



Civil Resolution Tribunal

Date Issued: January 20, 2022

File: SC-2021-004632

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boulton v. 0986368 B.C. Ltd.*, 2022 BCCRT 76

B E T W E E N :

DALLON BOULTBEE

APPLICANT

A N D :

0986368 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Dallon Boulton, hired the respondent, 0986368 B.C. Ltd. (098), to fix a pinhole leak in a dishwasher hose. Mr. Boulton says he realized 098 had overcharged for parts and labour in its quote. This occurred prior to 098 completing repairs but after Mr. Boulton had already paid a deposit. He says 098 wrongfully

refused to return the deposit. Mr. Boulton claims for a refund of \$156.97 and \$1.00 for pain and suffering. His claims total \$157.97.

2. 098 denies liability and says the deposit was nonrefundable. It also says that in any event, its technician was entitled to charge \$75 for visiting and diagnosing the dishwasher.
3. Mr. Boulton is self-represented. An employee or principal represents 098.
4. For the reasons that follow, I dismiss Mr. Boulton's claims.

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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38,

the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

ISSUES

9. The issues in this dispute is whether 098 overcharge for its services.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Boulton must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision. I note that 098 did not provide evidence or arguments despite the opportunity to do so. I have relied on 098's Dispute Response for its version of events, as their written submissions was only the word "non-compliance".
11. I begin with the undisputed background. In June 2021, Mr. Boulton's dishwasher began leaking. His partner called 098. 098 sent a technician to meet Mr. Boulton and examine the dishwasher in person.
12. The technician said the dishwasher required a new hose. As shown in a June 9, 2021 estimate, the technician advised it would cost \$299 for parts and labour to repair the dishwasher. The estimate said Mr. Boulton had to "pay half now". I find Mr. Boulton did so as the estimate showed a balance owing of \$149.50. I note the estimate

indicates the deposit is slightly less than Mr. Boulton's claimed amount of \$156.97. The parties did not explain the discrepancy.

13. 098 submits its technicians charge \$75 per visit but the estimate does not refer to this. The estimate did not say if the amount paid was refundable.
14. The technician left to obtain the hose. Mr. Boulton says that after the technician left, his partner looked up the hose's cost and advised it was \$40. Mr. Boulton did not provide a copy of his search or any other evidence about the hose. Mr. Boulton then called 098 and asked for his money back. 098 refused to do so. Mr. Boulton in turn refused 098 access to complete repairs. Mr. Boulton says he subsequently paid another repairperson to fix the dishwasher on June 16, 2021. There is no evidence or submission about how much this cost.

Did 098 overcharge for its services?

15. Mr. Boulton's main argument is that 098 overcharged for the hose. He denies agreeing to the visit charge of \$75. So, I find his argument is that 1) the parties agreed that 098 would charge a reasonable fee for parts and labour, 2) 098 breached this term, and 3) the breach entitled Mr. Boulton to terminate the contract and sue for damages.
16. Mr. Boulton is the applicant and as such bears the burden of proof. I find that he did not provide any evidence to show 098's estimate was unreasonable. As noted earlier, he did not provide any evidence about the hose's cost. Although he said he arranged to have another repairperson look at the dishwasher in June 2021, he provided no estimates or invoices from that visit. I find that Mr. Boulton had the opportunity to do so as he provided his evidence to the CRT 2 months later, in August 2021.
17. Instead, Mr. Boulton's evidence consisted largely of negative online customer reviews of 098. While I acknowledge this evidence, I do not find it sufficiently relevant to whether 098 overcharged for the particular work at issue.

18. Though not directly raised by the parties, I also considered whether the money paid was a partial payment instead of a true deposit. In law, a true deposit is designed to motivate contracting parties to carry out their bargains. So, a deposit is generally forfeited by a buyer who repudiates the contract. An example of repudiation is when a party refuses to purchase what was bargained for. In contrast, for a seller to keep a partial payment, the seller must prove actual loss to justify keeping the money received. See *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30.
19. Mr. Boulton submits that the technician said they'd have to drive an hour and a half to get the hose. Mr. Boulton expressed some skepticism about this. Nonetheless, given this context, I find it likely that the parties agreed that the money paid was a true deposit, used to ensure any time or money spent obtaining the part would be compensated for. So, I find Mr. Boulton forfeited the deposit when he repudiated the contract by denying 098 access to complete repairs.
20. For all those reasons, I dismiss Mr. Boulton's claims.
21. 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. I dismiss Mr. Boulton's claims for reimbursement. 098 did not claim any dispute-related expenses, so I order none.

ORDER

22. I dismiss Mr. Boulton's claims and this dispute.

David Jiang, Tribunal Member