



Civil Resolution Tribunal

Date Issued: June 30, 2020

File: SC-2020-000690

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McGregor v. RJS Service Ltd.*, 2020 BCCRT 728

BETWEEN:

LAURA MCGREGOR

APPLICANT

AND:

RJS SERVICE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant, Laura McGregor, hired the respondent, RJS Service Ltd. (RJS), to service and repair her home pellet stove in September 2019. Ms. McGregor says the company did not do the work agreed to, or the work was faulty, as the stove stopped working properly in December 2019. She also says the company cracked the glass in the stove door. She claims reimbursement of \$1,137.99 she paid RJS

for stove parts, \$515.19 she paid RJS for labour and replacement glass, as well as \$450 in additional hydro costs.

2. The company says it repaired and serviced the stove as asked and is willing to replace the stove's ignitor under the supplier's warranty. It denies cracking the glass door and denies the hydro costs are the company's fault.
3. Ms. McGregor represents herself. RJS is represented by an employee or owner.

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 CRT 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. 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.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT 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

8. The issues in this dispute are:
 - a. Did the company fail to repair and service the stove as agreed?
 - b. Did the company break the glass in the stove door?
 - c. If the answer to either question is yes, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this one, Ms. McGregor must prove her claim on a balance of probabilities. Although I have reviewed all the parties' evidence and submissions, I refer only to that which explains and gives context to my decision.

Service and Repairs

10. Ms. McGregor's pellet stove required manual lighting, although it had previously run on a thermostat which automatically lit the stove when needed. Ms. McGregor asked the company to service and repair the stove and RJS came to Ms. McGregor's home to inspect the stove in September 2019. None of this is disputed.
11. It is undisputed the parties had no formal contract. I find the September 16, 2019 emails submitted by Ms. McGregor form the terms of the agreement between RJS and Ms. McGregor. RJS explained that a burnt igniter circuit was preventing the thermostat's auto function from working. RJS identified a number of replacement parts that were needed, including an ignitor and a circuit board, and asked Ms. McGregor to pay \$1,137.99 for parts, freight cost, and taxes up front RJS explained it would charge \$100 for the service call and \$70 per hour for needed repair work and servicing, which it estimated would take 2 to 3 hours. The repair work consisted of installing a new thermostat circuit, fresh air intake, and resealing the stove door.
12. The parties agree that Ms. McGregor paid RJS \$1,137.99 on September 17, 2019 for the parts.

13. It is undisputed that RJS worked on the stove on October 7, 2019. RJS says it replaced all the defective parts, reconnected the thermostat to the new control board, relocated the thermostat to the wall and serviced the stove. RJS billed Ms. McGregor \$378 for 3.5 hours of labour, the service call and the cost of a new door seal.
14. Ms. McGregor says the stove was not lighting automatically on October 9, 2019. RJS returned to make final adjustments to the stove on October 14, 2019.
15. It is undisputed that Ms. McGregor paid the company \$515.19 on October 16, 2019; \$378 for the October 7, 2019 work, plus 137.19 for half the cost of the pellet stove door glass, which I will discuss below.
16. Ms. McGregor says the automatic ignitor and thermostat stopped working on December 6, 2019 and she had to resort to manually lighting the stove. She says she called RJS and was told the stove's ignitor had not been replaced, then told RJS could not keep track of all the stoves it worked on. Later the same day RJS told Ms. McGregor that it had, in fact, replaced the igniter and that it had a 6-month warranty. RJS said it would order a new, and better, igniter, with a 1-year warranty and it would take approximately one week to arrive. RJS does not dispute these facts and says it has the new igniter ready to install in Ms. McGregor's stove.
17. Ms. McGregor says that, in January 2020 the stove stopped working altogether. She says RJS did not contact her again about the replacement ignitor until after she filed this dispute.
18. On January 31, 2020 Ms. McGregor hired another company to inspect her pellet stove, at a cost of \$365.40. Based on the company's February 7, 2020 invoice, I find the stove needed a new circuit board and ignitor. This is consistent with RJS' September 16, 2019 explanation that the pellet stove's automatic thermostat was not working at that time due to a faulty circuit board and ignitor. I find it likely that Ms. McGregor's pellet stove had the same issue in January 2020 as it had when RJS inspected it in September 2019.

19. Ms. McGregor says that RJS refused to give her copies of its supplier invoices when she asked. Given this, Ms. McGregor disputes RJS replaced the pellet stove's parts with new parts, as agreed. I disagree that the terms of the agreement required RJS to use new parts, as it is not set out in the September 2019 emails. However, I find that it is an implied term of the agreement that the parts used are adequate for the job and that the repair work would be done to a professional standard. I find nothing turns on RJS' refusal to provide the supplier invoices to Ms. McGregor.
20. Given that RJS ordered a replacement ignitor, and the other company determined the ignitor and circuit board need replacement, I find RJS did not fulfill its agreement to repair the pellet stove so that it worked through a thermostat and automatic ignition. I find it reasonable to expect the replacement parts and repairs to last for more than 6 weeks. I allow this claim and will address the appropriate remedy below.

