



Civil Resolution Tribunal

Date Issued: September 17, 2020

File: SC-2020-002891

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rob Blaksic dba R&B Plumbing and Heating Ltd. v. Kinnoch*,
2020 BCCRT 1046

B E T W E E N :

ROB BLAKSIC (Doing Business As R&B PLUMBING AND HEATING
LTD.)

APPLICANT

A N D :

MELISSA KINNOCH

RESPONDENT

AND:

R&B PLUMBING AND HEATING LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute flows from the replacement of a hot water heater. The applicant (and respondent by counterclaim), Rob Blaksic (Doing Business As R&B Plumbing and Heating Ltd.) (R&B) says that the respondent (and applicant by counterclaim), Melissa Kinnoch, provided it with “fraudulent” credit card information, accused it of causing damage to her home, and withheld payment for its services. R&B asks for an order that Ms. Kinnoch pay its outstanding \$855.11 invoice.
2. Ms. Kinnoch denies that she provided fraudulent credit card information, but says that R&B overcharged her and caused damage to her home and that she “locked” her credit card so that R&B could not charge her for its work until the matter was dealt with. By counterclaim, Ms. Kinnoch asks for an order that R&B pay her \$400 in repair costs, \$100 for inconvenience, and \$1,000 for “general and aggravated damages”. R&B denies that it caused any damage to Ms. Kinnoch’s home or that it owes her any money.
3. Ms. Kinnoch is self-represented. R&B is represented by its principal.

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 Ms. Kinnoch gave fraudulent credit card information to R&B,
 - b. whether Ms. Kinnoch owes R&B \$855.11 for its services,
 - c. whether R&B caused damage to Ms. Kinnoch's home and, if so, what is the appropriate remedy, and
 - d. whether Ms. Kinnoch is entitled to the damages she claims.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, an applicant (whether on a claim or counterclaim) bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
10. Ms. Kinnoch contacted R&B in early January of 2020 to assess a hot water heater in her home that had stopped working. Ms. Kinnoch provided credit card information to R&B when she arranged this service call.

11. R&B's technician went to Ms. Kinnoch's home on January 16, 2020 and determined that her hot water heater needed to be replaced and some additional work would be required to meet municipal code requirements.
12. R&B's technicians attended the home on January 20, 2020 to replace the hot water tank. The technicians needed to make a trip to get a different heater as the one they brought did not fit the space. The second heater was installed, along with an expansion tank required by the municipality.
13. Once the work was completed, Ms. Kinnoch says that she saw damage to the floor and walls in the bathroom where the heater was installed. She had concerns about the damage and some of R&B's charges. According to Ms. Kinnoch, R&B's technician required that she sign the work order indicating her agreement to pay the described amount, and told her that someone from the office would contact her to discuss the charges and damage. Ms. Kinnoch says she put a lock on her credit card to ensure that nothing was charged to her before these issues were resolved.
14. R&B attempted to charge its invoices to Ms. Kinnoch's credit card but was unable to do so as the card was locked. The parties discussed the matter, and made changes to some of the charges.
15. Before the parties could resolve their issues, they became aware that the work done by R&B did not pass the municipal inspection. R&B returned to Ms. Kinnoch's home in late March 2020 to remedy the problem at no charge. The work passed the second inspection.
16. At some point after this dispute started, Ms. Kinnoch provided payment for the January 16, 2020 service call. However, the issues of the charges from the January 20, 2020 service call and the alleged damages to the home remain outstanding.

Did Ms. Kinnoch Provide Fraudulent Credit Card Information?

