



Civil Resolution Tribunal

Date Issued: February 23, 2021

File: SC-2020-007372

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Miller v. Beaudry dba JM&P Enterprises #806679031*, 2021 BCCRT 211

B E T W E E N :

MAX MILLER

APPLICANT

A N D :

PIERRE BEAUDRY (Doing Business As JM&P ENTERPRISES
#806679031)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about allegedly deficient propane gas work.

2. The applicant, Max Miller, says he hired the respondent, Pierre Beaudry (Doing Business as JM&P Enterprises #806679031), to install a propane gas line for a dryer and stove in 2017 and an on-demand propane boiler in 2019. Mr. Miller says the boiler failed after it was installed, and Mr. Beaudry refused to come back and fix it. Mr. Miller says he then hired a third-party to fix the boiler and it discovered both the 2017 gas line and 2019 boiler installation were not done to code and presented several safety issues. Mr. Miller claims \$2,788.92 for his costs to remedy Mr. Beaudry's faulty work.
3. Mr. Beaudry denies they were involved in the purchase, installation, or venting of the boiler. He says they only connected the gas line to the boiler, which was not the reason it failed to work. Mr. Beaudry also says they were willing to fix any gas code issues identified with his 2017 work, but that Mr. Miller did not respond to his offer. Mr. Beaudry says the only thing they are responsible for is failing to get a gas permit for the boiler.
4. Each of the parties is self-represented.

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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal

demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Whether Mr. Beaudry's 2017 propane gas work was deficient, and if so, what is the appropriate remedy?
 - b. Whether Mr. Beaudry's 2019 propane gas work was deficient, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant, Mr. Miller must prove his claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I have addressed them only to the extent necessary to explain my decision.

11. It is undisputed that Mr. Miller hired Mr. Beaudry in 2017 to install a propane gas line to his stove and dryer, which included installation of a propane gas cylinder. The March 24, 2017 invoice in evidence shows that Mr. Beaudry obtained a gas permit for this work. While Mr. Beaudry's invoice totaled \$1,798.25, they say Mr. Miller did not agree to pay the full invoice and they negotiated a settlement for a lower amount. Mr. Beaudry filed a copy of a cheque in evidence, showing Mr. Miller paid \$1,400, which Mr. Miller did not particularly dispute. Mr. Miller does not allege any issues with the operation of his stove or dryer after Mr. Beaudry's gas work.
12. In 2019, Mr. Miller hired Mr. Beaudry again, to install a propane gas line to an on-demand boiler for heating and hot water. It is undisputed that Mr. Miller purchased the boiler and had already installed it, including the venting and plumbing, before Mr. Beaudry arrived to connect the gas. Mr. Beaudry says they installed the propane gas line and regulators to the boiler unit, tested it for leakage, and confirmed that it produced hot water. The October 6, 2019 invoice in evidence totaled \$677.54 and described Mr. Beaudry's work as: "install gas to on demand water heater". Mr. Miller undisputedly paid the full invoice.
13. Mr. Beaudry says that Mr. Miller contacted them a few days after they completed the 2019 work to report the boiler unit was shutting down part-way through a shower. Mr. Beaudry says they returned to adjust the regulator and confirmed there was no issue with the gas line. This did not resolve the issue with the boiler shutting off. Mr. Beaudry says they advised Mr. Miller that their gas work did not appear to be the problem and recommended he contact the company that sold him the boiler unit.
14. Mr. Miller says he then hired a third-party company, Veridis Plumbing & Heating Ltd. (Veridis), to investigate the boiler issue. The Veridis invoice in evidence contains a detailed description of its April 23, 2020 investigation, and states Veridis identified multiple issues with the boiler's gas piping and regulator, as well as its venting.
15. It is undisputed that Veridis contacted a Technical Safety BC officer, CH, about the boiler issues it had identified, which prompted an investigation of Mr. Beaudry's 2017 propane work as well. Mr. Miller filed in evidence CH's April 27, 2020 Technical Safety

BC “Gas Certificate of Inspection” report of Mr. Beaudry’s work relating to the gas permit they obtained for their 2017 work. This report shows the inspection “failed”, as the dryer, propane cylinder, propane piping, and venting were assessed “non-compliant”. I find this was Mr. Miller’s first notice of any issues with Mr. Beaudry’s 2017 work. The report provided a May 27, 2020 deadline to correct noted deficiencies.

16. Mr. Miller says that given the extent of the issues identified with Mr. Beaudry’s work, he hired Veridis to make the necessary corrections to both the 2017 and 2019 gas work. Veridis’ May 7, 2020 invoice in evidence shows it charged Mr. Miller the claimed \$2,788.92 for its work.

Was Mr. Beaudry’s 2017 work deficient?

17. There is no evidence before me that the parties had a written contract or detailed written estimate for Mr. Beaudry’s 2017 gas work, though nothing turns on this because the scope and cost of Mr. Beaudry’s work are not in issue. Whether the parties had a written contract or a verbal one, I find it was an implied term of their contract that Mr. Beaudry’s work would be carried out in a reasonably professional and competent manner: see *A.A.A. Aluminum Products Ltd. v. Grafos*, 2015 BCSC 2128. I find that this means Mr. Beaudry’s work was expected to pass an inspection.
18. As noted above, the Technical Safety BC report says Mr. Beaudry’s 2017 work was largely “non-compliant” and the inspection “failed”. Therefore, I find that Mr. Beaudry did not perform their work in a reasonably professional or competent manner, in breach of their contract with Mr. Miller.
19. The usual remedy for breach of contract is to restore the innocent party to the position they would have been in if the contract had not been broken. So, I find Mr. Miller must be put in the position of having propane gas work connecting his stove and dryer that passes inspection and is compliant with Technical Safety BC standards. I address the particular remedy below.

