



# Civil Resolution Tribunal

Date Issued: August 24, 2021

File: SC-2021-002656

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sarpalius (dba Cozy Homes Fireplaces) v. Rempel*, 2021 BCCRT 936

**B E T W E E N :**

JIM SARPALIUS (Doing Business As COZY HOMES FIREPLACES)

**APPLICANT**

**A N D :**

RUSSELL JOHN REMPEL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about a fireplace installation.
2. The applicant, Jim Sarpalius (Doing Business As Cozy Homes Fireplaces), says he installed a fireplace for the respondent, Russell John Rempel, but he has not been paid. Mr. Sarpalius claims \$2,980.41 for his outstanding invoice.

3. Mr. Rempel says the fireplace installation is incomplete and that Mr. Sarpalius' work was unsatisfactory. Mr. Rempel does not otherwise take issue with Mr. Sarpalius' invoice. As no counterclaim was filed, I infer Mr. Rempel argues that he owes Mr. Sarpalius nothing because he is entitled to a set-off for Mr. Sarpalius' incomplete and substandard work.
4. The parties are each self-represented.

## **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.

9. Both parties submitted all their evidence after the CRT's evidence deadline. Neither party objected to the other's late evidence, and each had the opportunity to review and provide submissions in response to the late evidence. I find both parties' late evidence is relevant to this dispute. Consistent with the CRT's mandate that includes flexibility, I find there is no actual prejudice to the parties in allowing the late evidence, and I do so.

## **ISSUES**

10. The issues in this dispute are:
  - a. Whether Mr. Sarpalius' fireplace installation work was incomplete or substandard?
  - b. If so, to what extent is Mr. Rempel entitled to a set-off of Mr. Sarpalius' invoice?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Mr. Sarpalius must prove his claims on a balance of probabilities. However, the burden is on Mr. Rempel to prove the deficiencies he alleges, as discussed below. I have read all the parties' evidence and submissions but refer only to what I find is necessary to explain my decision.
12. It is undisputed that in August 2020, Mr. Rempel contacted Mr. Sarpalius' business, Cozy Homes Fireplaces (Cozy Homes), to discuss replacing his existing wood burning fireplace with a gas fireplace. The parties agree that Mr. Sarpalius advised Mr. Rempel that his existing fireplace and liner had to be removed and the chimney swept before Mr. Sarpalius could install the gas appliance. Mr. Sarpalius provided Mr. Rempel with the contact information for a chimney sweep to complete that work.
13. It is undisputed that Mr. Rempel hired the chimney company that Mr. Sarpalius recommended, Paul's Chimney (PC), to remove his existing wood fireplace. One of Mr. Rempel's complaints is that PC was unable to pull out the chimney liner, and it was left askew on top of his chimney. However, Mr. Rempel agrees that Mr. Sarpalius

was not a party to his contract with PC. Since Mr. Sarpalius was not a party to Mr. Rempel's contract with PC, I find Mr. Sarpalius is not responsible for any alleged deficiencies related to the existing wood fireplace liner and its removal.

14. The parties agree that because the wood fireplace liner was not removed, Mr. Sarpalius could not use the chimney to vent the gas stove. So, on Mr. Sarpalius' advice, Mr. Rempel cut a hole in the masonry chimney to vent the gas fireplace out the side wall instead.
15. The evidence shows that Mr. Sarpalius provided a Mr. Rempel with an October 7, 2020 quote for the gas stove installation. The quote in evidence included a Valor Retrofire Direct Vent fireplace, slider plate, log set, and fret, plus amounts for permits, venting, labour, and installing gas lines, all totaling \$6,655.68. I find the quote comprises the parties' contract.
16. The parties agree they had initially planned to run the gas lines through Mr. Rempel's crawlspace. However, Mr. Sarpalius later discovered the crawlspace was too small and decided the gas lines would have to run on the house's exterior. Mr. Rempel does not dispute that he agreed to the new plan.
17. Mr. Sarpalius says that he completed the fireplace insert and gas line installation as set out in his quote. He says Mr. Rempel has refused to pay the \$2,980.41 balance owing.
18. I note that Mr. Sarpalius' December 11, 2020 final invoice does not include the fret that is on the quote. Mr. Sarpalius says Mr. Rempel cancelled it due to its delivery time, which Mr. Rempel does not dispute. So, the total on the final invoice is only \$6,480.41. It is undisputed that Mr. Rempel paid a \$3,500 deposit on October 15, 2020. The difference between \$6,480.41 and the deposit is the claimed \$2,980.41.
19. Mr. Rempel argues that Mr. Sarpalius has not completed the installation because there is no trim around the fireplace, so it does not look like the pictures of the fireplace in the advertisement brochure. Mr. Rempel says Mr. Sarpalius never told

him he would need to get someone else to finish the trim. Mr. Rempel also says the gas line must be moved because it is blocking his only access to his crawlspace.

