



Civil Resolution Tribunal

Date Issued: September 2, 2020

File: SC-2020-003585

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *John Sadler Mechanical Ltd. v. Wilcox*, 2020 BCCRT 978

BETWEEN:

JOHN SADLER MECHANICAL LTD.

APPLICANT

AND:

JOAN WILCOX

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about payment for furnace repairs.
2. The respondent, Joan Wilcox, hired the applicant, John Sadler Mechanical Ltd. (Sadler), to repair her furnace. Sadler says Ms. Wilcox initially paid the invoice by

cheque, but then stopped payment on the cheque. Sadler claims \$453.60 for the outstanding invoice, plus \$32 in bank fees.

3. Ms. Wilcox says the furnace broke down again days later because Sadler did not fix it properly the first time. She says she should not have to pay Sadler's invoice. Ms. Wilcox asks that the claim be dismissed.
4. Sadler is represented by its owner, John Sadler. Ms. Wilcox is represented by a family member, LB.

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. 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.
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 tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Must Ms. Wilcox pay Sadler for the furnace repair and, if so, how much, and
 - b. Must Ms. Wilcox pay Sadler for the bank fees and, if so, how much?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this one the applicant, Sadler, must prove 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.
11. On behalf of Ms. Wilcox, LB asked Sadler to fix Ms. Wilcox's oil-fueled furnace on an emergency basis as Ms. Wilcox had no heat on January 15 or 16, 2020. Sadler repaired Ms. Wilcox's furnace that same day. Sadler billed Ms. Wilcox \$453.60 for the repairs. Ms. Wilcox paid the full amount with a January 24, 2020 cheque. On February 4, 2020 LB stopped payment on the cheque. None of this is disputed.

Furnace Repairs

12. Based on Sadler's January 16, 2020 invoice, I find Mr. Sadler cleaned the oil filter housing, replaced the filter, replaced the oil burner nozzle and adjusted the electrodes. There is no dispute that Mr. Sadler did the work listed on the invoice. It is also undisputed that the oil furnace was working again when Mr. Sadler left Ms. Wilcox's house.
13. Mr. Sadler says he told LB that the oil storage tank was contaminated with water and sludge and needed treatment. LB says Mr. Sadler told her that there was bacteria in the oil tank but did not mention sludge. LB says Mr. Sadler told her to buy a chemical to treat the oil tank. Regardless of whether Mr. Sadler told LB there was sludge or bacteria in the oil tank, I find Mr. Sadler told LB that the oil tank

needed further treatment. This is consistent with notes Mr. Sadler made note on the January 16, 2020 invoice about further oil tank treatment needed.

14. It is undisputed that the furnace stopped working again on January 25, 2020. None of this is disputed.
15. LB says she hired a different repair person (PP) to come fix the furnace the same day. LB says PP told her that the filter was dirty again, that he found part of the nozzle in the filter, that the supply line from the oil tank to the furnace needed cleaning and that the oil tank required anti-bacterial treatment.
16. Ms. Wilcox says the furnace failed again because Sadler left part of the nozzle in the filter, failed to clean out the supply line from the oil tank to the furnace, failed to clean out the bacteria from the oil tank and failed to identify the source of the water and bacteria in the oil tank. Essentially, Ms. Wilcox claims Sadler's furnace repair work is deficient.
17. The burden is on Ms. Wilcox to prove the alleged deficiencies (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 24). Where the subject matter is technical, or beyond common understanding, it often necessary to produce expert evidence to determine the appropriate standard of care (see *Bergen v. Guliker*, 2015 BCCA 283). I find oil furnace repair technical and beyond common understanding. So, I find expert evidence is necessary in this dispute.
18. The February 4, 2020 invoice submitted by Ms. Wilcox shows what PP charged and what parts he used to fix the furnace. It does not identify what work PP did or provide a reason for the oil furnace's failure on January 25, 2020.
19. LB's statement about what PP told her is second-hand information and so I do not give it as much weight as I would if PP had provided a statement. Further, I find PP's statements to LB did not contain any opinion that Sadler's work was deficient. Even if PP had given that opinion, Ms. Wilcox has not shown how PP is qualified to give that opinion. On balance, I find Ms. Wilcox has failed to prove that Sadler's oil furnace repair work was deficient.

20. I acknowledge that the oil furnace failed again, approximately 10 days after Sadler repaired it. I find it reasonable that a furnace repair should reasonably last more than 10 days, in most circumstances. However, in this case, I find Mr. Sadler told LB that the oil tank required further work in the way of chemical treatment. It is undisputed that no-one treated the oil tank before January 25, 2020. So, I find it reasonable that the filter would become clogged again, and the oil furnace would fail again.
21. In summary, I find Mr. Sadler completed the repair work invoiced on January 16, 2020. I find Ms. Wilcox has failed to prove that Sadler's work was deficient. So, I find Ms. Wilcox must pay for the work done. I now turn to consider whether the amount of the invoice is reasonable.
22. LB says Sadler charged a "harsh weather fee" that neither she, nor Ms. Wilcox, had agreed to. Based on the January 16, 2020 invoice I find Sadler charged \$45 for parts and \$387 for 3 hours of labour, including travel time in harsh conditions. There is no additional harsh weather fee so I infer LB refers to the travel time Sadler billed for.
23. As the applicant, the burden is on Sadler to prove that the invoice is reasonable. Neither Mr. Sadler nor LB provided any evidence about how many hours the initial repair took. However, the parties agree that the weather was cold and snowy the day Mr. Sadler fixed the furnace. Mr. Sadler says he lost control of his truck on the snowy road on the way home from Ms. Wilcox's house. Based on his statement, I find 3 hours for travel time in poor driving conditions, plus repair time, is reasonable. On balance, I find Sadler's January 16, 2020 invoice reasonable and Sadler is entitled to payment of \$453.60.

Bank Fees

24. Based on banking records submitted by Sadler, I find Sadler had to pay a \$7 service charge for the cancelled cheque. LB acknowledges she placed the stop payment on the cheque on behalf of Ms. Wilcox. LB says she set up the

appointments with Sadler, she spoke with Mr. Sadler about the furnace issues and helped Ms. Wilcox manage her affairs generally. Based on LB's submissions I find LB acted as agent for Ms. Wilcox in placing the stop payment on the cheque.

25. Sadler is entitled to payment for the furnace repair work. I find the \$7 service charge a reasonably foreseeable expense of cancelling the cheque. So, I find Sadler is entitled to reimbursement of that service charge.
26. Although Sadler also claims a \$25 bank fee, it did not provide any evidence supporting that it had to pay that fee. So, I dismiss Sadler's claim for \$25.
27. Based on the January 16, 2020 invoice I find the parties agreed that interest would apply to any unpaid balance as of February 6, 2020. However, Sadler does not claim contractual interest in this dispute.
28. The *Court Order Interest Act* applies to the CRT. I find Sadler is entitled to pre-judgment interest on the total of \$460.60 from February 6, 2020, to the date of this decision. This equals \$3.96.
29. Under section 49 of the CRTA and CRT 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. Sadler is entitled to reimbursement of \$125 in CRT fees. Sadler did not claim any dispute-related expenses.

ORDERS

30. Within 30 days of the date of this order, I order Ms. Wilcox to pay Sadler a total of \$589.56, broken down as follows:
 - a. \$450.60 as full payment on the January 16, 2020 invoice,
 - b. \$7.00 as reimbursement for bank fees,
 - c. \$3.96 in pre-judgment interest under the *Court Order Interest Act*, and

d. \$67.50 in CRT fees.

31. Sadler is entitled to post-judgment interest, as applicable.
32. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
33. 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