



# Civil Resolution Tribunal

Date Issued: August 9, 2021

File: SC-2021-001469

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. v. French*, 2021 BCCRT 869

B E T W E E N :

ASLAN ELECTRICAL, PLUMBING, GASFITTING, REFRIGERATION &  
SHEETMETAL SERVICES LTD.

**APPLICANT**

A N D :

GORDON FRENCH also known as GORD FRENCH

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about plumbing services. The applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan), says it provided plumbing services to the respondent, Gordon French also known as Gord French, for

which it has not been paid. Aslan claims \$730.70 in unpaid plumbing services and contractual interest at 19.6% annually.

2. Mr. French says Aslan overcharged him for labour and materials and says Aslan did not sufficiently resolve his plumbing issue.
3. Aslan is represented by an employee or principal and Mr. French represents himself.

## **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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Aslan overcharge Mr. French for labour or materials?
  - b. Was Aslan's plumbing work substandard or incomplete?
  - c. Is Aslan entitled to contractual interest at 19.6% annually?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Aslan must prove its claims on a balance of probabilities. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
10. It is undisputed that in August 2020, Mr. French hired Aslan to clean a clogged drain at a property he owned but did not live in at the time. Mr. French signed a work authorization form with Aslan on August 4, 2020 for drain cleaning at the property. Aslan says this created a binding contract between the parties and Mr. French does not dispute this. I agree that the work order is a binding contract between the parties (contract).
11. It is undisputed that Aslan went to Mr. French's property on August 4, 2020 to attempt to clear the clogged drain. Aslan says it also went to Mr. French's property on August 5, 2020 to finish cleaning the drain, which Mr. French denies. I address this further below.
12. Aslan invoiced Mr. French \$730.70 for the work. The invoice includes 2.5 hours of labour on August 4, 2020 for a total of \$245, and 2 hours of labour on August 5, 2020 for a total of \$196. The invoice also charges \$57.90 for 2 drain cleaners, \$20 for shop supplies, \$30 for a truck, and \$147 for drainage machines, plus 5% GST. It is undisputed that Aslan did not send Mr. French the invoice until February 10, 2021, citing COVID-19 and staff turnover as an explanation for the delay. The parties

disagree about the quality and extent of Aslan's work, and Mr. French disputes the invoice's amount.

### ***Did Aslan Overcharge Mr. French for Labour or Materials?***

#### *Labour*

13. Mr. French says Aslan overcharged him for labour. He says Aslan performed the work only on August 4, 2020 and not on August 5, 2020. Mr. French was not at the property on either of those dates, but he submitted a March 8, 2021 email statement from his tenant who was living at the property at the time. The tenant said an Aslan representative came to the property on the morning of August 4, 2020 but said they would have to return later with a larger auger. The tenant said later that day another Aslan representative came to the property but was unable to complete the job. The tenant says later that day the first Aslan representative returned, uninstalled the toilet, and unclogged it. The tenant says Aslan was only at the property on August 4, 2020, not August 5, 2020, and says Aslan was not there for a total of 4.5 hours as it claims.
14. Aslan says it performed work on both August 4 and 5, 2020, and it submitted work orders and GPS records supporting its position. It also says Mr. French's tenant scheduled a time for Aslan to perform the work on August 4, 2020, but when Aslan first arrived at the property the tenant did not answer the door or their phone. Aslan says when its technicians returned on August 5, 2020, the tenant was again not available at the scheduled time. I find the GPS records reflect Aslan's truck making multiple visits to Mr. French's property on both August 4 and August 5, 2020. Mr. French does not specifically address Aslan's allegation that his tenant was not available at the scheduled times.
15. On balance, I prefer Aslan's evidence about its dates and hours of work. On their own, the GPS records showing that an Aslan truck was in the vicinity of Mr. French's property on August 4 and 5, 2020 do not prove that Aslan performed work at Mr. French's property on those dates. However, I find the dates and times on the GPS records are generally consistent with those on the work orders, and consistent with Aslan's version of events. I also find the GPS records and work orders made at the

time the work was performed are more reliable than Mr. French's tenant's email statement made more than 7 months after Aslan performed the work, by which time I would not expect the tenant to have a perfect memory about the details of Aslan's work.

