Civil Resolution Tribunal

Date Issued: December 15, 2020

File: SC-2020-005797

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wang v. Central Commercial & Residential Services Ltd.*, 2020 BCCRT 1412

B E T W E E N :

RUNGANG WANG

APPLICANT

A N D :

CENTRAL COMMERCIAL & RESIDENTIAL SERVICES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicant, Rungang Wang, hired the respondent, Central Commercial & Residential Services Ltd. (CCRS), to perform maintenance on their boiler. They say that CCRS's technician was negligent and damaged the boiler.

2. The applicant claims $5,000, broken down as follows:

a. $690.00 as a refund for CCRS's maintenance work,

b. $1,956.15 for another contractor to inspect and repair the boiler, and

c. $2,353.85 for the increased risk of fire, the period of time that they were without heat, and the time and effort to resolve the issue.

3. CCRS denies that its technician was negligent.

4. The applicant is represented by their daughter, LW. CCRS is represented by a lawyer, Christopher Philip.

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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.

6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

7. Section 42 of the CRTA says 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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:

    a. Did CCRS's technician negligently perform maintenance on the applicant's boiler?

    b. If so, what are the applicant's damages?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove their case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

11. On April 1, 2020, a CCRS technician, B, attended the applicant's home to do routine maintenance on the boiler.

12. The same day, CCRS issued an invoice for $690, which the applicant paid. The invoice included a brief description of the work B did, which included maintaining or replacing the ignitor, sensor, regulator, heat exchanger, and condensate trap. B did not provide evidence in this dispute, which I address more below.

13. On April 18, 2020, someone in the applicant's home noticed the smell of gas. The applicant shut the boiler off.

14. The parties disagree about whether CCRS offered to return on April 18 to inspect the boiler. Ultimately, I find that it does not matter to the outcome of this dispute. CCRS says that it made this offer under its warranty, but the terms of that warranty are not

in evidence. I find that the applicant had no obligation to allow CCRS to return to inspect the boiler.

15. On May 2, 2020, a Technical Safety BC employee provided LW with the names of several contractors who could service the boiler. The applicant hired Corry Martin of CM Plumbing off that list, who inspected the boiler on May 6, 2020. He charged $292.50 for the inspection.

16. Mr. Martin returned to repair the boiler on June 17, 2020, at a cost of $1,663.20.

17. Mr. Martin produced a video explaining his findings, along with a written report. Even though his qualifications are not before me, he is the Chief Technician at CM Plumbing, which Technical Safety BC identified as a qualified contractor. Also, CCRS did not dispute his qualifications. I accept the video and written report as expert evidence under CRT rule 8.3.

18. In the video, Mr. Martin describes how the damage to the boiler occurred. He says that there was a leak at the connection to the gas valve. As a result, gas was drawn through the combustion air tube into the mixing chamber. When the boiler ignited, there was a fire that damaged several boiler components. The video shows a hole in the combustion air intake pipe and a burn hole through condensate drain line. The video also shows a fan that was partially melted from the heat.

19. In his written report, Mr. Martin does not express a definitive opinion on what caused the leak. He identifies 3 possibilities. First, he says that B “may have” caused the leak when he cleaned the heat exchanger. Second, he says that the leak may have been pre-existing, in which case B should have noticed it and fixed it. Third, he says it is possible that another person may have worked on the boiler between April 1, when B maintained the boiler, and April 18, when the leak was discovered.

20. Mr. Martin also says that he cannot “confirm or deny negligence on the part of [B] OR that [B] was solely responsible” for the leak. CCRS relies on this statement as proof that it was not negligent. However, I place no weight on this statement. Whether or not B was negligent is a legal conclusion, which Mr. Martin is not qualified to give.

21. CCRS provided an expert report from Simon Shariati. Mr. Shariati says that he has 11 years of experience servicing the type of gas boiler at issue in this dispute. The applicant did not dispute his qualifications. I accept his report as expert evidence under CRT rule 8.3.

