



Civil Resolution Tribunal

Date Issued: May 21, 2021

File: SC-2020-006039

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Montpetit v. Murphy*, 2021 BCCRT 556

B E T W E E N :

JASON MONTPETIT

APPLICANT

A N D :

BRADLEY MURPHY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a garage door installation. The applicant, Jason Montpetit, hired the respondent, Bradley Murphy, to install a garage door opener in his home. Mr. Montpetit claims that Mr. Murphy failed to properly install it, causing the equipment to

detach from the garage door. Mr. Montpetit says this alleged equipment failure injured his left hand and damaged his garage door opener. As discussed further below, Mr. Montpetit claims \$4,000 for personal injury damages, plus \$829 for the door.

2. Mr. Murphy denies Mr. Montpetit's claims. Mr. Murphy says that a garage door opener's screws sometimes loosen and Mr. Montpetit is responsible for his own injury and losses by trying to repair the garage door opener himself.
3. Both parties are 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.

Increased claims

8. In his application for dispute resolution, Mr. Montpetit claims a \$400 refund for Mr. Murphy's services and in his submissions, Mr. Montpetit claims a \$700 refund. However, I do not find this submission to be a proper Dispute Notice amendment request under CRT Rule 1.19 and I find that allowing Mr. Montpetit to increase his claimed amount during submissions could prejudice Mr. Murphy. So, I find that Mr. Montpetit's refund claim is limited to the \$400 claimed in his application for dispute resolution.

Late evidence

9. I note that Mr. Montpetit submitted evidence late. These evidence includes witness statements and emails exchanged with a repair business, Universal Doors and Exteriors (Universal). I find that these documents are relevant to this dispute and I find that Mr. Murphy was not prejudiced by this late evidence because he had an opportunity to respond. So, I have allowed Mr. Montpetit's late evidence and I have considered this evidence in my decision.

ISSUES

10. The issues in this dispute are:
 - a. Did Mr. Murphy negligently install the garage door opener improperly, causing Mr. Montpetit's hand injury and repair costs? If so, how much does Mr. Murphy owe?
 - b. Did Mr. Murphy breach the contract by failing to properly install the garage door opener? If so, does he owe Mr. Montpetit a refund and reimbursement of his repair costs?

- c. Did Mr. Montpetit cause or contribute to his own alleged losses and injury? If so, should the damages owed by Mr. Murphy, if any, be reduced?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Montpetit must prove his 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. Mr. Murphy did not provide any evidence, though he had the opportunity to do so.
12. It is undisputed that Mr. Montpetit hired Mr. Murphy to install an overhead garage door opener at his house in September 2019. Mr. Montpetit says he owned the garage door that Mr. Murphy installed and there is no evidence or submissions before me showing that Mr. Murphy sold the garage door opener. So, I find that Mr. Murphy provided installation services, and not a sale of goods.
13. Based on text messages exchanged between the parties on September 19, 2019, I find that Mr. Montpetit agreed to pay Mr. Murphy \$700 to install garage door opener. It is undisputed that Mr. Montpetit fully paid Mr. Murphy. However, as discussed above, Mr. Montpetit's claim for a refund of Mr. Murphy's fees is limited to the \$400 claimed in his application for dispute resolution.
14. Mr. Montpetit provided an undated text message sent to Mr. Murphy describing the incident. The text message says that on June 9, 2020, while Mr. Montpetit was painting in the garage, he noticed one of the 2 garage door opener's lag bolts had fallen out. Mr. Montpetit says he took a closer look and he noted that 1 lag bolt was still connected to the metal plate but the springs were pushed up and not level. Mr. Montpetit says he pushed the spring to reinstall the dislodged bolt. However, he says the springs came loose and injured his hand when he touched it.
15. Mr. Montpetit provided a June 9, 2020 emergency department report which says he suffered blunt trauma to his left hand and wrist. Mr. Montpetit also provided a

photograph showing what appears to be multiple lacerations and scrapes to his left hand.