16. Mr. French also says the work at his property was a 1-person job and did not require 2 Aslan representatives. However, I find the work orders for both August 4 and 5, 2020 indicate that only one Aslan representative performed the work, so I find Mr. French's allegation is unfounded.
17. Mr. French acknowledges that under the contract he agreed to pay Aslan \$98 per hour for labour. According to the contract, I find Mr. French agreed to pay for Aslan's time starting from when its technician left the shop until they returned to the shop, "including any shop time, mobilization, demobilization, and necessary trips to obtain materials".
18. On the evidence before me I find Aslan's labour charges on the invoice are consistent with the labour hours recorded in the work orders and GPS reports, with one exception. The August 5, 2020 work order states that Aslan's technician first worked at Mr. French's property that day from 8:00 a.m. to 9:00 a.m. and returned later that morning from 10:30 a.m. to 11:30 a.m. However, the GPS records show Aslan's technician left its shop for the first visit that morning at 8:19 a.m. and returned at 8:47 a.m., which is only 28 minutes. Based on Aslan's labour charges of 2.5 hours on August 4, 2020, I find it reasonable for Aslan to round 28 minutes up to 30 minutes, but not up to 1 hour. So, I find Aslan performed only 1.5 hours of work on August 5, 2020, not 2 hours as stated in the invoice. While the contract states a minimum 2-hour labour charge, it does not specify whether the minimum is per day or per job. I find this ambiguity should be resolved in favour of Mr. French, who did not draft the terms of the contract, and the total labour charged for the job exceeded 2 hours. So, I find Aslan overcharged Mr. French for 0.5 hours of labour on August 5, 2020 which equals \$51.45 including GST, and the invoice must be reduced by this amount. I find

the remaining labour charges on the invoice are consistent with Aslan's work orders and GPS records.

### Materials

19. Mr. French says Aslan overcharged him for materials. He says he did not agree to pay Aslan any additional charges for drain cleaner, shop supplies, trucks, or drainage machines. However, under the terms of the contract, I find Mr. French agreed to pay Aslan "charges for mileage and vehicle, permits, administration fees, shop supplies, freight, material restocking fees, subtrades, equipment/tool rental, and cleaning". I find all of the non-labour charges in the invoice are captured by this term of the contract. However, I find it is an implied term of the contract that such fees must be reasonable in the circumstances.
20. Mr. French says some of the materials fees in the invoice are unreasonable. He says Aslan did not specify in its invoice which shop supplies it used for the work, and I agree. Aslan had the opportunity to clarify in its submissions what shop supplies it used for the work but did not do so. In the absence of such information in the invoice or in Aslan's submissions, I find the \$20 charge for shop supplies is unreasonable. I find the total invoice amount must be reduced by \$21, which is the total of the \$20 shop supplies charge plus GST.
21. Mr. French also questions why Aslan required 2 drainage machines for an auger job. However, I find that whether it was unreasonable for Aslan to use 2 drainage machines for the work is beyond general knowledge and requires expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). Mr. French did not provide any expert or other evidence to support his allegation, so I find he has not proven the charges for 2 drainage machines are unreasonable.
22. Mr. French also says it was unnecessary for Aslan to use drain cleaner. He provided a statement from a representative of another plumbing company stating that they would not use drain cleaner for an auger job. However, Mr. French did not provide the full name of the person who gave the statement or their qualifications. So, I find

the statement does not meet the requirements for expert evidence under CRT rule 8.3, and in the circumstances, I decline to exercise my authority to waive those requirements. I also find that one company's policy of not using drain cleaner for an auger job does not necessarily mean it would be unnecessary or inappropriate for another company to do so. For these reasons, I place no weight on this evidence.