22. Mr. Shariati identifies 3 possible causes of the damage: a faulty inducer fan and pressure switch, "over firing", or a missing or cracked burner door seal. He does not explain these 3 potential causes further. He says that the "issue was with the inducer fan back firing" and that there was "no indication that the problem was in relation to the service" that CCRS provided. Again, he does not explain this opinion.

23. CCRS says that Mr. Shariati's report supports its position that there was a pre-existing problem with the boiler that was "not patently noticeable" when B serviced it. However, there is nothing in Mr. Shariati's report about whether or not the issue was pre-existing or whether B should have noticed it. CCRS also argues that Mr. Shariati's report says that the damage may have been caused by natural wear and tear. Mr. Shariati's report does not say anything about wear and tear.

24. Ultimately, I do not find Mr. Shariati's opinion helpful. It is very brief and does not explain why he does not believe that B caused the damage. In particular, even though Mr. Shariati reviewed Mr. Martin's report, he does not comment on Mr. Martin's opinion that B may have caused a leak when he cleaned the heat exchanger. He also does not express an opinion about whether B should have noticed an issue when he worked on the boiler.

25. For these reasons, I place more weight on Mr. Martin's expert report. As discussed above, he does not express a definitive opinion but does outline 3 possibilities. With respect to the possibility that someone else worked on the boiler between April 1 and 18, 2020, the applicant denies that anyone touched the boiler during this time. There is no evidence that contradicts this statement, and no apparent reason that the applicant would have someone else work on the boiler so soon after having it maintained. So, on balance, I find that no one worked on the boiler between April 1 and 18, 2020.

26. This leaves the other 2 possibilities that Mr. Martin identified: that B caused a leak when he cleaned the heat exchanger or that B failed to notice a pre-existing issue. I infer from Mr. Martin's report that in either case, B's conduct fell below that of a reasonably competent professional. I find that Mr. Martin's opinion as a whole supports the applicant's argument because it identifies 2 ways that B's conduct could have caused the damage. I find that there is no other persuasive explanation for the damage in evidence.

27. As mentioned above, there is no evidence from B in this dispute. CCRS says that B denies damaging the gas intake valve. CCRS also says that B would have noticed a problem with the gas intake valve if it had been present. While the CRT is permitted to admit evidence that would not be admissible in court, I place little weight on these hearsay denials. I find that they are self-serving, and in any event, too general to assist me in determining what happened.

28. Therefore, based on Mr. Martin's report and the lack of evidence from B, I find that it is more likely than not that B was negligent in completing the maintenance work, either because he caused a leak or failed to notice a pre-existing leak. I find that B's negligence led to the fire that damaged the boiler.

29. The applicant claims both a refund of CCRS's invoice and the amount they paid Mr. Martin to inspect and repair the boiler. The applicant is entitled to the amount of money it would take to put them in the same position as if B had not been negligent. There is no evidence before me about whether the maintenance and cleaning work that B did was rendered worthless by the subsequent damage to some parts of the boiler. I find that on the evidence before me, awarding both a refund and the repair cost would overcompensate the applicant.

30. I find that the applicant is entitled only to the cost to inspect and repair the boiler after the fire. I find CCRS must pay the applicant $1,955.70 for Mr. Martin's 2 invoices.

31. The applicant also claimed $2,353.85 to compensate for the increased risk of fire, the period of time that the applicant was without heat, and the applicant's time and effort to resolve the issue.

32. With respect to the alleged increased risk of fire, the law compensates parties for actual losses, not potential losses that did not materialize. I find that there is no legal basis for an award for damages because of a temporary increased risk of fire that has now passed.

33. I find that the applicant did not prove that they are entitled to compensation for the lack of heat. If the loss of heat was significant enough to impact the applicant's ability to enjoy their home, then I find that they should have mitigated their damages by buying space heaters. The applicant says that the property was too large for this to be practical but provides no evidence to support this assertion.

