitted an online advertisement for the same brand of the installed thermostats for \$35.99 each.

14. Mr. Frass says he told the respondents their proposed thermostat was for an electric heating system, which would not work with their hot water heating system. He says he showed the respondents a thermostat on site and advised them he could supply them for \$90 each, plus GST and installation, which he says Ms. Sanderson agreed to. Mr. Frass submitted a cost sheet from one of his suppliers which shows the thermostats' raw cost as between \$53.31 and \$57.18, to which he says mark-up is then added by the supplier, and again by him. In response to the \$35.99 advertisement, Mr. Frass says that the respondents brought that up after the fact, and that the amount does not include taxes or shipping costs. In any event, Mr. Frass says Ms. Sanderson specifically agreed to the \$90 cost, and that the respondents did not dispute that agreement until Superior Gas started this dispute. Overall, I find Mr. Frass's evidence more reliable, given the totality of the evidence. On balance, I find the respondents agreed to have Superior Gas install the five thermostats for \$90 each, plus GST and installation. Therefore, I find Superior Gas is entitled to payment of its \$2,102.10 invoice in full.
15. I find Superior Gas is entitled to pre-judgment interest on the \$2,102.10 under the *Court Order Interest Act*. From October 25, 2019, the date of the invoice, this amounts to \$26.50.
16. 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 Superior Gas was successful, I find that it is entitled to reimbursement of its \$125 in paid tribunal fees.
17. Superior Gas also claims for "time spent" in dealing with this dispute. The amount claimed ranged from \$690 to a final figure of \$4,588.50, for 35 hours and 25 minutes, at \$120 per hour, plus GST. CRT rule 9.5(5) states that "time spent" is generally not compensable except in extraordinary circumstances. I find this is not an extraordinary circumstance. Therefore, I dismiss Superior Gas's claim for compensation for "time spent".

ORDERS

18. Within 30 days of the date of this decision, I order the respondents, Jonathan James and Kelly Sanderson, to pay the applicant, Superior Gas Installations & Service Ltd, a total of \$2,253.60, broken down as follows:
 - a. \$2,102.10 for unpaid services,
 - b. \$26.50 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
19. Superior Gas is also entitled to post-judgment interest, as applicable.
20. Under section 48 of the CRTA, the CRT 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 CRT'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 CRT 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 CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

21. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Andrea Ritchie, Vice Chair