17. R&B claims that Ms. Kinnoch gave it “fraudulent” credit card information in order to obtain service that would not otherwise have been provided. R&B says that its terms of service require customers to provide a credit card number that will be used to process payment unless the customer provides another form of payment to the technician. R&B says that Ms. Kinnoch accepted the service but failed to provide payment. R&B’s position is that this is fraud as Ms. Kinnoch received an intentional, unlawful gain.
18. Ms. Kinnoch denies that she engaged in fraud, and says that she provided a valid credit card number to R&B when asked. As noted above, Ms. Kinnoch says that she put a lock on her credit card to ensure that she would not be charged before her concerns with R&B’s service were addressed.
19. The standard of proof for allegations of fraud is the same for any civil matter, namely proof on a balance of probabilities (see *F.H. v. McDougall*, 2008 SCC 53 at paragraph 49). The 4 elements of civil fraud, which is also known as fraudulent misrepresentation, were set out by the Supreme Court of Canada in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, at paragraph 21. In order to be successful, R&B must establish that:
 - a. A false representation made by Ms. Kinnoch,
 - b. Some level of knowledge of the falsehood of the representation on the part of Ms. Kinnoch (whether through knowledge or recklessness),
 - c. The false representation caused R&B to act, and
 - d. R&B’s actions resulted in a loss.
20. There is no indication in the evidence that the credit card number Ms. Kinnoch provided to R&B was invalid or did not belong to her. The evidence supports the conclusion that Ms. Kinnoch provided the credit card information when requested, and I find that she made no false representation when doing so.

21. Further, the evidence suggests that Ms. Kinnoch intended for the credit card information to be used in order to pay for R&B's service. Ms. Kinnoch locked her credit card only after she expressed her concerns about the damage and charges to R&B's technician. R&B, through its technician, was aware of Ms. Kinnoch's concerns but it does not appear that it attempted to address these concerns before it tried to charge the service to her credit card.
22. I find that Ms. Kinnoch did not make a false representation about her willingness to pay for R&B's services. Emails in evidence indicate that Ms. Kinnoch asked for clarification about charges and for revised invoices several times, which is not consistent with an attempt to obtain services without paying for them as R&B suggests.
23. Without a false representation, it is not necessary for me to consider the other 3 elements of fraudulent misrepresentation. I find that R&B has not proven its claim that Ms. Kinnoch provided it with fraudulent credit card information.

Does Ms. Kinnoch Owe R&B for its Services?

24. There is no dispute that R&B performed work in Ms. Kinnoch's home, or that Ms. Kinnoch has not yet provided full payment for that work. The issue is the amount that Ms. Kinnoch owes R&B for the January 20, 2020 service call.
25. Neither party provided evidence of a specific quote for the work to be performed at the January 20, 2020 service call. The parties anticipated a "tank replacement" and "expansion tank needed" according to the January 16, 2020 work order. However, there is no indication that there was an agreement about the number of hours this would take.
26. When Ms. Kinnoch signed the work order, she "acknowledge[d] the satisfactory completion of all services rendered, and agree[d] to pay the cost of services as specified above". R&B's original invoice reflected the charges on the work order.

27. As noted above, Ms. Kinnoch had concerns about some of R&B's charges. She questioned the hours of labour that were billed to her, as the cost of the expansion tank was identified on the work order as including installation. She also disputed responsibility for the time spent getting the second heater as measurements should have been taken on the first visit.
28. R&B decided to deduct 1 hour of labour time for each technician for time spent on the second heater. R&B also corrected an error that charged the municipal permit at \$0.00 instead of the actual cost of \$78.50. It also added a charge of \$30 for "Sourcing and/or picking up specialty materials". R&B issued a revised invoice for \$933.61. However, its claim in this dispute is for the \$855.11 (apparently to remove the \$78.50 permit charge removed).
29. As noted, there is no evidence to establish a specific quote or agreement about the number of hours of labour that would be required to complete the water heater replacement. I find that the extent of labour for this task is outside ordinary knowledge and requires expert evidence to determine (see *Bergen v. Guliker*, 2015 BCCA 283). However, there is no evidence from a plumber or other industry professional to comment on the amount of labour that would be required to perform this scope of work. Ms. Kinnoch agreed to pay the labour and other charges listed on R&B's work order when she signed it on January 20, 2020. Although R&B later agreed to adjust the hours of labour, I find that Ms. Kinnoch is responsible for the remainder.
30. The work order signed by Ms. Kinnoch did not contain the additional charge for sourcing or picking up specialty materials. There is no indication that Ms. Kinnoch agreed to pay for this. As such, I find that she is not responsible for it.
31. So, after deducting the \$30 charge and associated taxes, I find that R&B is entitled to payment of \$784.39, plus taxes, for a total of \$823.61.