20. Mr. Beaudry says they offered to correct the deficiencies identified with the dryer to bring it up to “code”, but Mr. Miller did not respond to their offer. I find based on the parties’ emails in evidence, Mr. Beaudry’s offer to remedy the deficiencies was made after Veridis had already completed the repair work. While a contractor would normally be permitted the opportunity to fix any alleged deficiencies, I find that Mr. Miller reasonably lost confidence in Mr. Beaudry’s abilities given the extent of the issues allegedly requiring correction. Therefore, I find Mr. Miller was not obligated to request that Mr. Beaudry repair the 2017 deficiencies before hiring Veridis to complete the repairs.
21. I turn next to discuss my findings about Mr. Beaudry’s boiler installation before addressing the appropriate remedy.

Was Mr. Beaudry’s 2019 work deficient?

22. I accept that after the boiler installation, Mr. Miller experienced a problem with inconsistent hot water in his home, which required repairs, including to the propane gas piping. However, for the following reasons, I find Mr. Miller has not proven that Mr. Beaudry’s gas work was responsible for the problem or was otherwise deficient.
23. There was no Technical Safety BC report in evidence for Mr. Beaudry’s 2019 gas work stating whether his work was compliant or passed inspection. I infer this is because Mr. Beaudry did not obtain a gas permit for this work, so there was no permit to attach an inspection to. While Mr. Beaudry admits that they should have obtained a gas permit, I find their failure to do so alone is insufficient to find Mr. Beaudry’s work was deficient. I say this because Mr. Miller has not claimed any remedy in relation to Mr. Beaudry’s failure to obtain a permit, and I find Mr. Miller has not established that having a permit would have prevented the alleged deficiencies.
24. I find that whether Mr. Beaudry’s gas work was deficient or below industry standards is technical and beyond ordinary knowledge. In such cases, expert evidence is generally required to determine the appropriate standard of professional competence:

see *Bergen v. Guliker*, 2015 BCCA 283. I find expert evidence is needed here to show Mr. Beaudry's 2019 gas work was deficient.

25. The only evidence before me that Mr. Beaudry's gas piping work was deficient comes from Veridis' invoice. The invoice says the following about the boiler installation:

Installation of gas piping is not correct. Regulator is too close to the boiler. Regulator at tank is not done correctly and is aimed the wrong way. Piping on tanks is not done correctly. Venting on boiler is not the correct material 636 is present the vent needs to be 636CPVC. The venting is too close to the regulator on the propane tanks.

26. I find that Veridis' invoice does not meet the criteria for an expert report under CRT rule 8.3. The invoice identifies the specific Veridis representative only as "MH", but does not otherwise name the person who prepared the invoice, as required by rule 8.3. The invoice also does not provide MH's education, training or experience that qualifies them to investigate and identify boiler installation deficiencies. For these reasons, I do not accept the invoice opinions as expert evidence.

27. Further, Mr. Beaudry alleges the boiler problems were caused by Mr. Miller installing the boiler too close to the original propane gas cylinder, so the boiler's combustion air supply was too close to the regulator. As noted, Mr. Miller undisputedly installed the boiler (other than connecting the propane), including its venting, and Veridis' invoice also identified problems with the boiler venting. In the absence of expert evidence, I find there is insufficient evidence to prove whether or how Mr. Beaudry's gas piping and connection work were deficient, or that the boiler issues and required corrections were not caused at least in part by Mr. Miller's own faulty installation work. I dismiss Mr. Miller's claims relating to Mr. Beaudry's 2019 work.

28. I turn now to the remedy for Mr. Beaudry's breach of contract relating to the 2017 work.

Remedy

29. As noted, Mr. Miller paid Veridis a total of \$2,788.92 to investigate and fix both the boiler issues and Mr. Beaudry's 2017 work. However, there was no specific breakdown of the costs for time and materials relating to each issue. Nevertheless, based on the Veridis invoice description of the work completed and the Technical Safety BC report about the 2017 deficiencies, I find Veridis likely spent more time and materials addressing the 2019 boiler issues than the 2017 gas work issues.
30. On a judgment basis, I find \$1,000 plus GST is a reasonable assessment of Mr. Miller's costs to remedy the deficiencies with Mr. Beaudry's 2017 work. So, I find Mr. Beaudry must pay Mr. Miller \$1,050.
31. The *Court Order Interest Act* applies to the CRT. Mr. Miller is entitled to pre-judgment interest on the \$1,050 from May 7, 2020, the date of Veridis' invoice, to the date of this decision. This equals \$6.15.
32. 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 find that Mr. Miller was partly successful, so is entitled to reimbursement of half his CRT fees, or \$62.50. Neither party claimed any dispute-related expenses.

ORDERS

33. Within 30 days of the date of this decision, I order Mr. Beaudry to pay Mr. Miller a total of \$1,118.65, broken down as follows:
 - a. \$1,050 in damages for breach of contract relating to Mr. Beaudry's 2017 work,
 - b. \$6.15 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
34. Mr. Miller's remaining claims are dismissed.

35. Mr. Miller is entitled to post-judgment interest, as applicable.
36. 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.
37. 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.

Kristin Gardner, Tribunal Member