



Civil Resolution Tribunal

Date Issued: May 31, 2021

File: SC-2020-008282

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Blakely v. Brunning*, 2021 BCCRT 590

BETWEEN:

KAREN BLAKELY

APPLICANT

AND:

JACOB BRUNNING

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about the installation of heat pumps. The applicant, Karen Blakely, hired the respondent, Jacob Brunning, to install heat pumps in her home. Ms. Blakely says that Mr. Brunning performed the work improperly, causing \$1,758.75 in repairs costs. Ms. Blakely also acknowledges that Mr. Brunning issued a \$543.50 invoice that she has not paid. After deducting the \$543.50 outstanding under Mr. Brunning's

invoice, Ms. Blakely claims \$1,215.25 for repair costs she says were necessary due to Mr. Brunning's allegedly substandard work.

2. Mr. Brunning denies liability. He says he performed the work properly and is not responsible for the owner-supplied equipment or other people's work.
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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions. 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.

6. 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

7. The issue in this dispute Mr. Brunning improperly install the heat pumps causing Ms. Blakely to incur repair costs, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the applicant Ms. Blakely must prove her 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.
9. Ms. Blakely hired Mr. Brunning to install a heat pump system. It is undisputed that Ms. Blakely provided the heat pump system and Mr. Brunning agreed to charge \$50 per hour for his installation work.
10. Ms. Blakely's general contractor, ST, also worked on the project. Mr. Brunning says that ST is also Ms. Blakely's spouse. Ms. Blakely does not dispute this, but she says ST is a self-employed contractor and she paid him for his services. As discussed below, ST's role is relevant because Ms. Blakely says ST repaired the heat pump system that she says was leaking after Mr. Brunning completed his work. Since Ms. Blakely does not dispute her marital relationship with ST, I find that ST is her spouse. Based on this relationship, I infer that ST is an interested party in relation to this dispute.
11. Ms. Blakely claims that Mr. Brunning improperly installed the heat pump system. She says he failed to follow the manufacturer's warnings and instructions, improperly installed and connected electric wires, did not install cable clamps, did not properly instruct ST, improperly connected and installed drain lines, failed to properly mount air handler units, failed to install vibration pads and failed to test for leaks. Mr.

Brunning says that the heat pumps were fully operational when he finished and that he is not responsible for the drain lines or the electrical connections because he did not install them.

12. In her application for dispute resolution, Ms. Blakely said that Mr. Brunning was hired to install 2 heat pump units, 6 heat pump heads, electrical connections and drain lines. However, Mr. Brunning says he was only hired to install the heat pumps, not the electrical connections and drain lines. Mr. Brunning says that ST installed the drain lines and electric connections. In her submissions, Ms. Blakely says that Mr. Brunning started to install the electric supply but ST decided to do the work himself and he completed it. Further, Ms. Blakely says that ST installed the drain lines in her submissions. Since Ms. Blakely's submissions are consistent with Mr. Brunning's Dispute Response, I find that Mr. Brunning only installed the heat pumps and that ST installed the electric connections and drain lines.
13. Mr. Brunning performed work on 3 unspecified dates in the spring of 2020, partially completing the project. It is undisputed that Ms. Blakely paid Mr. Brunning for all of the work performed to that time.
14. In August 2020, Ms. Blakely says water leaked from a heat pump when it was used for the first time. Mr. Brunning returned about a week later on August 27, 2020 to finish the installation work. Mr. Brunning sent Ms. Blakely an August 31, 2020 invoice for \$543.50 for 7 hours of work performed on August 27, 2020. Mr. Brunning's invoice says that he installed the last 4 wall heads, pressure tested the system and that the system was fully operational when he left. It is undisputed that this invoice is unpaid.
15. Ms. Blakely says she tested the system the next day and discovered that 4 heat pump units were leaking. She says that 3 of the heat pumps did not have the correct drain line length, causing water to drip from the units. Ms. Blakely says ST repaired the system.

16. ST sent Ms. Blakely a September 4, 2020 invoice for \$1,758.75 for repairs to the heat pump system. The invoice billed for 33.5 hours of labour at a \$50 hourly rate. Ms. Blakely says she paid the invoice and she provided an electronic transfer receipt.

Negligence

17. To prove negligence, Ms. Blakely must show that (1) Mr. Brunning owed her a duty of care, (2) Mr. Brunning failed to meet a reasonable standard of care, (3) it was reasonably foreseeable that Mr. Brunning's failure to meet that standard could cause Ms. Blakely's damages, and (4) the failure caused the claimed damages (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
18. I find that Mr. Brunning owed Ms. Blakely a duty of care when he installed the heat pumps in her home. However, I am not satisfied that Mr. Brunning 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 heat pump installation is technical and outside ordinary knowledge. I cannot determine that Mr. Brunning was negligent simply because the system allegedly needed repairs or further work. Therefore, I find expert evidence is required to prove Mr. Brunning's work fell below the standard of a reasonably competent heat pump installation tradesperson.
19. Here, other than ST's invoice, Ms. Blakely has not provided a statement from an expert witness showing that Mr. Brunning performed his work improperly. While ST's invoice does not specifically say that Mr. Brunning breached the standard of care, it does provide detailed criticisms of Mr. Brunning's work. ST's invoice says the drain lines were the wrong length and installed in the wrong locations, the device mountings were not securely anchored to the walls, electrical cables were too short, and rubber feet were not installed on the heat pumps. I note that several of ST's complaints relate to the drain line installation and electrical connection work which he performed, not Mr. Brunning.

20. CRT rule 8.3 says that expert evidence can only be considered if the expert states their qualifications and I am satisfied that the expert has the education, training or experience to give that opinion. Ms. Blakely says that ST is a self-employed contractor with more than 18 years of experience building and renovating homes and providing property maintenance services. However, there is no evidence before me showing that ST has any expertise in heat pump installation. Further, as discussed above, I find that ST has an interest in the outcome of this dispute as Ms. Blakely's spouse. I find that Ms. Blakely has not proven that ST is qualified to provide independent expert evidence about the installation of the heat pumps. So, I do not accept ST's opinion as expert evidence that Mr. Brunning performed his work improperly.
21. Ms. Blakely provided photographs but they do not help me determine whether Mr. Brunning breached the standard of care because I cannot tell from these photographs if Mr. Brunning did something incorrectly when he installed the heat pumps.
22. For the above reasons, I find that Ms. Blakely has failed to prove that Mr. Brunning was negligent.

Breach of contract

23. I have also considered whether Mr. Brunning breached the parties' contract. I find that it is an implied term that Mr. Brunning's services will be performed in a good and professional manner. To prove that Mr. Brunning's work was defective, Ms. Blakely must prove that Mr. Brunning breached their agreement by failing to properly install the heat pumps (see, *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124).
24. For the reasons discussed above, I find that Ms. Blakely has failed to provide sufficient evidence to prove that Mr. Brunning failed to install the heat pumps properly. So, I dismiss Ms. Blakely's claim for breach of contract.
25. For the above reasons, I dismiss this dispute.

26. 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. Since Ms. Blakely was unsuccessful, I dismiss her claim for CRT fees and dispute-related expenses. Mr. Brunning did not claim reimbursement of CRT fees or dispute-related expenses.

ORDER

27. I dismiss Ms. Blakely's claims and this dispute.

Richard McAndrew, Tribunal Member