Is R&B Responsible for the Damage to Ms. Kinnoch's Home?

32. Ms. Kinnoch says that, although R&B's technicians covered the floors in other areas of her home, they did not cover the floor in the bathroom where they were working. Ms. Kinnoch admits that the linoleum floor in the bathroom was not in perfect condition, but says that after R&B replaced the water heater, there was damage to the floor that was not there before. She also says that there was damage to her wall and baseboards.
33. Photographs in evidence show a linoleum floor with several dark marks in a small area, a larger area of lighter discolouration, dark marks on the baseboards, and a gouge in the drywall. Photographs also show areas of tearing and what appears to be a rectangular patch on the edge of the linoleum. Ms. Kinnoch asks for \$400 as a contribution to the floor repair. Ms. Kinnoch did not make a specific claim for the damage to the wall or baseboards.
34. R&B says that, although it acknowledged that damage existed, it never admitted liability for it. R&B submits that there is no evidence that the damage to the floor was caused by its technicians and that it was all pre-existing. It says that it offered to repair a small section of the floor as a "customer service gesture" to keep Ms. Kinnoch happy. R&B did not provide evidence from its technicians about their recollections about the use of floor coverings or the floor's condition before the work, but it did submit evidence that the torches it used would not cause the type of marks on Ms. Kinnoch's floor.
35. Ms. Kinnoch cited other CRT decisions where floor damage was found to be proved against contractors. These decisions are not binding on me, and I will consider only the evidence before me in this dispute in my analysis. I will address the two areas of floor damage separately.
36. The dark marks are on the linoleum in front of the enclosure where the water heater was installed. Ms. Kinnoch noticed the dark marks right away, and R&B's technician took photos of them. In a January 24, 2020 email message about these marks, R&B

stated “[w]e are fully aware of the damages and do apologize for any problems this may have caused you”. In a January 28, 2020 email message, R&B stated that it would “cover the cost of the replacement tiles” as “three of the tiles have become damaged”. The message did not state that this was a customer service or gratuitous gesture. In the circumstances, I find that R&B admitted responsibility for the dark marks. The fact that R&B subsequently tested its equipment to see if it could cause marks on linoleum does not alter my conclusion about the admission of responsibility.

37. The next consideration is the larger discoloured area. According to the evidence, Ms. Kinnoch did not notice this discolouration while the technician was still in the home. She noticed it later, and provided photos to R&B’s office by email.
38. Both parties provided evidence about the possible cause of the marks. R&B provided undated and unsigned statement that is said to come from a floor installer, CM, who stated that the larger area of discolouration could be due to moisture saturation from the subfloor or a reaction at the glue layer. Although he stated that it was not possible to determine the exact cause without seeing the subfloor, CM stated that the issue was “coming from underneath not staining from the top”. Ms. Kinnoch provided a statement from RH, a plumber and gas fitter, about the cause of the damage. According to RH, the discoloured area would have been caused by rusty water that came out of the old water heater, as this liquid would “have a chance of staining a floor” if it was not cleaned up promptly.
39. As neither of these individuals had an opportunity to inspect Ms. Kinnoch’s floor, I find their comments to be speculative and I do not give them any weight. On balance, I find that the evidence before me does not establish a cause for the discolouration, or that R&B is responsible for it.
40. As I have determined that R&B is responsible only for the dark marks, its responsibility for damages is limited to that area. Ms. Kinnoch provided information about a telephone estimate of \$642 she received for labour and materials to replace the entire bathroom floor. She subtracted amounts for “depreciation” and a

“reduction for sub-par installation” and requests \$400 towards the floor’s replacement. It is not clear to me why the small area of damage would require the replacement of the entire floor. Even if such replacement was required, I find that R&B would not be responsible for such a large portion of the replacement cost given Ms. Kinnoch’s admission that the floor was poorly installed and given the evidence that suggests the floor was damaged previously.

