



# Civil Resolution Tribunal

Date Issued: December 7, 2020

File: SC-2020-004457

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ostopchuk v. 0704268 B.C. Ltd.*, 2020 BCCRT 1381

**B E T W E E N :**

SONJA OSTOPCHUK and CHRIS OSTOPCHUK

**APPLICANTS**

**A N D :**

0704268 B.C. LTD.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. This dispute is about damage from a faulty dishwasher. The applicants, Sonja Ostopchuk and Chris Ostopchuk, hired the respondent, 0704268 B.C. Ltd., to fix their dishwasher in November of 2019. They say that the dishwasher later malfunctioned and released steam that damaged their kitchen. The applicants ask for an order that the respondent pay them \$4,678 in repair costs. The respondent denies that it is

responsible for any problems with the dishwasher or for the damages the applicants claim.

2. Ms. Ostopchuk represents the applicants. The respondent is represented by its owner.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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**

7. The issues in this dispute are:
  - a. Whether the respondent is responsible for the dishwasher's malfunction,
  - b. Whether the respondent should reimburse the applicants for \$178 in dishwasher repair costs, and
  - c. Whether the respondent must pay the applicants \$4,500 to fix damage to their kitchen.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute like this, the applicants bear the burden of proof on a balance of probabilities. The parties have 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.
9. There is no dispute that the respondent's technician attended the applicants' home on November 19, 2019 to service their dishwasher, which was displaying an "E15" error code. According to the respondent's invoice, the technician replaced the door springs and cleaned a filter. The applicants paid the respondent \$177.52 for this service.
10. In January of 2020, the applicants noticed another E15 error code on the dishwasher. The applicants were disappointed that there was a problem so soon after the service call, and did not believe that the respondent had fixed the problem properly. They asked the respondent for a refund of a portion of their previous payment. The parties exchanged text messages but were unable to come to an agreement about how to resolve the issue.
11. The applicants decided that they did not wish the respondent to service their dishwasher again. However, after noticing steam coming out of the dishwasher, they

sent the respondent a text message about the steam and photos of damage to the countertop above the dishwasher and the adjacent cupboard.

12. The applicants obtained a June 29, 2020 estimate from a restoration company that it would cost \$2,266.06 to perform “repairs to the kitchen counter tops and cabinet door due to old dishwasher steam leaking over time and causing damage”. The applicants claim damages of \$178 for the initial service call and \$4,500 for the repairs. Although the claim for \$178 appears to be rounded up from the \$177.52 they paid the respondent, the applicants did not explain the discrepancy between the claim for \$4,500 in damages and the \$2,266.06 repair estimate. Given my conclusion below, I find that nothing turns on this.
13. The applicants say that leaking steam from the dishwasher caused damage to their countertop and cupboard over time. The applicants’ position is that the respondent did not repair the dishwasher properly in November of 2019, and that it is responsible for the subsequent problems with the dishwasher and the damage to their kitchen.
14. The respondent denies that its repair was faulty. It says that the E15 error code is very common with the applicants’ model of dishwasher and is usually caused by a foreign object in the drain line. The respondent notes that it has a 30-day warranty on its labour. According to the respondent, had the repair not been done properly, the problem would have been evident immediately, not 2 months after the repair.
15. In essence, the applicants’ claim is that the respondent was negligent in its repair of the dishwasher. In order to succeed in a claim for negligence, the applicants must prove that the respondent owed them a duty of care, that the respondent breached the applicable standard of care, that the loss was reasonably foreseeable, and that the respondent’s failure to meet the standard of care caused the loss.
16. I find that the respondent owed the applicants a duty of care in servicing their dishwasher. The key issues are whether the respondent breached the standard of care of a reasonable contractor in the circumstances and whether such a breach caused the applicants’ claimed damages.

17. I find that the fact that the applicants' dishwasher malfunctioned approximately 2 months after the respondent serviced it is not determinative. The questions of whether the respondent's repair of the dishwasher fell below the required professional standard or caused the claimed losses are not within ordinary knowledge, and must be answered with expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283).
18. The applicants did not produce evidence (from an expert or otherwise) to show that the respondent's work did not meet the standard of a reasonable appliance repair contractor. In addition, the evidence before me does not establish that a possible breach of the standard of care caused any damage to their kitchen. Based on the evidence before me, and keeping in mind that the applicants bear the burden of proof, I find that the applicants have not established any negligence on the respondent's part. I dismiss the applicants' claim for damages.
19. 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 the applicants were not successful, I dismiss their claim for reimbursement of CRT fees.
20. The respondent did not pay any CRT fees or claim dispute-related expenses. The respondent did ask that the applicants apologize to it for the stress and time involved with this dispute. The CRT generally does not order apologies because forced apologies are not productive or helpful. Although the respondent was successful, I decline to order the applicants to apologize.

## **ORDER**

21. I dismiss the applicants' claims and this dispute.

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Lynn Scrivener, Tribunal Member