



Civil Resolution Tribunal

Date Issued: August 17, 2020

File: SC-2020-003168

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kernovich v. Rather Be Plumbing Ltd.*, 2020 BCCRT 912

B E T W E E N :

DREW KERNOVICH

APPLICANT

A N D :

RATHER BE PLUMBING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about residential plumbing services. The applicant, Drew Kernovich, says the respondent, Rather Be Plumbing Ltd. (RBPL), wrongly identified the location of a pipe blockage. Mr. Kernovich seeks a \$374.06 refund of the amount he paid RBPL for a camera inspection. He also seeks \$3,320 in damages for the time he spent trying to access the blockage, the cost of repairing his yard, and lost

wages for time spent waiting for RBPL to come to his house. He also says RBPL posted comments about Mr. Kernovich's business on Google and seeks \$5,000 in damages for defamation and slander. Mr. Kernovich's claims exceed the CRT's monetary limit of \$5,000. I address this issue in further detail below.

2. RBPL denies it owes Mr. Kernovich a refund or other damages.
3. Mr. Kernovich is self-represented and RBPL is represented by its owner, Jarod Hughes.

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:
 - a. Whether RBPL must refund the amount Mr. Kernovich paid for a camera inspection, and
 - b. Whether RBPL breached the standard of a plumber such that Mr. Kernovich is entitled to damages.

EVIDENCE AND ANALYSIS

9. In a civil claim, such as this one, an applicant has the burden of proving its claim on a balance of probabilities. I have reviewed all submissions and evidence, but I will only refer to that which explains and gives context to my decision.
10. Mr. Kernovich had a leak in his basement after a heavy rainstorm and contacted RBPL for a camera inspection of his downspout and perimeter drain system. Mr. Kernovich says RBPL's employee, A, stated that the "big O" pipe was blocked by tree roots. Mr. Kernovich says A used paint to mark the blocked pipe's location on his lawn and advised him to have it cleared (marked spot).
11. Mr. Kernovich says he decided to unblock the pipe himself. He says he relied on A's recommendation and dug a hole 3 feet wide and 4 feet deep at the marked spot but could not locate the pipe. He says he tried other spots near the marked spot after speaking with Mr. Hughes. Mr. Kernovich says Mr. Hughes came to his house to check and determined that the blocked pipe was not at the marked spot and that Mr. Hughes made new markings of where the blocked pipe should be. Mr. Kernovich says the new location was 8 feet from the marked spot. Mr. Hughes did not charge Mr. Kernovich for this visit.
12. RBPL says the blocked pipe was "a few feet away" from the marked spot. However, Mr. Kernovich provided a detailed sketch of the perimeter drains and indicated the blocked pipe was 8 feet from the marked spot. Since RBPL did not dispute the

accuracy of the sketch, I find the blocked pipe was actually 8 feet from the marked spot.

13. Mr. Kernovich says Mr. Hughes agreed to return on the following Wednesday or Thursday to repair the blockage. Mr. Kernovich says he took the days off work but Mr. Hughes did not show up.
14. Mr. Kernovich says after he filed a dispute with the CRT, Mr. Hughes posted a negative review of his real estate business on Google. I will discuss this issue in detail below.

Quality of work

15. Mr. Kernovich says RBPL knowingly provided false information about the blocked pipe's location. He says he followed the "big O" pipe and discovered it was not connected to any system. Mr. Kernovich says this means that A did not actually inspect the pipe or he would have discovered there was no pipe where he marked the lawn. Mr. Kernovich seeks a refund of \$374.06 for the camera inspection.
16. RBPL denies it knowingly provided false information and says A determined the blocked pipe's location based on "the locating equipment and homeowners knowledge" (reproduced as written by RBPL). Aside from the camera, RBPL did not explain what equipment was used or what information Mr. Kernovich provided. RBPL also did not explain how A used a camera to locate the spot he identified as the blocked pipe's location if, in fact, there was no pipe there, as confirmed by Mr. Hughes.
17. I note that according to RBPL's invoice, A recommended to Mr. Kernovich to replace the section of "big O" pipe area marked with paint. RBPL did not produce any evidence that it advised Mr. Kernovich the marked spot was the blocked pipe's general location or that the pipe may not be located at the marked spot. Under the circumstances, I find it was reasonable for Mr. Kernovich to rely on A's advice. I find A was incorrect about the blocked pipe's location and failed to perform the work Mr.