41. I do not find that the information about the verbal estimate is helpful in determining the actual cost of the damage associated with the dark marks. On a judgment basis, I find that R&B is responsible for \$50 in damages. For convenience, I order that this amount be deducted from the amount owing to R&B, leaving an outstanding total of \$773.61.

Is Ms. Kinnoch Entitled to the Damages she Claims?

42. In addition to the \$400 floor damage claim that I have addressed above, Ms. Kinnoch claims \$100 that R&B previously offered as inconvenience for the failed inspection, and \$1,000 for “general and aggravated damages”. R&B denies that it is responsible for any of these amounts.
43. While the parties may have discussed a discount of \$100 for inconvenience associated with the failed inspection during their attempt to resolve this matter, I do not find that this was a binding promise to pay. Further, as Ms. Kinnoch has not proved that she experienced any expense associated with the failed inspection, I find that she has not proved this claim and I dismiss it.
44. Ms. Kinnoch outlined general and aggravated damages in the amount of \$1,034.80, but she rounded her claim down to \$1,000. Her claim of general damages includes \$134.80 for items from the invoice which I have addressed above, \$100 for negligence for the failed inspection, and \$800 for R&B’s alleged unspecified degradation, heavy-handed behaviour, and pursuit of a weak and meritless claim.
45. The claim for negligence stems from the fact that an R&B technician put a piece of tape over some screws so they were not visible to the inspector. This was remedied

later by removing the tape. In order to succeed in a claim for negligence, Ms. Kinnoch must prove that R&B owed her a duty of care, that R&B breached the applicable standard of care, that the loss was reasonably foreseeable, and that R&B's failure to meet the standard of care caused the loss. I find that R&B owed Ms. Kinnoch a duty of care in replacing her water tank. The issue is whether R&B breached the standard of care of a reasonable contractor in the circumstances and whether such breach caused Ms. Kinnoch's claimed damages. Her claim in this regard is distinct from the \$100 claim for inconvenience discussed above.

46. I do not find that the failed inspection, by itself, is sufficient to establish a breach. I find that expert evidence is required because what is being alleged is outside the knowledge and expertise of an ordinary person (see *Bergen*). Ms. Kinnoch did not produce evidence to show that R&B's work did not meet the standard of a reasonable contractor. Further, even if a breach was established, she did not provide any evidence to show that she sustained \$100 in damages as a result. As the burden of proof has not been met, I dismiss the claim for damages for negligence.
47. Aggravated damages are a form of damages that arise when a party's conduct is particularly poor. These damages involve intangible losses such as pain and suffering, mental distress and emotional shock (see, for example, *Gibson v. F.K. Developments Ltd. et al*, 2017 BCSC 2153 at paragraph 54). Aggravated damages are compensatory even if the conduct justifies punitive damages (see *Gibson* at paragraph 57).
48. While I acknowledge that Ms. Kinnoch found her dealings with R&B to be frustrating, based on the evidence before me, I find that R&B's conduct did not rise to the level that would attract aggravated damages. In any event, Ms. Kinnoch has not provided evidence in support of her claim for aggravated damages. So, I dismiss Ms. Kinnoch's claims for general and aggravated damages.

49. I find that R&B is entitled to pre-judgment interest on the \$773.61 under the *Court Order Interest Act*. Calculated from March 31, 2020 (being the actual date of completion), this equals \$4.53.
50. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As success was divided in this case, I find that it is reasonable for each party to bear their own fees and expenses.

ORDERS

51. Within 30 days of the date of this order, I order Ms. Kinnoch to pay R&B a total of \$778.14, broken down as follows:
- a. \$773.61 for work performed on January 20, 2020, and
 - b. \$4.53 in pre-judgment interest under the *Court Order Interest Act*.
52. R&B is entitled to post-judgment interest, as applicable.
53. The remainder of the parties' claims are dismissed.
54. 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.

55. 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.

Lynn Scrivener, Tribunal Member