16. Mr. Montpetit says he hired Universal to repair and reinstall the garage door opener on June 10, 2020. Mr. Montpetit provided Universal's \$429 repair invoice that charged \$169 for a belt trolley part and \$240 to repair the garage door opener.
17. Although Mr. Montpetit does not specifically say this, I find that his claim is based either in negligence or breach of contract.

Negligence

18. To prove negligence, Mr. Montpetit must show that (1) Mr. Murphy owed him a duty of care, (2) Mr. Murphy failed to meet a reasonable standard of care, (3) it was reasonably foreseeable that Mr. Murphy's failure to meet that standard could cause Mr. Montpetit's damages, and (4) the failure caused the claimed damages (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
19. I find that Mr. Murphy owed Mr. Montpetit a duty of care when he installed the garage door opener in Mr. Montpetit's home. However, I am not satisfied that Mr. Murphy breached a reasonable standard of care. Where the subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine the appropriate standard of care (see *Bergen v. Guliker*, 2015 BCCA 283). I find that this garage door opener installation is technical and outside ordinary knowledge. I cannot determine Mr. Murphy was negligent simply because the equipment later allegedly failed. Therefore, I find expert evidence is required to prove Mr. Murphy's work fell below the standard of a reasonably competent garage door installation tradesperson.
20. Here, Mr. Montpetit has not provided any expert evidence proving that a reasonably competent door technician would have performed the garage door installation any differently or that Mr. Murphy did not complete the installation to a reasonable standard.

21. Mr. Montpetit says that Universal's technician reported multiple deficiencies. Specifically, Mr. Montpetit says that an unnamed Universal technician said that the lag bolts holding the main spring supports were not installed into the wood studs, the overhead motor was only installed hand tight, the track was misaligned and the belt was very loose. However, Mr. Montpetit did not provide a statement from this technician. Mr. Montpetit emailed Universal in November 2020 requesting a statement but Universal refused to provide one. In the absence of a statement, Mr. Montpetit's application for dispute resolution only summarizes the technician's comments. While the CRT has discretion to rely on hearsay evidence, I find these statements are unreliable and give them no weight because they are based solely on what Mr. Montpetit says that the unnamed technician said, which is double hearsay.
22. Mr. Montpetit provided photographs but they do not help me determine whether Mr. Murphy breached the standard of care. The photographs show holes in the garage door which Mr. Montpetit says was the location where Mr. Murphy had installed the garage door opener hardware. However, I cannot tell from these photographs if Mr. Murphy did something incorrectly when he installed the garage door opener.
23. Further, I note that the alleged incident did not occur until 9 months after Mr. Murphy installed the garage door opener. Given the passage of time and lack of evidence critical of Mr. Murphy's service, I am unable to infer that Mr. Murphy's improper installation caused the garage door opener to fail.
24. For the above reasons, I find that Mr. Montpetit has failed to prove that Mr. Murphy was negligent.
25. Given my conclusions above, I do not need to address Mr. Murphy's argument that Mr. Montpetit was responsible for his own injuries because he should not have tried to fix the door himself as a lay person.

Breach of contract

26. I have also considered whether Mr. Murphy breached the parties' contract. Neither party provided a written contract. However, it is undisputed that Mr. Montpetit hired

Mr. Murphy to install his garage door opener and I find that it is an implied term that his services will be performed in a good and professional manner. To prove that Mr. Murphy's work was defective, Mr. Montpetit must prove that Mr. Murphy breached their agreement by failing to properly install the garage door (see, *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124).

27. For the reasons discussed above, I find that Mr. Montpetit has failed to provide sufficient evidence to prove that Mr. Murphy failed to install the garage door opener properly. So, I dismiss Mr. Montpetit's claim for breach of contract.

28. For the above reasons, I dismiss this dispute.

29. 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. Mr. Montpetit was unsuccessful so I dismiss his claim for CRT fees. Mr. Murphy did not claim reimbursement of CRT fees or dispute-related expenses.

ORDER

30. I dismiss Mr. Montpetit's claims and this dispute.

Richard McAndrew, Tribunal Member