



# Civil Resolution Tribunal

Date Issued: August 7, 2020

File: SC-2020-003056

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Canned Heat Ltd v. Vernon Stone & Fireplaces Ltd.*, 2020 BCCRT 879

B E T W E E N :

CANNED HEAT LTD

**APPLICANT**

A N D :

VERNON STONE & FIREPLACES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about payment for wood burning stoves.
2. The applicant, Canned Heat Ltd (Canned Heat), says that the respondent, Vernon Stone & Fireplaces Ltd. (Vernon Stone), failed to pay for its order for wood burning stoves. Canned Heat seeks payment of \$5,000 for outstanding invoice #11599.

3. Vernon Stone says that while Canned Heat invoiced it for 4 stoves, only 2 were delivered and those 2 stoves arrived damaged and were returned. Vernon Stone says this claim should be dismissed.
4. Canned Heat is represented by an owner or principal. Vernon Stone is represented by an officer.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
7. 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.

8. 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.
9. I note that Canned Heat's invoice #11599 totals \$6,134.63, but it claims \$5,000. Therefore, I find that Canned Heat has abandoned its claim for the amount in excess of \$5,000, the CRT's small claims limit, as permitted by section 188(2) of the CRTA.

## **ISSUE**

10. The issue in this dispute is whether Vernon Stone owes Canned Heat for unpaid stoves and, if so, how much.

## **EVIDENCE AND ANALYSIS**

11. 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.
12. Canned Heat is a distributor of Danish wood burning stoves in Canada. It is undisputed that on October 3, 2018, Vernon Stone made a purchase order (#583) from Canned Heat for 4 different stove models: a 2B Standard Radiant, a 1410 Radiant, a 6143L Convection, and a Morso 6148. In its Dispute Notice, Canned Heat seeks payment of invoice #11599, which it says is outstanding from purchase order #583.
13. Canned Heat says that by the time it received purchase order #583, its stock situation had changed and 2 of the stoves were no longer available from their local third party warehouse, TL, in Delta, British Columbia. Therefore, Canned Heat says the 2 unavailable stoves were shipped from its warehouse in Ontario instead.

14. An October 10, 2018 bill of lading shows that 1 skid, weighing 557 pounds was delivered from TL to Vernon Stone, relating to purchase order #583. This bill of lading does not include the stove model numbers included in the delivery and it is not signed to confirm delivery. Vernon Stone says that it received 2 stoves in this delivery.
15. Vernon Stone submitted in evidence an email chain between it and Canned Heat. In an October 12, 2018 email, Vernon Stone reported to Canned Heat that the bill of lading says the 2B Standard Radiant and 1410 Radiant stoves were delivered, but Vernon Stone received the 2B Standard Radiant and “high with wood storage”. I find from the parties’ evidence and submissions that the “high with wood storage” stove refers to the Morso 6148 on purchase order #583.
16. In the October 12, 2018 email, Vernon Stone also reported to Canned Heat that the Morso 6148 stove arrived damaged. On October 15, 2018, Vernon Stone followed up with Canned Heat by email asking for an update on a replacement for the damaged stove.
17. On October 24, 2018, Canned Heat sent invoice #11599 to Vernon Heat, stamped “Past Due”, for all 4 stoves on purchase order #583. The invoice also indicates “outside air kits backordered”.
18. Vernon Stone sent an email to Canned Heat upon receipt of invoice #11599 on October 24, advising that it would not pay for the damaged Morso 6148. Vernon Stone told Canned Heat that its customer would accept a model 6143 stove as a replacement for the Morso 6148. Vernon Stone also advised Canned Heat that it planned to ship the 2B Standard Radiant back because of the backordered outside air kits, and that it no longer wanted the 1410 Radiant stove that it had not yet received.
19. The evidence shows that Canned Heat separately invoiced and delivered a Morso 6143 stove to Vernon Stone as a replacement for the damaged Morso 6148.

20. On November 5, 2018, Vernon Stone confirmed with Canned Heat that invoice #11599 required adjustment because the only stove it had was the 2B Standard Radiant. Vernon Stone again told Canned Heat that it also intended to send the 2B Standard Radiant back “when it can be packed up”.
21. Vernon Stone says it shipped the damaged Morso 6148 back to TL on November 5, 2018. A waybill in evidence shows that Vernon Stone sent 1 pallet containing return of a damaged stove, which I infer was the damaged Morso 6148, to TL on November 5, 2018. While Canned Heat submits that TL did not receive the damaged stove, it did not provide any evidence of TL about how stock and shipments are recorded. I find that Vernon Stone advised Canned Heat that it was shipping the damaged stove to TL and accept that it did so on November 5.
22. In a December 13, 2018 email from Canned Heat’s accounting department to Vernon Stone, Canned Heat acknowledged Vernon Stone’s report about invoice #11599 that it did not receive the 1410 Radiant stove or the 6143L Convection and that it returned the damaged Morso 6148.
23. I find there is no evidence that Canned Heat shipped, or that Vernon Stone received, the 1410 Radiant and 6143L Convection stoves listed on invoice #11599. While Canned Heat shipped a Morso 6143 to Vernon Stone on October 29, 2018, I find that stove was invoiced separately and is not part of Canned Heat’s claim relating to invoice #11599. Therefore, I find that Vernon Stone does not owe Canned Heat for the 1410 Radiant or 6143L Convection stoves listed on invoice #11599.
24. Vernon Stone does not dispute that it received the 2B Standard Radiant and Morso 6148 stoves. I find that the evidence establishes that the Morso 6148 was damaged and returned to Canned Heat’s storage facility. Therefore, I find that Vernon Stone does not owe Canned Heat for the Morso 6148 listed on invoice #11599.
25. This leaves the 2B Standard Radiant stove. Vernon Stone says that this stove was also damaged and returned to Canned Heat. However, I find there is no evidence

that the 2B Standard Radiant stove was damaged. The three photographs in evidence showing stove damage do not describe the stove model depicted but, based on my own review of the photographs and the other evidence and submissions, I find that all three photographs are of the damaged Morso 6148.

26. Further, based on the emails in evidence, I find that Vernon Stone wanted to return the 2B Standard Radiant due to the inconvenience associated with the backordered outside air kits, not because the stove was damaged. While the evidence shows that Vernon Stone advised Canned Heat on at least two occasions that it intended to ship the 2B Standard Radiant stove back, there is no evidence that it ever did so. There is also no evidence that Vernon Stone paid for the 2B Standard Radiant stove. Therefore, I order that Vernon Stone must pay Canned Heat for the 2B Standard Radiant stove listed on invoice #11599.
27. Invoice #11599 says the 2B Standard Radiant stove was \$909.35 plus GST. Therefore, Vernon Stone must pay Canned Heat \$954.82.
28. The *Court Order Interest Act* applies to the CRT. Canned Heat is entitled to pre-judgement interest on the \$954.82 from October 24, 2018, the date of the invoice, to the date of this decision. This equals \$30.97.
29. 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 find that Canned Heat was partially successful in its claim and is entitled to reimbursement of \$87.50 in CRT fees.
30. Given Vernon Stone was not successful, I dismiss its claim for \$75 in dispute-related expenses.

## **ORDERS**

31. Within 21 days of the date of this decision, I order Vernon Stone to pay Canned Heat a total of \$1,073.29, broken down as follows:

- a. \$954.82 for payment of invoice #11599,
- b. \$30.97 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 in CRT fees.

32. Canned Heat is entitled to post-judgment interest, as applicable.

33. 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.

34. 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.

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Kristin Gardner, Tribunal Member