Cracked Glass

21. Based on a photo submitted by Ms. McGregor, I find there is a crack in the bottom left corner of the pellet stove door glass. Ms. McGregor says she saw the crack on October 9, 2019 and told RJS about it. She says RJS told her the crack was old and had soot in it and was likely not previously noticeable as the stove was very dirty before being serviced. Ms. McGregor does not dispute that the stove was dirty and agrees that it had not been serviced in quite some time.
22. Ms. McGregor says she took the cracked glass to the glass supplier. She says the glass supplier told her that there was no soot in the crack, the crack was not old, and that the RJS employee told the glass supplier that he had, in fact, cracked the glass while working on the stove. RJS denies saying this to the glass supplier and denies cracking the glass. I do not have any evidence from the glass supplier before me and Ms. McGregor has not explained why she did not obtain that statement, given the importance of this evidence. I do not accept the RJS employee told the glass supplier that he cracked the glass.

23. It is undisputed that RJS ordered replacement glass and installed it in Ms. McGregor's stove door. RJS replaced the repaired door when on October 14, 2019 and charged Ms. McGregor for the cost of the glass only, which I find was \$274.38. However, as noted above, Ms. McGregor paid only half the cost, at \$137.19.
24. As noted above, the burden is on Ms. McGregor to prove that RJS is responsible for cracking the glass in the stove door. On balance, I find she has failed to do so. I dismiss Ms. McGregor's \$137.19 claim for the cracked glass door.

Hydro Costs

25. Ms. McGregor says she wanted to use the pellet stove to heat her house using a thermostat and thus reduce her hydro costs. As the stove was not working properly, she says she has had to pay more in hydro costs. Ms. McGregor has provided no evidence to support this claim, such as copies of hydro bills, or any comparison of her heating costs when the stove worked, and when it stopped working. I find Ms. McGregor has failed to prove that she had extra hydro costs as a result of her pellet stove not working in December 2019. I dismiss McGregor's \$450 claim for hydro costs.

Remedy

26. RJS says it has obtained a replacement ignitor under warranty and is ready and willing to install it in Ms. McGregor's pellet stove. RJS says it offered to inspect and repair the stove again, which Ms. McGregor declined. I find it reasonable for Ms. McGregor to ask another company to repair her pellet stove for the second time, given the short duration it continued to work after the company's repairs. I find Ms. McGregor is entitled to some amount of money as a remedy for the company's failure to repair the stove.
27. It is undisputed that Ms. McGregor has paid the company \$1,137.99 for parts and \$378 for labour to service and repair her pellet stove. Although Ms. McGregor claims a full refund of these costs, I find that would be unfair to the company, as Ms.

McGregor received some benefit from RJS' work including stove cleaning, door resealing, small part replacement, and relocating the thermostat. Further, Ms. McGregor also received the benefit of a working pellet stove for some time. I find it appropriate to apply the legal principle of *quantum meruit*, meaning payment for work done based on its value.

28. Ms. McGregor received no value for the ignitor and circuit board she paid for, nor for their installation. Based on the cost of those parts in the September 16, 2019 email I find Ms. McGregor is entitled to a refund of \$713.54 plus GST for those parts. On a judgment basis, I find Ms. McGregor is also entitled to a refund of \$70 plus GST for one hour of labour. Overall, I find Ms. McGregor is entitled to a refund of \$822.72.
29. The *Court Order Interest Act* applies to the CRT. Ms. McGregor is entitled to pre-judgment interest on the \$822.72 from December 6, 2019, when the pellet stove stopped working, to the date of this decision. This equals \$9.14.
30. Under section 49 of the CRTA and tribunal rules, the CRT 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. As Ms. McGregor was partially successful in her dispute, I find she is entitled to reimbursement of \$62.50, which is half her CRT fees.
31. I find Ms. McGregor is entitled to reimbursement of \$365.40 in dispute-related expenses for the cost of obtaining a second opinion about the pellet stove. The February 7, 2020 diagnostic invoice provided evidence about the stove's faulty parts and was necessary to determine whether the December 6, 2019 problem was related to the same stove parts fixed by the company, or something new.

ORDERS

32. Within 30 days of the date of this order, I order RJS to pay Ms. McGregor a total of \$1,259.76, broken down as follows:
 - a. \$822.72 as reimbursement for faulty parts and/or work,

- b. \$9.14 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$427.90, for \$62.50 in tribunal fees and \$365.40 for dispute-related expenses.
33. The applicant is entitled to post-judgment interest, as applicable.
34. 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 CRT 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.
35. 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.

Sherelle Goodwin, Tribunal Member