



Civil Resolution Tribunal

Date Issued: June 11, 2021

File: SC-2021-000329

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *King Gas Ltd. v. Rai*, 2021 BCCRT 646

BETWEEN:

KING GAS LTD.

APPLICANT

AND:

SANDEEP RAI and HARMAIL RAI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about payment for a new hot water heater and its installation. The respondents, Sandeep Rai and Harmail Rai, hired the applicant, King Gas Ltd. (King) to install the plumbing system for their newly constructed home. King says that near the end of its work, it became apparent that there was not enough room to install a

traditional hot water heater. So, King says the Rais agreed to pay King extra to install a slimmer wall-mounted model instead. King claims \$1,575 for the additional price of installing the wall-mounted hot water heater, which the Rais did not pay.

2. The Rais say that they agreed to a fixed price for all of King's work including the hot water heater. The Rais do not deny that King installed a slim model hot water heater, but they say they never agreed to pay extra for it, or that the original project price only included a traditional hot water heater. The Rais say that they paid King the originally agreed amount for its plumbing work, and they owe nothing further.
3. The Rais are each self-represented in this dispute. King is represented by an authorized employee or principal.

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. King submitted relevant but late evidence about hot water tank prices. The Rais had an opportunity to comment on the late evidence and did not object to it. I find the Rais were not prejudiced by the late evidence, and I allow it.

ISSUE

9. The issue in this dispute is whether the Rais are responsible for paying an additional amount for a wall-mounted hot water heater, and if so, do they owe King \$1,575?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant King must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant and necessary to provide context for my decision.
11. The Rais hired King to install the plumbing and other features in a new house the Rais were building, including a hot water heater. It is undisputed the agreed price was \$16,500 plus GST for all of the work, which totals \$17,325. The parties agree that the Rais paid that total by a \$10,000 cheque dated August 6, 2019 and a \$7,325 cheque dated June 20, 2020.
12. The Rais' house was incomplete when the parties first agreed King would do the work. The parties agree that closer to completion, it became apparent that a standard-style hot water heater would not fit in the desired location in the home. It is undisputed King proposed and installed a wall-mounted on-demand style hot water heater, with the Rais' consent.

13. The parties disagree about what type of hot water heater was included in the contract price. King says its quoted price included only a “standard” hot water heater. King says that the Rais agreed to pay an extra \$1,500 plus GST for the wall-mounted unit, which equals the claimed \$1,575. King says this was an upgrade from the original agreement for a standard hot water heater. The parties agree that King invoiced the Rais \$1,575 more than originally agreed, but the Rais did not pay that additional amount.
14. In contrast, the Rais say the original contract price included the “Demand Water Heater” installed by King. The Rais say they did not agree to pay extra for the wall-mounted hot water heater. They also say that King had an opportunity to measure the hot water heater space before agreeing to the contract price, implying that King should have known what type of heater would fit in the desired location.
15. There is no written contract or correspondence between the parties in evidence. I find there are no documents before me showing what the parties agreed to. In particular, none of the evidence shows that the parties agreed King would only install a standard hot water heater for the agreed price, or shows that the Rais agreed to pay extra for a wall-mounted unit. The only evidence of the agreement is each party’s own statement about it. I find that King’s evidence and the Rais’ evidence about the contract’s contents are equally credible.
16. So, I find that the evidence of whether the parties’ agreement only included a standard hot water heater, and whether the Rais agreed to pay extra for a wall-mounted heater, is evenly balanced. I find this means that King has not met its burden of proving it is more likely than not that the Rais owe an extra \$1,575 for the wall-mounted unit under their agreement.
17. King also argues that it is entitled to the claimed \$1,575 on a *quantum meruit* basis. This is a legal principle meaning “value for work done.” I find King argues, essentially, that the Rais consented to and received a hot water heater upgrade, so they owe King for the cost of the upgrade even if the parties did not agree on the price of the upgrade work.

18. First, I find that an additional amount for the wall-mounted hot water heater would only be available as a contractual *quantum meruit* if the parties neglected to finalize the price of that work in their agreement (see *Gill Tech Framing Ltd. v. Gill*, 2012 BCSC 1913 at paragraph 253). I find that is not the case here because, as explained below, I find it unproven the wall-mounted unit was not included the parties' agreed \$17,325 price.
19. Second, I find the evidence fails to show that the installed wall-mounted unit was an upgrade. I find the evidence does not show the parties agreed to install a particular type or cost of hot water heater. However, the parties acknowledge that a standard hot water heater was inappropriate. I find it was likely an implied term of the parties' agreement that King would supply and install an appropriate hot water heater for the agreed price. So, on the evidence before me, I find the wall-mounted unit was not an upgrade from an inappropriate but less-expensive standard hot water heater, but was likely required under the parties' agreement to provide an appropriate unit.
20. Even if the wall-mounted unit was an upgrade from a standard hot water heater, I find that King also has not sufficiently proven a cost increase. King submitted quotations from hot water heater suppliers showing prices for a standard hot water heater and a wall-mounted one. King says it charged the Rais an additional \$1,575 based on the \$1,095.76 price quotation difference between the 2 types of heaters, plus an additional amount for fittings and installation fees. However, King failed to submit any evidence showing what it actually paid for the installed wall-mounted unit plus fittings, although I find this evidence was likely available to it. Further, I find that the agreed \$17,325 price paid by the Rais included installation fees and any necessary fittings, so charging for hot water heater installation and fittings a second time was inappropriate.
21. Having weighed the evidence, I find that King has failed to prove that the Rais owe anything further for the wall-mounted hot water heater, either under an agreement or on a contractual *quantum meruit* basis. I dismiss King's claims.

CRT FEES AND EXPENSES

22. 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. King was unsuccessful in its claims, but the Rais paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

23. I dismiss King's claims, and this dispute.

Chad McCarthy, Tribunal Member