Civil Resolution Tribunal

Date Issued: June 4, 2021

File: SC-2020-008019

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jaberi v. Housininh dba Enerstar Electric*, 2021 BCCRT 616

B E T W E E N :

NAVID JABERI

APPLICANT

A N D :

MASHAL HOUSININH (Doing Business As ENERSTAR ELECTRIC)

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Richard McAndrew

INTRODUCTION

1. This dispute is about electrical connections to a furnace. The applicant, Navid Jaberi, hired the respondent electrician, Mashal Housininh, to replace an electrical control panel at a rental property. Mr. Jaberi claims that Mr. Housininh damaged his furnace by improperly connecting the wrong electric voltage. Mr. Jaberi claims $2,552 for repair costs and $2,448 for loss of rent while the furnace was broken. I infer that Mr.

Jaberi reduced his rental loss claim to $2,448 to comply with the Civil Resolution Tribunal's (CRT) $5,000 maximum monetary limit for small claims.

2. Mr. Housininh denies Mr. Jaberi's claims. Mr. Housininh says he properly connected the furnace to the control panel and that the furnace was already damaged.

3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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.

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.

Late Evidence

7. I note that both parties submitted evidence late, consisting of tenancy documents, the tenant's statement and messages, and submissions. I this evidence to be relevant and I find that neither party was prejudiced by the late evidence because both parties had an opportunity to respond. So, I have allowed both parties' late evidence and I have considered that evidence in my decision.

ISSUE

8. The issue in this dispute is whether Mr. Housininh negligently damaged the furnace, and if so, how much must he pay Mr. Jaberi.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Jaberi 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.

10. Mr. Jaberi's property manager, HN, asked Mr. Housininh to check Mr. Jaberi's rental property on April 16, 2020. The tenant provided a February 6, 2021 statement saying that some of the room lights, outlets and the thermostat had not been working for about 2 weeks. Mr. Housininh checked the property and he says that the electrical panel was "fried and overloaded." Mr. Housininh provided photographs that he says show melted breakers from the old control panel. Mr. Housininh recommended replacing the electrical panel and upgrading the electric service from 100 amps to 200 amps. Mr. Jaberi declined the upgrade and he hired Mr. Housininh to only replace the electrical panel. Mr. Housininh says he replaced the panel on May 6, 2020. Mr. Housininh says everything was working when he left and all reported issues were resolved.

11. HN says that, while checking the property on June 20, 2020 after the tenant had moved out, she noticed that the thermostat was not working. HN contacted the former

tenant and they emailed HN on June 24, 2020 saying that the thermostat had not been working since Mr. Housininh replaced the electric panel. However, I find that the tenant's email is hearsay. Although the CRT may accept hearsay evidence whether or not it would be admissible in a court of law, I do not accept this as evidence because the tenant did not say this in their subsequent February 6, 2021 statement. Based on this important omission, I find that the tenant's June 24, 2020 email is unreliable and I have not considered it in this decision.

12. HN hired BestWay Heating (BestWay) to check the furnace. BestWay Heating's technician JS went to the property on July 1, 2020. I am satisfied that as a furnace technician JS had sufficient expertise as required by CRT rule 8.3 to provide expert opinions about the furnace. JS says the furnace was inoperable because it was incorrectly supplied with 240 volts of electricity instead of 110 volts.

13. HN contacted Mr. Housininh and he met HN at the property on July 1, 2020. Mr. Housininh admits that the furnace was incorrectly connected to 240 volts instead of 120 volts when he checked the electrical panel on July 1, 2020. However, he says that this was not how he wired it in May. I discuss this further below.

14. I note that the parties have interchangeably referred to the furnace's proper voltage as both 110 and 120 volts. Since neither party provided any evidence or submissions about the difference, if any, between 110 and 120 volts in this dispute, I make no findings about this discrepancy.

15. It is undisputed that Mr. Housininh corrected the furnace power supply connection on July 1, 2020 but the furnace still did not work. Mr. Housininh went to JS's home on July 1, 2020 to pick up a spare furnace transformer to repair the furnace. Mr. Housininh returned to the property and installed the new furnace transformer that evening.

16. JS returned on July 2, 2020 to check the furnace again and he provided a July 5, 2020 quote saying that the furnace was still inoperable and that it was damaged from high voltage. JS said the control module, ECM variable speed motor and variable

speed inducer fan needed to be replaced. BestWay quoted $3,100 for parts and labour for these repairs.

17. The parties exchanged multiple messages about repairing the furnace in July 2020. On July 23, 2020, Mr. Housininh emailed HN saying that he found a contractor willing to repair the furnace for $1,200. HN responded and said that Mr. Jaberi had already hired BestWay to perform the repairs because he could not wait any longer to repair it.

18. BestWay repaired the furnace and sent Mr. Jaberi an August 13, 2020 invoice for $2,551.81. This included $149 for the July 1, 2020 inspection, $416.31 for the July 2, 2020 inspection, $180 for a used inducer, $1,175 for a new blower motor and $510 for labour. BestWay's invoice included receipts for the installed parts without markup. Mr. Jaberi claims that Mr. Housininh is responsible for the $2,551.81 repair costs.