20. I turn first to the trim issue.
21. Mr. Sarpalius says that installing trim around the fireplace was not part of the quoted scope of work. He says the fireplace model Mr. Rempel ordered is for combustible fireplaces, such as Mr. Rempel's masonry chimney, and trim is not included. Mr. Sarpalius says these fireplaces generally need custom trim to finish the install because combustible fireplace openings do not have standard sizing. He says homeowners may finish the opening with drywall, tile, steel studs, or other finishing of their choosing. Mr. Sarpalius provided a screenshot of the available options for Mr. Rempel's gas fireplace, and the options do not show any trims or fronts for his model.
22. In contrast, Mr. Sarpalius provided a screenshot for the "zero clearance" fireplace model options, which shows various trims and fronts available to order. He explained that the "zero clearance" fireplace model is generally installed on a flat wall in a standard opening size, so the manufacturer offers some standard trims.
23. I find that the fireplace model Mr. Rempel ordered did not include trim, and there is no indication on the October 7, 2020 quote that Mr. Rempel ordered any trim. I also find there is insufficient evidence to conclude that Mr. Sarpalius agreed to make Mr. Rempel's fireplace look like the fireplaces in the advertisement brochure.
24. Further, the photographs of Mr. Rempel's installed gas fireplace show the opening is surrounded by rough, uneven stone masonry. I accept Mr. Sarpalius' evidence that Mr. Rempel's fireplace requires custom trim, given the size and shape of the opening. I find Mr. Rempel has not proven Mr. Sarpalius agreed to supply or install trim around the fireplace as part of the agreed price.
25. On the evidence before me, I find Mr. Sarpalius has shown he completed the work as set out in his quote and final invoice. Therefore, I find Mr. Rempel must pay Mr. Sarpalius the outstanding \$2,980.41, subject to any set-off for deficient work, as discussed below.

26. I turn then to the gas line installation.
27. When a contractor's work is deficient, a homeowner may seek to set-off the cost of remedying the deficiencies against what the contractor is owed under the contract. The burden of proving a deficiency is on the person asserting it (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91). So, I find Mr. Rempel bears the burden of proving what work was done in a substandard way. He also bears the burden of proving the cost of repairing any deficiencies.
28. Mr. Rempel provided a photograph of the gas line on his house's exterior, which shows the pipe crossing the bottom of a screened opening in the wall. Mr. Rempel says the opening is his only access to the crawlspace where his water shut-off valve is located, which he says Mr. Sarpalius knew. He says the gas line location makes it dangerous for him to access the crawlspace, so it should be re-routed.
29. Mr. Sarpalius argues the wall opening was not a crawlspace access, but a cold air intake vent. He denies that the pipe's location is dangerous. He also says that Mr. Rempel told him after the gas line was installed that he objected to its location because he planned to create a larger opening to access the crawlspace there in the future. Mr. Sarpalius says he offered to relocate the gas line for an extra cost. However, he says Mr. Rempel decided he would ask his gasfitter brother-in-law to move the gas line for free in the future, if necessary.
30. On the wall opening issue, I find I am left with an evidentiary tie. Mr. Sarpalius did not provide any additional evidence about other crawlspace access points, and Mr. Rempel did not specifically respond to Mr. Sarpalius' submission that the opening was a cold air intake vent. I find I am unable to determine from the photograph alone whether the opening is a crawlspace access or simply an air intake vent.
31. I accept Mr. Rempel's undisputed evidence that he was not home during the gas line installation. So, while the parties agreed Mr. Sarpalius would run the gas line on the house's exterior, I find the parties had no specific agreement about the gas line's route. In particular, I find Mr. Sarpalius did not advise Mr. Rempel in advance that the

gas line would cross the bottom of the screened wall opening. In any event, Mr. Rempel did not say that the gas line completely prevented him from accessing the opening, just that it made it dangerous. I find the question is whether Mr. Sarpalius' work in routing the gas line fell below the required standard of care.

32. Where an allegation of deficient work is based on a claim that the work fell below the required professional standard, and the subject matter is outside ordinary knowledge, expert evidence is required to prove the deficiency (see *Bergen v. Guliker*, 2015 BCCA 283). I find expert evidence is required here, and there is none. Without expert evidence, I am unable to conclude that Mr. Sarpalius' work was substandard.
33. I note that even if Mr. Rempel had proven Mr. Sarpalius' gas line work was deficient, I find he did not prove his damages. Mr. Rempel provided no evidence about the cost to re-route the gas line. Therefore, I would not have allowed a set-off in any event for failure to prove damages.
34. Given that Mr. Rempel has not proven Mr. Sarpalius' work was deficient, I find he must pay Mr. Sarpalius the claimed \$2,980.41.
35. The *Court Order Interest Act* applies to the CRT. Mr. Sarpalius is entitled to pre-judgment interest on the \$2,980.41 from December 11, 2020, the date of his final invoice, to the date of this decision. This equals \$9.42.
36. 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 find Mr. Sarpalius is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

## **ORDERS**

37. Within 30 days of the date of this decision, I order Mr. Rempel to pay Mr. Sarpalius a total of \$3,114.83, broken down as follows:
  - a. \$2,980.41 in debt for the fireplace installation,

- b. \$9.42 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

38. Mr. Sarpalius is entitled to post-judgment interest, as applicable.

39. 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.

40. 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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Kristin Gardner, Tribunal Member