



Civil Resolution Tribunal

Date Issued: February 4, 2022

File: SC-2021-003323

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *JD Plumbing and Gas Inc. v. Caulford*, 2022 BCCRT 137

B E T W E E N :

JD PLUMBING AND GAS INC.

APPLICANT

A N D :

COURTNEY CAULFORD

RESPONDENT

A N D :

JD PLUMBING AND GAS INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about plumbing repair services. The respondent and applicant by counterclaim, Courtney Caulford, hired the applicant and respondent by counterclaim, JD Plumbing and Gas Inc. (JD), to install a hot water tank. Shortly after JD did this work, Ms. Caulford asked JD to return to repair a water leak. JD claims \$559.13 for its unpaid leak repair service.
2. Ms. Caulford says she is not responsible for JD's leak repair work because she claims JD negligently caused the leak. Ms. Caulford counterclaims for \$5,000 for uninsured property damage, future insurance premium increases, and hotel expenses relating to the water leak. JD says it properly performed its work and did not cause the leak.
3. JD is represented by an employee. Ms. Caulford is self-represented.

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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. 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. In the circumstances of this dispute, I find that I am properly able to

assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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. How much, if any, does Ms. Caulford owe JD for unpaid plumbing services?
 - b. Does JD owe Ms. Caulford damages for negligently causing the leak? If so, how much JD owe?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, JD must prove its claims on a balance of probabilities. Ms. Caulford has the same burden to prove her counterclaim. I have read all the parties' evidence and submissions, but I refer only to what is necessary to explain my decision.
10. The parties agree that JD installed an electric hot water tank with an expansion tank at Ms. Caulford's property on July 7, 2020, which Ms. Caulford paid for. Ms. Caulford asked JD to return to her home on approximately July 14, 2020 because a copper

pipe burst in her floor, resulting in an extensive water leak. JD issued a July 14, 2020 invoice for \$559.13 for leak repair services which Ms. Caulford has not paid.

JD's claim for unpaid repair service

11. Ms. Caulford says that she is not responsible for JD's July 14, 2020 repair services because she alleges JD negligently installed the hot water and expansion tank which she claims caused the pipe rupture. As such, Ms. Caulford says that she did not expect JD to charge for the July 14, 2020 work. In contrast, JD claims Ms. Caulford is responsible for its leak repair work because the pipe rupture was unrelated to its work.
12. Although the pipe leak occurred shortly after JD's July 7, 2020 plumbing work, Ms. Caulford did not provide any submissions or evidence showing that JD agreed to repair the leak as uncharged warranty work. It is undisputed that Ms. Caulford requested JD's repair services and this work was performed. Without proving that JD agreed to perform this work without charge, I find that there was an implied term of their agreement that Ms. Caulford would pay for JD's services that she requested. So, I find that Ms. Caulford must pay JP for its leak repair work, subject to her negligence counterclaim discussed below.
13. JD's July 14, 2020 invoice charged \$559.13. This includes \$339 for repair service and \$39.85 for materials. Since Ms. Caulford does not dispute the amount of these charges, I find that these fees are reasonable and owed.
14. The July 14, 2020 invoice also charged \$63.65 for interest and \$90 for administrative expenses to deal with Ms. Caulford's insurance company. However, JD has not provided any evidence or submissions showing that Ms. Caulford agreed to pay contractual interest or pay for JD's administrative communications with her insurance company. So, I find that JD has not proved that the contract included these charges and I find that Ms. Caulford does not owe JD a debt for contractual interest or administrative expenses.

15. Based on the above, I find that Ms. Caulford owes JD \$378.85, plus tax, for labour and materials to repair the water leak. With tax, I find that Ms. Caulford owes JD \$397.78. This is subject to the counterclaim, which I address below.

