Civil Resolution Tribunal

Date Issued: March 05, 2021

File: SC-2020-008612

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Salmon v. High Mark Mechanical Services Ltd.*, 2021 BCCRT 252

B E T W E E N :

GREG SALMON

APPLICANT

A N D :

HIGH MARK MECHANICAL SERVICES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. The applicant, Greg Salmon, hired the respondent, High Mark Mechanical Services Ltd. (High Mark), to install a toilet. Mr. Salmon says High Mark installed the toilet incorrectly, resulting in a minor water leak from the toilet's base. Mr. Salmon claims

reimbursement of $157.50 he says he paid High Mark to install the toilet, plus $131.25 he says he paid in repair costs.

2. High Mark denies any fault. High Mark says it is more likely that the toilet leaked due to blockage and plunging, or being bumped, rather than an incorrect installation. It also says its 1-year warranty on the installation has expired.

3. Mr. Salmon represents himself. High Mark is represented by its owner.

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). 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.

5. 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.

6. 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.

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.

ISSUE

8. The issue in this dispute is whether High Mark installed the toilet incorrectly and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil proceeding such as this one, Mr. Salmon, as the applicant, must prove his claim on a balance of probabilities. I have reviewed all submissions and evidence provided but only refer to relevant submissions and evidence which explain, and provide context to, my decision.

10. It is undisputed that High Mark's plumber re-installed an existing toilet in Mr. Salmon's powder room on August 7, 2019. Based on High Mark's August 7, 2019 invoice, I find it charged Mr. Salmon a total of $454.56 to re-install the powder room toilet and a washer and dryer. The invoice does not specify how much of the amount charged was for the toilet installation. I infer that Mr. Salmon has estimated a cost of $157.50 for the toilet installation.

11. Mr. Salmon says that, approximately 9 to 10 months later, he noticed a mildew smell coming from the toilet area although he could not feel or see any water leaking from the toilet. Mr. Salmon says he continued to smell mildew around that toilet on an intermittent basis.

12. Mr. Salmon says that he hired Allan Korfman, a plumber, to inspect the toilet and do other plumbing work on October 19, 2020. Mr. Salmon says that when Mr. Korfman removed the toilet there were water stains on the hardwood floor around the toilet and a strong smell of mildew. This is consistent with Mr. Korfman's October 19, 2020 invoice, which notes a smell by the powder room toilet. Mr. Korfman also noted that, after removing the toilet, he found the toilet was leaking at the wax seal "as there was no squish on the wax ring". Based on the observations of both Mr. Korfman and Mr. Salmon, I find the powder room toilet base leaked.

13. Mr. Salmon says High Mark used the wrong size, or number of, wax rings when it installed the toilet in August 2019, which caused the slow leak. As Mr. Salmon alleges that High Mark's work was deficient, he has the burden of proving that (see *Lund v. Appleford Building Company Ltd., et al,* 2017 BCPC 91).

14. Mr. Salmon submitted a December 17, 2020 signed statement from Mr. Korfman. Mr. Korfman said that he had 29 years' experience as a plumber and owned a plumbing business. He said that when he removed Mr. Salmon's powder room toilet, he found the seal was hardly compressed at all. Due to the lack of compression, the wax ring did not form a tight seal and this caused the slight leak, in Mr. Korfman's opinion. He said that if the installer had used a higher profile wax ring, there would have been enough compression to properly seal the toilet and avoid a leak. In a January 3, 2021 signed statement Mr. Korfman listed his training and qualifications as a certified and licenced plumber.

15. High Mark points out that Mr. Salmon drafted both of Mr. Korfman's statements then emailed them to him at a gmail account. I infer High Mark questions the validity of Mr. Korfman's opinions or his qualifications. While Mr. Salmon drafted the content of the statements, I accept his undisputed statement that he did so based on conversations he had with Mr. Korfman. Based on Mr. Salmon's emails to Mr. Korfman, I find he invited Mr. Korfman to review the statements and change them if needed, before signing them. Further, I find Mr. Korfman's December 17, 2020 statement is consistent with the handwritten notes on his October 19, 2020 invoice. For these reasons I find Mr. Korfman's statement is his own opinion, and not merely restating Mr. Salmon's. I further find Mr. Korfman is qualified to provide expert evidence under CRT rule 8.3.

16. High Mark denies that it installed the toilet incorrectly. It says that if that had been the case, the toilet would have leaked more water and would have been noticed much earlier. However, High Mark does not explain why that would be the case. It also does not address Mr. Salmon's undisputed statement that the powder room toilet is rarely

used. I do not find that the toilet would have leaked more, or sooner, if it had been installed incorrectly.

17. High Mark says it is more likely that the wax ring failed because the toilet became blocked and someone used a plunger to unblock it, or that someone bumped the toilet. I accept Mr. Salmon's statement that neither he, nor his wife, ever used a plunger on that toilet since its re-installation or bumped or moved the toilet. This is because there is no evidence to suggest otherwise. So, I find it unlikely that the toilet leaked due to plunger use or being bumped.

18. On balance, I accept Mr. Korfman's expert opinion and find that the powder room toilet likely leaked because High Mark used the wrong height wax ring at the base of the toilet.

19. High Mark says it should not have to refund Mr. Salmon any of the installation costs because its 1-year warranty has expired. There is no mention of a warranty period on High Mark's August 7, 2019 invoice. I find High Mark provided no evidence that Mr. Salmon agreed to a 1-year warranty period or what that warranty would cover. Even if High Mark proved that the toilet installation was under warranty for 1 year, such a warranty does not shield High Mark from any defective work claims after the warranty expires. So, I find Mr. Salmon's claim is not barred by the expiration of any warranty period, as alleged by High Mark.

20. Mr. Salmon claims both a refund of High Mark's installation cost and his costs to repair and reinstall the powder room toilet. I decline to order both a refund and reimbursement as that would amount to double recovery.

21. As High Mark's August 7, 2019 invoice does not break down the cost, or labour time, for the toilet installation alone, I find Mr. Korfman's October 19, 2020 invoice a better measure of Mr. Salmon's damages. Mr. Korfman specifically identifies the toilet repair costs as $131.25, including taxes. So, I find Mr. Salmon is entitled to reimbursement of $131.25 from High Mark for the incorrectly installed toilet.

22. The *Court Order Interest Act* applies to the CRT. Mr. Salmon is entitled to pre-judgment interest on the $131.25 repair costs from October 19, 2020, the day he requested reimbursement from High Mark, to the date of this decision. This equals $0.22.

23. 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. I find Mr. Salmon is entitled to reimbursement of $125 in CRT fees.

ORDERS

24. Within 14 days of the date of this order, I order High Mark to pay Mr. Salmon a total of $256.47, broken down as follows:

    a. $131.25 in damages for repair costs,

    b. $0.22 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees.

25. Mr. Salmon is entitled to post-judgment interest, as applicable.

26. 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.

27. 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.

Sherelle Goodwin, Tribunal Member