



Civil Resolution Tribunal

Date of Original Decision: June 24, 2021

Date of Amended Decision: June 25, 2021

File: SC-2021-000541

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Blair v. Milani Plumbing Heating & Air Conditioning Ltd.*, 2021 BCCRT 701

B E T W E E N :

GEORGE BLAIR

APPLICANT

A N D :

MILANI PLUMBING HEATING & AIR CONDITIONING LTD

RESPONDENT

AMENDEDⁱ REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about a furnace warranty.
2. The applicant, George Blair, purchased a new furnace from the respondent, Milani Plumbing Heating & Air Conditioning Ltd. (Milani), in 2012. In October 2020, the

applicant discovered that the furnace's heat exchanger was cracked and so the furnace needed to be replaced. Mr. Blair says Milani charged him labour costs to install the new furnace, contrary to the 10-year warranty Milani provided in 2012. Mr. Blair claims \$2,500 for installation costs he paid to Milani.

3. Milani says Mr. Blair did not have his 2012 furnace serviced annually by Milani, as required by the warranty. I infer Milani argues that the warranty agreement is no longer valid because Mr. Blair did not comply with the service term.
4. Mr. Blair represents himself. Milani is represented by its manager.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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

9. The issue in this dispute is whether Milani must reimburse Mr. Blair the furnace installation costs under the 2012 warranty agreement.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one Mr. Blair, as the applicant, must prove his claim on a balance of probabilities. I have reviewed the parties' submissions and weighed their evidence but only refer to that necessary to explain and provide context to my decision.
11. Milani installed a new furnace in Mr. Blair's house on April 5, 2020. In October 2020 a Fortis BC technician discovered carbon monoxide leaking from Mr. Blair's furnace and shut it off. The heat exchanger in the furnace was cracked. Milani installed a new furnace on October 22, 2020. Milani did not charge Mr. Blair for the new furnace but charged \$2,650 to install the furnace. Mr. Blair paid the installation cost under protest. None of this is disputed.
12. The parties agree that Milani provided a 10-year warranty on the 2012 furnace. They disagree on whether annual service was an agreed upon warranty term.
13. Mr. Blair says the full agreement between himself and Milani is contained in an April 4, 2012 Scope of Work document he provided. Based on the handwritten notes, I find Milani offered to install a new furnace with a specific make and model number, with a 10-year parts and labour warranty, estimated at a total cost of \$4,250.40. By signing the agreement and paying the \$2,200 required deposit, I find Mr. Blair agreed to the Scope of Work. I agree with Mr. Blair that the document includes a pre-printed term that says the agreement contains the entire contract between the parties and no other

terms are valid, unless recorded in writing and signed by both parties. I find the April 4, 2012 contract does not contain any terms about the warranty, such as a requirement for annual service. So, I find the parties' original contract was for Milani to provide and install a new, specific, furnace with a 10-year parts and labour warranty and Mr. Blair was to pay \$4,250.40 for the furnace and the warranty, with some exceptions for increased cost which I find do not apply here.

14. Milani says the 10-year warranty is subject to servicing requirements, as set out in its April 5, 2012 invoice, submitted by both parties. Handwritten notes on the preprinted invoice set out the work done and that \$4,250.40 is the final cost. Stamped in red on the invoice is a note that the new furnace was installed "per Contract" which, I find, likely refers to the April 4, 2012 contract, as there is no other document or agreement it could refer to. The red stamp also says the 10-year warranty is subject to the "Complete Terms and Conditions on furnace only". Another red stamp on the left side of the invoice, in large print, indicates "All warranties are subject to annual maintenance by MILANI. Please check, clean and/or replace filter monthly."
15. Mr. Blair says he did not agree to the annual service term as part of the warranty, because he did not sign underneath that term on the April 5, 2012 invoice. I agree, as there is a preprinted "customer approval signature" line directly below the red stamped annual service term with no signature. Although Mr. Blair signed the bottom of the right side of the invoice, I find that signature indicates Mr. Blair's satisfaction with the work completed, his agreement to pay the charges indicated, and his acknowledgment of the interest charged on overdue accounts. This is because those terms are pre-printed within a box with the signature line.
16. On balance, I find Mr. Blair did not agree to modify the April 4, 2012 contract to include an annual service requirement as part of Milani's 10-year warranty. I find Milani cannot add a term to the April 4, 2012 contract by unilaterally including it on the April 5, 2012 invoice. In order for the term to be binding on both parties, Mr. Blair must have consented to it, which I find he has not. So, I find Milani is bound by the April 4,

2012 contract to provide parts and labour under the 10-year warranty on the 2012 furnace, regardless of whether Milani serviced the 2012 furnace annually or not.

17. It is undisputed that Mr. Blair's 2012 furnace needed to be replaced. Based on Milani's October 22, 2020 invoice, I find Milani charged Mr. Blair \$2,500 plus \$125 in GST on to install a new furnace but did not charge him for the furnace itself. Based on Mr. Blair's visa statement, I find he paid the \$2,650 invoice on the same day. I find the 2012 furnace was still covered by the 10-year warranty in October 2020 and so find Milani must reimburse Mr. Blair the labour charges for installing the new furnace. However, I find Mr. Blair is only entitled to reimbursement of the \$2,500 he claimed in this dispute, even though the invoice was for \$2,650.
18. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Blair is entitled to pre-judgment interest on the \$2,500 labour charge from October 22, 2020, the date he paid the charge, to the date of this decision. This equals \$7.58.
19. 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 not to follow the general rule in this case. I find Mr. Blair is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

20. Within 30 days of the date of this order, I order Milani to pay Mr. Blair a total of \$2,632.58, broken down as follows:
 - a. \$2,500 reimbursement for labour charges,
 - b. \$7.58 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
21. Mr. Blair is entitled to post-judgment interest, as applicable.

22. 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.
23. 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.

Sherelle Goodwin, Tribunal Member

ⁱ I have amended this decision to correct an inadvertent error in paragraph 17, marked with underlined text. I make this amendment under the authority of section 64 of the CRTA.