Ms. Caulford's counterclaim for property damage

16. Ms. Caulford claims that JD negligently installed the expansion tank. To prove negligence, Ms. Caulford must prove that her home was damaged, and the damage was caused by JD's negligent conduct (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

17. I find that JD owed Ms. Caulford a duty of care to install her hot water and expansion tank with the competence and skill of a reasonable plumber. Ms. Caulford argues that JD breached the standard of care by improperly installing the expansion tank. She says that this device increased her pipes' water pressure and temperature, causing the pipe rupture. Ms. Caulford also says that JD breached the standard of care by installing the expansion tank without her permission or advising her of this device's risks.

18. JD says it complied with the standard of care and that it properly installed the expansion tank. JD provided a copy of the BC *Building Code* that recommends the use of expansion tanks to protect against thermal expansion. JD says that the expansion tank did not increase water pressure or temperature. Rather, JD says the expansion tank protects the pipes. JD says that the pipe ruptured because they wore out as the pipes were 40 to 50 years old. JD says this was unrelated to its prior work.

19. Where the subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine whether work was performed properly (see *Bergen v. Guliker*, 2015 BCCA 283). I find that the proper installation of a hot water tank is technical and outside ordinary knowledge. I find that expert evidence is required to prove JD's plumbing service was below the required standard. Yet, Ms. Caulford has not provided any expert plumbing statements.

20. Ms. Caulford says that she spoke with an unspecified plumber who told her that JD caused the water leak. However, I do not give her summary of this alleged plumber's opinions any weight because this evidence does not satisfy the CRT rules' requirements for expert evidence. CRT rule 8.3 says an expert must be identified and state their qualifications in writing in order to provide expert evidence. Without identifying the plumber or describing their credentials, I am not satisfied that this unidentified plumber is qualified to provide an expert opinion under CRT rule 8.3. Further, Ms. Caulford's summary of the alleged plumber's opinions are hearsay. While the CRT can accept hearsay evidence, I would not admit this evidence in these circumstances because she did not identify the plumber or explain why did not provide a statement directly from them.
21. Ms. Caulford says that JD breached the standard of care by installing the expansion tank based on a warning label on the device. The warning label on says not to install the expansion tank in a location where a leak could cause injury or property damage. The label also warns that the device is "known to the State of California to cause birth defects or other reproductive harm." However, I find that this warning label is not an expert opinion and it does not establish that JD breached the standard of care by improperly installing the expansion tank. In the absence of supporting expert evidence, I find that Ms. Caulford has not proved that JD acted negligently.
22. Ms. Caulford also says that JD breached the standard of care by installing the expansion tank without her permission. JD says it installed the expansion tank as part of its water tank replacement service to comply with current plumbing code requirements. As discussed above, Ms. Caulford has not provided an expert plumbing opinion. In the absence of such supporting expert opinion, I find that Ms. Caulford has not proved that the standard of care required JD to get her permission to install the expansion tank.
23. For the above reasons, I find that Ms. Caulford has not provide sufficient evidence to prove that she JD negligently installed the expansion tank or that JD's work caused the pipe rupture. So, I dismiss her claim for negligence.

Interest, CRT fees and dispute-related fees

24. The *Court Order Interest Act* (COIA) applies to the CRT. JD is entitled to pre-judgment interest on its \$378.85 debt from the invoice date of July 14, 2020. This equals \$4.34.
25. 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 JD was partially successful in its claim, I find that it is entitled to reimbursement of one-half of its CRT fees. This is \$67.50. Since Ms. Caulford was not successful in her counterclaim, I find that she is not entitled to reimbursement of her CRT fees. Neither party claimed reimbursement of dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Ms. Caulford to pay JD a total of \$450.69, broken down as follows:
 - a. \$378.85 as unpaid plumbing work,
 - b. \$4.34 in pre-judgment COIA interest, and
 - c. \$67.50 in CRT fees.
27. JD is entitled to post-judgment interest, as applicable.
28. 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.

29. 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.

Richard McAndrew, Tribunal Member