23. In summary, I find the shop supplies charge in the invoice is unreasonable and must be reduced from the total invoice amount. I find the remainder of the materials charges in the invoice are contemplated by the contract and Mr. French has not proven that they are unreasonable.

***Was Aslan's plumbing work substandard or incomplete?***

24. Mr. French says Aslan's work was deficient and failed to properly resolve the plumbing issue at his property. However, for the following reasons, I find Mr. French has not proven this claim.
25. I find that whether Aslan's work was deficient or below industry standards is beyond general knowledge and requires expert evidence (see *Bergen*, noted above). Mr. French failed to submit any expert opinion evidence about the quality of Aslan's work aside from the statement from a plumbing company representative which I have given no weight, as noted above.
26. Mr. French says Aslan did not actually resolve his plumbing issue at his property, and he had to hire another company 2 weeks later to complete the work properly. He submitted an August 21, 2020 invoice for those plumbing services for \$160.13 including tax. However, I find the exact nature of the plumbing issue at Mr. French's property is unclear on the evidence before me. Mr. French says he hired Aslan to auger a drain but does not elaborate on the details. It is unclear on the evidence whether the plumbing issue at his property later in August 2020 was connected to the issue Aslan repaired earlier that month. I also note Aslan's August 5, 2020 work order and Mr. French's tenant's statement both indicate that Aslan unclogged the drain.

27. Mr. French also says Aslan did not perform the work as instructed by his tenant, but instead augered the drain from within the house. However, there is no indication that Mr. French's tenant has any plumbing expertise, so I find it would not necessarily have been reasonable for Aslan to follow the tenant's instructions.
28. For all of these reasons, I find Mr. French has not established that Aslan's work was substandard or incomplete, or that it failed to resolve the plumbing issue at his property in early August 2020.

***Is Aslan entitled to contractual interest?***

29. Aslan claims 19.6% annual interest on the unpaid invoice. It relies on the contract which states that "all outstanding balances are subject to a 1.5% per month service charge (19.6% per annum) with a \$2.00 monthly minimum." The invoice says payment is due on receipt of invoice and states, "interest charged at 1.5% per month (19.56% per annum) on past due accounts". Mr. French says he should not have to pay interest on the invoice because Aslan did not send him the invoice until February 10, 2021, more than 6 months after it performed the work. He says Aslan did not provide a reasonable excuse for its lengthy delay in sending him the invoice.
30. While I appreciate Mr. French's frustration with a 6-month delay in invoicing, the contract does not require Aslan to invoice for its work within a specific time frame. Mr. French says that in between the time Aslan performed the work and sent him the invoice, he sold his rental property so he can no longer write off the expense. However, he provided no evidence that he sold the property.
31. I find that under the contract, Mr. French is required to pay interest on all outstanding amounts. However, at 1.5% per month, I find the annual interest rate should be 18%, not 19.6% as stated in the contract or 19.56% as stated in the invoice.
32. Having reduced the labour charges on the invoice by \$51.45 and the materials charges by \$21, I find the total amount owing on the invoice is \$658.25. I find Aslan is entitled to 18% annual interest on the \$658.25 owing under the invoice, calculated



from February 10, 2021, which is the date Aslan sent Mr. French the invoice, to the date of this decision. This equals \$58.76.

33. 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 Aslan was generally successful, I find it is entitled to reimbursement of \$125 in CRT fees. It did not claim any dispute-related expenses.

## ORDERS

34. Within 30 days of the date of this order, I order Mr. French to pay Aslan a total of \$842.01, broken down as follows:
- a. \$658.25 as payment of the invoice,
  - b. \$58.76 in contractual interest, and
  - c. \$125 in CRT fees.
35. Aslan is entitled to post-judgment interest, as applicable.
36. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

37. 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.

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Sarah Orr, Tribunal Member