



Civil Resolution Tribunal

Date Issued: March 26, 2021

File: SC-2020-008113

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Johal Inc. v. Hallstead Plumbing Inc. dba Roto Rooter Plumbers*,
2021 BCCRT 336

B E T W E E N :

STEPHEN JOHAL

APPLICANT

A N D :

HALLSTEAD PLUMBING INC. dba ROTO ROOTER PLUMBERS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about a plumbing guarantee.

2. The applicant, Stephen Johal, hired the respondent, Hallstead Plumbing Inc. doing business as Roto Rooter Plumbers (Roto Rooter), to clear a sewer line backup in a commercial washroom. Roto Rooter returned 2 more times to clear subsequent backups in the same sewer line and invoiced Mr. Johal for those service visits. Mr. Johal says the further service visits should have been provided without charge under Roto Rooter's 30-day guarantee. He claims reimbursement of \$738.05 paid for Roto Rooter's second service visit and \$450 for the third visit.
3. Roto Rooter denies that the extra 2 service visits were covered under its 30-day guarantee.
4. Mr. Johal represents himself. Roto Rooter is represented by an employee.

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

ISSUE

9. Must Roto Rooter must reimburse Mr. Johal \$1,188.05 for the second or third service visits?

EVIDENCE AND ANALYSIS

10. In a civil proceeding such as this one Mr. Johal, as the applicant, must prove his claim on a balance of probabilities. I have reviewed all submissions and evidence provided, but only address that which explains, and provides context for, my decision. I note that Roto Rooter provided no evidence in this dispute, despite being reminded of the opportunity to do so.
11. Mr. Johal contacted Roto Rooter about a sewer backup from the floor drains and toilets in the washroom of his business. On August 4, 2020, Roto Rooter's technician (N) cleared a blockage from the sewer line. The invoice was for \$575.40. On August 27, 2020, the washroom sewer line backed up again. Another Rotor Rooter technician (V) cleared a blockage from the sewer line and charged \$738.05. On September 3, 2020, the bathroom sewer backed up a third time. V cleared a blockage from the sewer line and charged \$688.75. After Mr. Johal spoke with a Roto Rooter manager, the September 3, 2020 invoice was reduced to \$450. Mr. Johal objected to being charged for the second and third service visits but did pay the 3 invoices. None of this is disputed.

12. Mr. Johal says Roto Rooter should not have charged for the August 27 and September 3, 2020 service visits, as that work should have been covered under Roto Rooter's 30-day guarantee.

13. The face of Roto Rooter's invoice says it provides a 30-day commercial guarantee for main/branch lines, which I find applies here. Roto Rooter's 'Terms and Conditions' are printed on the back side of its invoices. Clause 4 says (my bold emphasis added):

If we provide a service guarantee, it covers only drainage failure in the line serviced, **and** defective plumbing workmanship, during the guarantee term. As your exclusive remedy under our service guarantee, we will, at our option, either do the work again at no labor cost or refund your payment. Guarantees do not apply to problems arising out of main sewer line backup or improper, abnormal or unanticipated use or conditions.

14. I disagree with Roto Rooter that its guarantee only covers poor workmanship. I find the guarantee explicitly covers poor workmanship and drainage failure in the line that was serviced. If it only covered poor workmanship, there would be no need to include "drainage failure" as well.

15. It is undisputed that the washroom sewer line that backed up on August 27 and September 3, 2020 is the same one that N serviced on August 4, 2020. It is also undisputed that the second and third backups both occurred within 30 days of the August 4, 2020 backup. So, I find the second and third backups fall within Roto Rooter's guarantee, absent any "improper, abnormal or unanticipated use or conditions".

16. Roto Rooter says the second and third sewer line backups resulted from abuse of the business' sewer lines, specifically with baby wipes. I agree that flushing baby wipes would be an improper use of the sewer line. However, I find Roto Rooter has not provided any evidence of baby wipes blocking the line. Roto Rooter says it showed video recording of the sewer blockages to Mr. Johal but he denies seeing any baby wipes in the blockages. Despite having the opportunity to do so, Roto Rooter did not

provide the video recording as evidence, or a statement from either V or N as to what they saw in the sewer pipes. Further, the August 27 and September 3, 2020 invoices do not mention baby wipes. Rather, both invoices documented finding paper products in the line. On balance, I find it unlikely that the sewer line was blocked with baby wipes.

17. Roto Rooter also says that each time it left Mr. Johal's business, the sewer lines were clear. I infer Roto Rooter to mean that, if the line was clear, any resulting back up must have been caused by something going into the line from Mr. Johal's commercial washroom. On the evidence before me it is unclear whether any further back up could have originated from somewhere other than Mr. Johal's business washroom. In any event, I find that any subsequent backup would be covered under Roto Rooter's guarantee unless it came from the main sewer line or the backup was caused by improper, abnormal or unanticipated use or conditions.
18. On the August 27, 2020 invoice, V wrote "line will back up again if abuse continues" without specifying the abuse he found. V also documented a 5 to 7-foot long blockage of paper product. I infer this means toilet paper which, I find, is an acceptable and anticipated use of the sewer line. In the absence of any further evidence I find it unlikely that the August 27, 2020 sewer line back up was caused by improper, abnormal, or unanticipated use of the sewer line. I find the August 27, 2020 backup was not excluded from Roto Rooter's 30-day guarantee. So, I find Roto Rooter must reimburse Mr. Johal the \$738.05 he paid for that service visit.
19. On the September 3, 2020 invoice, V wrote that the blockage consisted of "heavy paper product", without further explanation how much paper or what kind of paper. Without further evidence as to whether, or how, "heavy paper product" shows improper, abnormal, or unanticipated use, I am unable to find that the September 3, 2020 sewer back was caused by such use. I find the September 3, 2020 backup is also not excluded from Roto Rooter's 30-day guarantee. So, I find Roto Rooter must reimburse Mr. Johal the \$450 he paid for that service visit.

20. The *Court Order Interest Act* applies to the CRT. There is no evidence about when Mr. Johal paid Roto-Rooter's invoices, so I infer he paid them the same day they were issued. I find Mr. Johal is entitled to pre-judgment interest on \$738.05 from August 27, 2020, the invoice date, to the date of this decision. This equals \$1.93. Mr. Johal is also entitled to pre-judgment interest on \$450 from September 3, 2020, the invoice date, to the date of this decision. This equals \$1.14.
21. 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 Mr. Johal was successful in his claims, I find he is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.
22. I find Roto Rooter is not entitled to reimbursement of \$1,000 claimed in dispute-related expenses because it was unsuccessful in this dispute. Even if Roto Rooter had been the successful party, I would not have allowed its \$1,000 claim for time spent on this dispute. This is because as CRT rule 9.5 only allows such expenses in extraordinary circumstances, which I find are not present here.

ORDERS

23. Within 30 days of the date of this order, I order Roto Rooter to pay Mr. Johal a total of \$1,316.12, broken down as follows:
 - a. \$1,188.05 in debt, as reimbursement for the August 27 and September 3, 2020 invoices,
 - b. \$3.07 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
24. Mr. Johal is entitled to post-judgment interest, as applicable.
25. I dismiss Roto Rooter's claim for expenses.

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