



# Civil Resolution Tribunal

Date Issued: September 24, 2020

File: SC-2020-002819

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Milani Plumbing Heating & Air Conditioning Ltd. v. Chen*, 2020 BCCRT  
1082

B E T W E E N :

MILANI PLUMBING HEATING & AIR CONDITIONING LTD.

**APPLICANT**

A N D :

SONG LAN CHEN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about payment for plumbing services.
2. The applicant, Milani Plumbing Heating & Air Conditioning Ltd. (Milani), removed a hot water tank and installed a new hot water tank at the respondent, Song Lan

Chen's, property. Milani says Mr. Chen refuses to pay for the work and claims \$1,659.06: \$198.45 for a December 27, 2019 service call and \$1,460.61 for a new hot water tank and installation.

3. Mr. Chen says the property manager called Milani to service Mr. Chen's hot water tank, not to replace it with a new tank. Mr. Chen denies he owes Milani any money as he did not ask for, or authorize, the new hot water tank installation.
4. Milani is represented by an officer or employee. Mr. Chen is represented by his property manager, JR.

## **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.

## **ISSUE**

9. The issue in this dispute is whether Mr. Chen must pay Milani for the work it did and, if so, how much?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this one the applicant, Milani, must prove its claim on a balance of probabilities. I have reviewed all submissions and evidence provided, but I will only refer to that which explains and gives context to my decision.
11. Mr. Chen owns the property, which he rents to a tenant (A). JR manages the property for Mr. Chen and acts as Mr. Chen's agent. None of this is disputed.
12. It is undisputed that JR phoned Milani on December 26, 2019 and asked that someone inspect Mr. Chen's hot water tank, as there was no hot water. In JR's December 26, 2019 email to Milani, JR told Milani that the hot water tank was newly installed by a different company but kept shutting off. Based on the photos attached to the email, I find the hot water tank had been installed on December 8, 2019, as that is the date written on the tank.
13. It is undisputed that a Milani technician went to the property and inspected the hot water tank on December 27, 2019. Milani provided copies of its computerized client history notes. In those notes the technician documented that the hot water tank was leaking and extinguishing the pilot light. The technician decided the tank needed to be replaced. The technician did not note whether the hot water tank might be covered under warranty.
14. The parties agree that Milani replaced the hot water tank on December 30, 2019. It is undisputed that Milani did not provide JR or the tenant with an estimate for the hot water tank replacement.

15. JR says he did not authorize, or agree to, a new hot water tank. Milani says either JR or the tenant authorized the work. For the reasons set out below, I find neither JR nor the tenant authorized Milani to replace the hot water tank.
16. Milani provided a copy of its December 27, 2019 work order which included the technician's handwritten notes, the cost of \$198.45 for the work, and room for a customer signature. The technician wrote that the hot water tank needed to be replaced. The work order is not signed and there is no suggestion from Milani that it was left with the tenant on December 27, 2019. So, I find it likely that the tenant did not see the December 27, 2019 work order. I also find JR did not receive a copy of the work order before Milani emailed it to him, asking for payment, on December 30, 2019. So, I find neither the tenant, nor JR, knew that Milani had decided the hot water tank needed to be replaced, prior to December 30, 2019.
17. JR says someone from Milani called him to set up a follow up appointment for December 30, 2019 but did not tell him about the tank replacement. Milani's client history notes document the telephone call, but do not specify what the appointment was for. As I find JR did not know the reason for the December 30, 2019 appointment, I find he did not authorize the hot water tank replacement by setting up the second appointment.
18. Milani's client history notes show that JR told Milani to talk to the tenant on December 30, 2019. Milani says this was JR's authorization for Milani to replace the hot water tank. I disagree. Based on the client history notes, Milani called JR on December 30, 2019 to access the property. So, I find JR referred Milani to the tenant for access to the property. I further find it unreasonable for Milani to assume JR's referral to the tenant for access was his authorization to replace the tank.
19. Milani says the tenant authorized the hot water tank replacement on December 30, 2019, likely because he wanted the hot water working again. This is not supported by the evidence. In a December 30, 2019 text message to JR, the tenant wrote that he told the Milani technician to talk to JR about the hot water tank replacement. The tenant wrote that he twice asked the Milani technician if he had approval from the

owner to replace the tank and the technician told the tenant he had approval. I find it unlikely that the tenant would ask Milani if the work had been authorized if the tenant was the person who authorized it. Milani has provided no contrary evidence, such as a statement from the technician that spoke to the tenant on December 30, 2019. On balance, I find the tenant did not authorize the hot water tank replacement on December 30, 2019.

20. I disagree with Milani that the tenant authorized the work by signing the December 30, 2019 work order. Based on the typed statement on the work order, I find the tenant's signature acknowledged that the work was completed satisfactorily, not that he authorized the work in the first place. Based on the tenant's text message to JR, I find the Milani technician told the tenant to sign the work order to confirm that the work had been done, not to confirm the work was authorized.
21. I also disagree with Milani that the tenant authorized Milani to dispose of the existing hot water tank. Based on the tenant's texts to JR, I find the tenant did not know what happened to the existing hot water tank.
22. I agree with JR that it is unlikely he would approve the removal and replacement of a 3-week old hot water tank. I also agree with JR that it is unlikely that he would authorize the expense of a new hot water tank as Mr. Chen's agent, without an estimate from Milani.
23. On balance I find it more likely than not that Milani did not have Mr. Chen's or JR's authorization, or agreement to replace the hot water tank on December 30, 2019. As the parties had no agreement about the hot water tank replacement, I find it is unauthorized work and that Mr. Chen is not obliged to pay for it. I dismiss Milani's \$1,460.61 claim for the hot water tank replacement.
24. However, I find JR, as agent for Mr. Chen, asked Milani to assess the existing hot water tank and determine why there was no hot water. Based on Milani's December 27, 2019 work order, I find Milani inspected and assessed the hot water tank as

requested by JR. So, I find Mr. Chen must pay Milani \$198.45 for the December 27, 2019 service call.

25. The *Court Order Interest Act* applies to the CRT. Milani is entitled to pre-judgment interest on the \$198.45 outstanding balance from December 27, 2019, the date of the work order, to the date of this decision. This equals \$2.19.
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. As Milani was partly successful in its claim I find it is entitled to reimbursement of half its CRT fees, which equals \$62.50. Neither party claimed any dispute-related expenses.

## **ORDERS**

27. Within 14 days of the date of this order, I order Mr. Chen to pay Milani a total of \$263.14, broken down as follows:
  - a. \$198.45 in debt for the December 27, 2019 invoice,
  - b. \$2.19 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 in CRT fees.
28. Milani is entitled to post-judgment interest, as applicable.
29. The remainder of Milani's 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. 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.

31. 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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Sherelle Goodwin, Tribunal Member