



Civil Resolution Tribunal

Date Issued: July 9, 2020

File: SC-2020-000332

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Keighley v. Jim Sarapalius (dba Cozy Homes Fireplaces)*,

2020 BCCRT 771

B E T W E E N :

JEF KEIGHLEY

APPLICANT

A N D :

JIM SARAPALIUS (Doing Business As COZY HOMES FIREPLACES)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This small claims dispute is about the installation of a gas fireplace. The applicant, Jef Keighley, built a house in 2019. Mr. Keighley says he purchased a gas fireplace from the respondent Jim Sarapalius (doing business as Cozy Homes Fireplaces), which included installation. He says Mr. Sarapalius did not properly install the gas

fireplace. Mr. Keighley seeks \$210 for the cost of hiring another technician to make adjustments to the fireplace settings.

2. Mr. Sarapalius denies Mr. Keighley's claim and says the gas fitter who installed the gas lines did not adjust the gas pressure properly.
3. The parties 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 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 CRT considers appropriate.

ISSUES

8. The issues in this dispute are whether Mr. Sarapalius properly installed the gas fireplace he sold to Mr. Keighley, and, if not, whether Mr. Keighley is entitled to any remedies.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, Mr. Keighley bears the burden of proof on a balance of probabilities. The parties provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer only to that which is necessary to provide context to my decision.
10. The parties agree that Mr. Keighley purchased a Valor H3 gas fireplace (fireplace) from Mr. Sarapalius for \$5,887.45 for a new house he was building. The purchase price included installation.
11. The parties agree that Mr. Sarapalius installed the fireplace on August 14, 2019 while the house was still under construction. Since the gas line to the fireplace had not been installed yet, Mr. Sarapalius used a portable propane tank to test the fireplace. He ran the fireplace for 30 minutes without any problems. After testing the fireplace, Mr. Sarapalius disconnected the portable propane tank. Mr. Sarapalius says he informed Mr. Keighley that he had roughed in a gas line pigtail from the fireplace to the crawlspace. Mr. Sarapalius says he only installs the fireplace and does not install gas lines or connect fireplaces to gas lines. He says this had to be done by a gas fitter or contractor. He says he told Mr. Keighley that the gas fitter would have to connect the fireplace after installing the final gas line.
12. On October 7, 2019, Mr. Keighley's gas fitter, GW, connected the "full gas service", which I infer meant he installed the gas line and connected the fireplace to it. Mr. Keighley attempted to use the fireplace after it was connected. He says the pilot light only remained lit when it was on the lowest setting. Mr. Keighley says he notified Mr. Sarapalius about the problem and Mr. Sarapalius agreed to look at it when he completed the final installation

13. On November 25, 2019, Mr. Sarapalius returned to complete the final installation, which involved arranging the fire logs in the fireplace and installing the trim. Mr. Sarapalius says he discovered there was soot build up in the fireplace and the pilot assembly. He says he checked the gas pressure and discovered the new gas line was delivering ½ of the required amount of gas. Mr. Sarapalius says he cleaned the soot from the fireplace and pilot assembly but had a hard time getting the pilot assembly to burn properly. Mr. Sarapalius did not state whether he adjusted the gas pressure. He told Mr. Keighley that he would have to return to replace the pilot hood. Mr. Sarapalius says he would have to charge Mr. Keighley if he came back to commission the fireplace properly since it was 2 hours roundtrip to Mr. Keighley's house.
14. Mr. Keighley says Mr. Sarapalius refused to return to replace the pilot hood and so he hired TE on December 18, 2019 to complete the work. Mr. Keighley says TE used to work for Mr. Sarapalius and had installed a fireplace in Mr. Keighley's previous home in 2009. Mr. Keighley did not provide a statement from TE or his qualifications. Mr. Keighley says according to TE, Mr. Sarapalius set the gas regulator pressure settings to well below the manufacturer's specifications. According to TE's invoice, he adjusted the supply pressure and the manifold pressure to the manufacturer's specifications. I infer from his invoice that TE did not replace any parts. Mr. Keighley says after this the fireplace worked properly. TE charged Mr. Keighley \$210 for the work.

Was Mr. Sarapalius responsible for adjusting the fireplace settings to the manufacturer's specifications?

15. Mr. Keighley says Mr. Sarapalius should have set the supply pressure and manifold pressure to the manufacturer's specifications when he came for the final installation in November, 2019. Mr. Keighley says Mr. Sarapalius did not adjust the regulator when he installed the fireplace, misdiagnosed the problem, and refused to return to fix the problem. He seeks \$210 for the cost of hiring TE to fix the fireplace.

16. Mr. Sarapalius says the gas fitter who connected the fireplace to the gas line was responsible for adjusting the gas pressure to the manufacturer's specifications. Mr. Sarapalius provided an email from DB who was a gas safety officer with Technical Safety BC, which he says supports his position. In his email, DB stated that "the person who installs and/or connects the gas system to an appliance is responsible for it's safe operation" (reproduced as written). I give this email no weight since Mr. Sarapalius did not provide a statement from DB, his qualifications, or explain what Technical Safety BC was.
17. Despite this, I find Mr. Sarapalius is correct. Section 57(1) Of the *Gas Safety Regulation* states that a person who connects gas to an appliance must adjust and test each appliance the person connects so that it will operate in accordance with the manufacturer's specifications, and adjust the input rate to the required rate by readjusting the gas pressure regulator outlet. I find that since GW connected the fireplace to the gas line, he was responsible for adjusting and testing it under section 57(1).
18. I also find that given my reasons above, nothing turns on whether Mr. Sarapalius misdiagnosed the problem with the fireplace. I dismiss Mr. Keighley's claims.
19. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since Mr. Keighley was unsuccessful, I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

20. I order Mr. Keighley's claims and this dispute dismissed.

Rama Sood, Tribunal Member