19. Mr. Jaberi says he was unable to rent the property until August 1, 2020 because he had to wait for the furnace repairs to be completed. Mr. Jaberi says he lost 3 weeks of rental income, totaling $2,775. However, as stated above, Mr. Jaberi has reduced his loss of rent claim to $2,448.

20. Mr. Jaberi argues that Mr. Housininh admitted liability by offering to settle this dispute for $600. Mr. Housininh does not dispute making this offer. However, I find that this was a settlement offer to resolve a disputed claim. Generally, settlement negotiations are not considered as evidence (see *B.C. Children's Hospital v. Air Products Canada Ltd.*, 2003 BCCA 177) So, I did not consider Mr. Housininh's offer to pay $600 in this decision.

Negligence

21. To prove negligence, Mr. Jaberi must show that (1) Mr. Housininh owed him a duty of care, (2) Mr. Housininh failed to meet a reasonable standard of care, (3) it was reasonably foreseeable that Mr. Housininh's failure to meet that standard could cause Mr. Housininh's damages, and (4) the failure caused the claimed damages (*Mustapha v. Culligan of Canada Ltd.,* 2008 SCC 27).

22. I find that Mr. Housininh owed Mr. Jaberi a duty of care to avoid damaging his property while replacing the electrical panel.

23. 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 electric panel replacement is technical and outside ordinary knowledge. However, Mr. Housininh admits that it would be improper to connect the furnace to a 240 volt power supply. Based on this admission, I am satisfied, without needing expert evidence, that the standard of care required Mr. Housininh to connect the furnace to 110 or 120 volts, rather than 240 volts. So, I find that Mr. Housininh breached the standard of care if he connected the furnace to a 240 volt circuit.

24. Mr. Housininh says that the furnace was connected to 120 volts when he installed the new electrical panel in May 2020. Mr. Housininh provided a photograph which he says shows the new electric panel after his installation in May 2020. The photograph shows that the furnace's circuit is labelled "25A." Mr. Housininh says, and Mr. Jaberi does not dispute, that circuit "25A" is supplied by 120 volts. Mr. Housininh argues that this proves that he properly connected the furnace to 120 volts in May 2020. Mr. Housininh says the electrical panel may have been tampered with after he completed his work.

25. Based on Mr. Housininh's undisputed control panel photograph, I am satisfied that the control panel labels say that the furnace was connected to 120 volts. However, Mr. Jaberi argues that the control panel's labels are not necessarily accurate. I agree that the issue is not whether the control panel was labelled properly. Rather, the issue is whether is Mr. Housininh connected the furnace to the wrong voltage, regardless of the labels.

26. On balance, I find that Mr. Jaberi has not proved that Mr. Housininh connected the furnace to 240 volts when he replaced the panel. It is undisputed that Mr. Housininh connected the furnace to the control panel on May 6, 2020 and it is undisputed that the connections were wrong on July 1, 2020. However, I find that there is not sufficient

evidence to establish when the faulty connection was made or when the furnace stopped working. Mr. Housininh says the furnace was working when he completed his work on May 6, 2020 and HN determined that the furnace was not working on June 20, 2020. However, Mr. Jaberi did not provide any evidence showing when the furnace stopped working during that time period and the tenant's statement does not describe the furnace's condition after Mr. Housininh's work. Further, Mr. Jaberi did not provide any evidence showing that there was no one else who worked on or tampered with the control panel after Mr. Housininh's work

27. I have considered the January 24, 2021 opinion letter from R. Mike Murphy, an electrician provided by Mr. Jaberi. Mr. Murphy says he has been a Red Seal electrician for 40 years, he holds a Class "A" electrical contractors' license and has owned and operated an electrical engineering and consulting business for more than 30 years. Based on Mr. Murphy's undisputed experience, I find that Mr. Murphy has sufficient experience to provide an expert electrical opinion under CRT rule 8.3. Mr. Murphy says that the furnace damage described in BestWay's July 5, 2020 invoice and its August 13, 2020 invoice could only be caused by high voltage. Mr. Murphy says the 240 volt current destroyed the furnace's transformer, variable speed motor, variable speed inducer fan and control module. Mr. Murphy says the damage could not have been caused by an old or failing circuit breaker because that would cut off the electrical supply without damaging the furnace.

28. Although Mr. Murphy says the damage was caused by a high voltage connection, he does not provide an opinion about when the damage occurred or when the furnace would stop working after such a faulty connection. I find that Mr. Murphy's expert opinion does not help determine whether the furnace damage occurred as a result of Mr. Housininh's work on May 6, 2020 or from subsequent work or tampering at some time between May 6, 2020 and June 20, 2020.

29. Mr. Jaberi has the burden of proving his claim and I find that he has not provided sufficient evidence to prove that Mr. Housininh made the faulty control panel

connection that damaged the furnace. So, I find that Mr. Jaberi has failed to prove that Mr. Housininh breached the standard of care and I dismiss Mr. Jaberi's claim.

30. 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 Mr. Jaberi was not successful, I dismiss his request for reimbursement of CRT fees and dispute-related expenses.

ORDER

31. I dismiss Mr. Jaberi's claim and this dispute.

Richard McAndrew, Tribunal Member