



Civil Resolution Tribunal

Date Issued: May 13, 2021

File: SC-2020-009359

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *JD Plumbing and Gas Inc. v. Nicoll*, 2021 BCCRT 508

B E T W E E N :

JD PLUMBING AND GAS INC.

APPLICANT

A N D :

JOHN NICOLL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about payment for plumbing services. The applicant, JD Plumbing and Gas Inc. (JD), says the respondent, John Nicoll, agreed to pay hourly to have JD install a heating and cooling system. JD says that Mr. Nicoll has not paid its October 28, 2020 invoice and claims \$3,846.75 for the unpaid work.

2. Mr. Nicoll says JD failed to complete the work on time, overcharged him, failed to fix defects in the system, and refused to do a final walk-through and handover. I infer that Mr. Nicoll asks for the dispute to be dismissed.
3. JD is represented by an employee. Mr. Nicoll is self-represented.

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.
8. I note that Mr. Nicoll submitted his only evidence (two videos) after the CRT's deadline. I find that JD was not prejudiced by the late evidence because it had an

opportunity to address the late evidence in its submissions, which it did. So, I have allowed the late evidence and considered it in my decision.

ISSUE

9. The issue in this dispute is whether Mr. Nicoll owes JD for the unpaid plumbing services and, if so, how much?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. It is undisputed that JD provided plumbing services to Mr. Nicoll on an hourly basis to install a heating and cooling system. Neither party provided a written contract. However, JD says that Mr. Nicoll agreed to a discounted rate of \$95 per hour. Mr. Nicoll does not deny that he agreed to this hourly rate. Therefore, I accept the agreed rate was \$95 per hour.
12. Mr. Nicoll says that he paid two earlier invoices to JD (one for \$13,272.62 and the other for \$24,929.12). JD issued Mr. Nicoll an October 28, 2020 invoice of \$3,846.75 for its September 24, September 28, and October 26, 2020 commissioning and completion services. The October 28, 2020 invoice details the work done on each of those days, the number of hours spent by each technician, and the technicians' hourly rates. It is undisputed that Mr. Nicoll has not paid this invoice.
13. Mr. Nicoll does not explicitly deny that the work set out in the October 28, 2020 invoice was done. However, he raises a number of issues with JD's work, essentially alleging that JD is in breach of contract. I deal with each of these allegations below.
14. First, in his Dispute Response, Mr. Nicoll says that JD told him the work would take 1 week to complete. JD says the 1-week timeline was estimated before it came onsite. Once onsite, JD realized the equipment provided by Mr. Nicoll was incompatible with

the manufacturer's engineered drawings and the 1-week timeline was not possible. JD says it spent countless hours working with the manufacturer to have new drawings issued and that Mr. Nicoll was kept informed during this process. JD further says that Mr. Nicoll never asked it to terminate the work after he learned about the timeline changes.

15. Mr. Nicoll does not deny that the equipment was incompatible with the drawings but says the equipment was approved by JD. JD denies that it approved the equipment and says that Mr. Nicoll had already purchased the equipment when JD was hired for the work.
16. The evidence includes a March 10, 2021 written statement from MF, JD's employee, which supports JD's submissions about the issues with the drawings. MF says that JD worked with another company to redesign the drawings so that they would work with the system that Mr. Nicoll wanted installed.
17. Based on the parties' submissions and evidence before me, I find that the 1-week timeline was an estimate and not a guaranteed contractual term. In any event, there is no evidence or allegation that Mr. Nicoll informed JD that he was terminating the contract for JD's failure to complete the work within 1 week. Therefore, I find JD did not breach the contract by not completing the work in 1 week.
18. In his Dispute Response, Mr. Nicoll also says that JD's original estimate was \$10,000 and that JD overcharged him. Mr. Nicoll does not elaborate on the \$10,000 estimate in his submissions, nor has he provided any evidence in support. As mentioned above, it is undisputed that the parties agreed the work would be done on an hourly basis. Therefore, even if JD had provided an initial estimate of \$10,000, I find there was no agreement between the parties that the work would cost no more than \$10,000. So, I find JD has not breached the contract by charging Mr. Nicoll more than \$10,000 for the work.
19. Next, Mr. Nicoll says that the system does not work, and that there have been leaks which JD has refused to fix. He says that JD's employees are incompetent and not

qualified to do the work. In contrast, JD says that the system was running when it completed the work and that JD did not hear anything from Mr. Nicoll about defects or leaks when it sent Mr. Nicoll the October 28, 2020 invoice. JD further says that its technicians are all qualified with over 15 years of experience.

20. The burden to prove breach of contract for defective or substandard work is on the party alleging the breach, in this case, Mr. Nicoll (see *Lund v. Appleford Building company Ltd. et al*, 2017 BCPC 91 at paragraph 124). Mr. Nicoll provided two videos which he says show that the heating system does not work. However, I find these videos do not adequately establish that the heating system is defective. I agree with JD's submission that the second video shows that the heating system turns on and runs. Further, there is no evidence that Mr. Nicoll informed JD about any alleged leaks or other defects and that JD refused to fix them.
21. Although Mr. Nicoll says that JD did not perform the work adequately, there is no evidence before me showing that JD's service was below the standard of care expected of plumbers. Where a subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine the appropriate standard of professional competence (see *Bergen v. Guliker*, 2015 BCCA 283). I find that a plumber's competence in installing a heating and cooling system is outside the scope of common understanding and expert evidence is, therefore, necessary. Since there is no expert evidence here, I find that Mr. Nicoll has failed to prove that JD did not perform the work adequately or that there are defects in the work.
22. Lastly, Mr. Nicoll says that JD failed to do a walk-through and handover the system. He says that on one day, the parties were supposed to walk through the system and complete the handover, but JD's employee got into a heated argument with him instead. JD says that Mr. Nicoll has never scheduled an appointment for the walk-through and handover. It says that the day Mr. Nicoll refers to was never agreed as the handover date and JD's employee was there to make some adjustments and continue working on the system. There is no evidence before me that the parties'

agreement required a final walk-through and handover. Therefore, I find JD did not breach the parties' contract by not completing these steps.

23. Since I have found JD did not breach the parties' agreement, I find the \$3,846.75 JD claims for the unpaid work is reasonable. Mr. Nicoll submits that he has incurred costs that JD should pay for, including \$3,000 in extra electricity charges, damage to the property, drywall and paint repair, and invoices from another heating company hired to fix the work. However, Mr. Nicoll has not provided any evidence to prove he has incurred these costs. So, I find he is not entitled to any set-off against the amount claimed by JD. I note Mr. Nicoll did not file a counterclaim.
24. Therefore, I find that Mr. Nicoll owes JD \$3,846.75. JD claims interest on the \$3,846.75 and says that the terms and conditions attached to its invoice clearly set out how interest is charged. However, the invoice in evidence does not address interest. There is no evidence before me that the parties had an agreement about interest. So, I find that the *Court Order Interest Act* applies, and JD is entitled to pre-judgment interest on the \$3,846.75 from October 28, 2020, the date of the invoice, to the date of this decision. This equals \$9.36.
25. 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 JD is entitled to reimbursement of \$175 in CRT fees. JD did not claim dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Mr. Nicoll to pay JD a total of \$4,031.11, broken down as follows:
 - a. \$3,846.75 in debt for the unpaid work,
 - b. \$9.36 in pre-judgment interest under the COIA, and

c. \$175 in CRT fees.

27. JD is entitled to post-judgment interest, as applicable.
28. 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.
29. 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.

Nav Shukla, Tribunal Member