Kernovich paid for. Consequently, I find Mr. Kernovich is entitled to a refund of \$374.06.

18. Mr. Kernovich says at the time Mr. Hughes agreed to investigate, the parties agreed that if the pipe was not at the marked spot, then Mr. Hughes would not charge him but if it was, Mr. Kernovich agreed to pay double the amount. Given my findings above, I find whether this was an enforceable agreement is no longer relevant.

Defamation and slander

19. I now turn to Mr. Kernovich's claim for defamation. Mr. Kernovich seeks \$5,000 for damage to his business caused by defamatory and slanderous comments he says Mr. Hughes made on Google. According to section 119 of the CRTA, the CRT does not have small claims jurisdiction over defamation. Therefore, I refuse to resolve the defamation claim under section 10 of the CRTA.
20. Even if I did have jurisdiction, I would still refuse to resolve this claim because Mr. Hughes is not named as a party in this dispute and the CRT has previously decided that a party cannot make a claim relating to the interests of a non-party (see *Action Rooter Ltd. v. Alice Chen (dba Beaconsfield Inn)*, 2020 BCCRT 135).

Damages

21. Mr. Kernovich seeks compensation for his time and the costs of supplies to repair his lawn. RBPL denies that Mr. Kernovich suffered any damages.
22. Mr. Kernovich says he spent 6 hours digging holes based on A's incorrect information about the blocked pipe's location. He says he should be refunded at a standard plumber's rate of \$85 per hour for a total of \$510. I infer Mr. Kernovich based the plumber's rate on RBPL's invoice which shows it billed \$85 per hour for A's time. However, Mr. Kernovich is not a licensed plumber and I find Mr. Kernovich has not provided sufficient evidence that a person would be paid the plumber's rate of \$85 per hour to dig holes. On a judgement basis, I find a reasonable hourly rate

would be \$20 per hour. I find Mr. Kernovich is entitled to \$120 for the time he spent digging in the areas indicated by A and by Mr. Hughes.

23. Mr. Kernovich says he missed 2 days of work waiting for Mr. Hughes to return to remove the tree roots. Based on text messages, Mr. Kernovich says Mr. Hughes agreed to return on Wednesday or Thursday to remove the tree roots allegedly blocking the big O pipe. Mr. Kernovich says he waited those 2 days but Mr. Hughes did not show up. Mr. Hughes denies he made an appointment to return and so it was unreasonable for Mr. Kernovich to wait for him. I agree with Mr. Hughes. I find the text messages between Mr. Kernovich and Mr. Hughes do not show that Mr. Hughes specified a day or time for returning. For this reason, I dismiss Mr. Kernovich's claim for lost wages.
24. Mr. Kernovich produced photos of his lawn that showed several large holes. Mr. Kernovich says he dug these holes when he was attempting to locate the blocked pipe. While Mr. Kernovich's lawn would have been damaged while removing roots from the blocked pipe, I find the damage would have not been so extensive if A had initially provided the correct location. Mr. Kernovich says he was a general contractor and opted to repair his lawn himself instead of hiring a landscaper. Mr. Kernovich seeks \$220 for supplies and labour for refilling the holes. He says he spent \$50 for soil and seed and spent 2 hours of labour. Mr. Kernovich did not provide receipts for the supplies. He also did not provide evidence that a landscaper would be paid the \$85 per hour. On a judgement basis, I award Mr. Kernovich \$150 for supplies and labour for repairing his lawn.

INTEREST, CRT FEES, DISPUTE-RELATED EXPENSES

25. The *Court Order Interest Act* applies to the CRT. Mr. Kernovich is entitled to pre-judgement interest on \$644.06 for damages from April 17, 2020, the date the application was submitted, to the date of this decision. This equals \$2.93.
26. 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. Kernovich was partially successful in this dispute, I find he is entitled to reimbursement of \$87.50 in CRT fees. He did not claim dispute-related expenses.

ORDERS

27. Within 14 days of the date of this order, I order the respondent, Rather Be Plumbing Ltd., to pay the applicant, Drew Kernovich, a total of \$734.49, broken down as follows:
 - a. \$644.06 in damages,
 - b. \$2.93 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in CRT fees.
28. The applicant is entitled to post-judgment interest, as applicable.
29. Aside from the applicant's defamation claim, which I refuse to resolve, the applicant's remaining claims are dismissed.
30. 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.
31. 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.

32. 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.

Rama Sood, Tribunal Member