34. Finally, under CRT rule 9.5(5), the CRT will not order compensation for the time spent to resolve a dispute except in extraordinary circumstances. I find that there is nothing extraordinary about this dispute.

35. Therefore, I dismiss the applicant's claim for $2,353.85 in consequential damages.

36. The *Court Order Interest Act* (COIA) applies to the CRT. The applicant is entitled to pre-judgment interest on Mr. Martin's 2 invoices from the date they were each issued to the date of this decision. This equals $6.17.

37. 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. The applicant was partially successful so I find they are entitled to reimbursement of half of their $175 in CRT fees, which is $87.50. The applicant did not claim any dispute-related expenses.

38. CCRS asks for an order that the applicant reimburse its legal fees under CRT rule 9.5(3)(b). Rule 9.5(3)(b) says that the CRT will only order a party to pay another party's legal fees in extraordinary circumstances. CCRS makes 2 arguments about

why extraordinary circumstances exist in this dispute. First, CCRS says that the applicant unnecessarily complicated the dispute by initially claiming against Mr. Philips, who again is CCRS's lawyer. Second, CCRS says that the applicant breached the CRT rules by providing a without prejudice settlement offer that CCRS made to the applicant.

39. With respect to Mr. Philips, CCRS says that it took an "inordinate" amount of time for Mr. Philip to remove himself from the claim. There is no evidence about how much time CCRS considers "inordinate", such as time records showing how long Mr. Philips spent on it. While I accept that this would have taken Mr. Philips some time to address, in the absence of any evidence to the contrary I find that the delay or expense was likely minor.

40. The applicant says that they named Mr. Philips because they had previously received correspondence from him that concluded with the statement: "Please direct all future correspondence to the undersigned". The applicant interpreted this to mean that they should name Mr. Philips as a respondent. The applicant withdrew their claim against Mr. Philips before this adjudication. I accept that the applicant's claim against Mr. Philips was likely a misunderstanding.

41. As for the without prejudice letter, the applicant says that they did not know what "without prejudice" meant. CRT rule 1.11 prohibits parties from providing settlement discussions from the CRT facilitation process as evidence in an adjudication. CCRS's settlement letter is dated July 27, 2020, which was before the applicant submitted their application for dispute resolution with the CRT. It was therefore not a breach of the CRT's rules to include it.

42. That said, the letter was likely inadmissible because it was covered by settlement privilege. Settlement privilege exists to encourage settlement by allowing parties to make admissions without fear that those admissions will end up as evidence in a later hearing. While CCRS's letter contained a settlement offer, it did not contain any admissions or other information that would prejudice CCRS's case. Therefore, while

the applicant should not have included the letter as evidence, their decision to do so did not prejudice CCRS.

43. For these reasons, I find that the issues that CCRS raises are not significant enough to make this dispute extraordinary within the meaning of CRT rule 9.5(3)(b). I dismiss CCRS's claim for reimbursement of its legal fees. CCRS also claimed "dispute-related fees paid to the CRT and other expenses and charges" but did not explain what these expenses or charges were. CCRS did not pay any CRT fees. In the absence of any explanation or evidence about the "other expenses and charges", I dismiss CCRS's claims for dispute-related expenses.

ORDERS

44. Within 28 days of the date of this order, I order CCRS to pay the applicant a total of $2,049.37, broken down as follows:

    a. $1,955.70 in damages,

    b. $6.17 in pre-judgment interest under the COIA, and

    c. $87.50 for half of their CRT fees.

45. The applicant is entitled to post-judgment interest, as applicable.

46. I dismiss the applicant's remaining claims.

47. I dismiss CCRS's claim for dispute-related expenses, including its claim for reimbursement of its legal fees.

48. 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.

49. 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.

Eric Regehr, Tribunal Member