



# Civil Resolution Tribunal

Date Issued: February 4, 2022

File: SC-2021-005774

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Patel v. Home Depot of Canada Inc.*, 2022 BCCRT 138

B E T W E E N :

RAMAN PATEL

**APPLICANT**

A N D :

HOME DEPOT OF CANADA INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. The applicant, Raman Patel, contracted with the respondent, Home Depot of Canada Inc. (Home Depot), to purchase and install a boiler and hot water tank in his home. Home Depot subcontracted both the supply and installation to a third-party company, DirectBuy Furnace Ltd. (DirectBuy). DirectBuy is not a party to this dispute.

2. Mr. Patel says that after DirectBuy installed the equipment, he experienced trouble with temperature consistency. Mr. Patel says DirectBuy could not determine the problem, and Home Depot closed its file without resolving the issue. So, Mr. Patel says he hired a third-party heating company to fix it. Mr. Patel also says he missed out on a \$1,000 FortisBC boiler rebate because DirectBuy failed to provide the necessary documentation in time. Mr. Patel claims a total of \$4,675, which includes \$3,675 for his alleged remedial costs and \$1,000 for the lost rebate.
3. Home Depot says all the equipment was properly installed. It says DirectBuy attempted to assist Mr. Patel with the temperature issue and offered to upgrade the standard zone valves, but Mr. Patel allegedly declined the offer. Home Depot says the upgraded zone valves would have fixed the problem at minimal cost and all the other claimed work was unnecessary. Home Depot denies it is responsible for the claimed remedial costs. Home Depot also says it is not contractually obligated to facilitate rebates and any rebate disputes are between Mr. Patel and FortisBC.
4. Mr. Patel is self-represented. Home Depot is represented by DirectBuy's employee.

## **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. Mr. Patel submitted one item of evidence after the evidence submission deadline. It consisted of an email from the company Mr. Patel hired to fix his boiler system. I find this evidence is relevant to this dispute. Home Depot was given the opportunity to respond to the late evidence, so I find there would be little prejudice to Home Depot in admitting it. Given the CRT's mandate that includes flexibility, I have allowed the late evidence and considered it in my decision.

## **ISSUES**

10. The issues in this dispute are:
  - a. Was DirectBuy's installation work deficient to the extent that Home Depot is responsible for any of Mr. Patel's claimed costs to fix his boiler and hot water installation?
  - b. Is Home Depot responsible for Mr. Patel missing out on a \$1,000 FortisBC rebate?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Mr. Patel must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties'

evidence and submissions, but I refer only to what I find is necessary to explain my decision.

12. The following background facts are undisputed:

- a. In October 2020, Mr. Patel went into a Home Depot store to ask about installing a new boiler and hot water tank to supply a radiant heating system in his home. Home Depot took his information and told him its subcontractor, DirectBuy, would contact him with an estimate.
- b. DirectBuy provided Mr. Patel with a November 12, 2020 estimate totalling \$13,560.75. The estimate noted there were \$2,150 in applicable FortisBC rebates, so Mr. Patel's "net investment" would be \$11,410.75.
- c. The estimate also noted Mr. Patel's purchase was eligible for a Home Depot promotion granting an extended 10-year parts and labour warranty on the boiler.
- d. Mr. Patel accepted DirectBuy's estimate. There was also a \$135 charge added for a gas permit, which Mr. Patel accepted. Mr. Patel used his Home Depot credit card to pay for the equipment and installation work.
- e. DirectBuy installed a high-efficiency IBC brand boiler and hot water tank in Mr. Patel's residence on November 18 and 19, 2020. DirectBuy is not an IBC authorized dealer.

***Was the boiler and hot water tank installation work deficient?***

13. After DirectBuy completed the equipment installation, it is undisputed that Mr. Patel experienced temperature inconsistencies throughout his home. Home Depot says that DirectBuy returned to Mr. Patel's home on 3 occasions to investigate his complaints. It says DirectBuy "exhausted all options" before offering to upgrade the standard zone valves to thermostatically controlled valves in the hopes that different valves would resolve the issue. Home Depot says Mr. Patel declined DirectBuy's upgrade offer.

14. Mr. Patel says he cooperated fully with DirectBuy from November 19, 2020 to January 25, 2021, and he denies that DirectBuy offered any valve upgrades. He also says DirectBuy refused his requests to get a second opinion from an IBC authorized technician about whether the boiler was properly installed. I infer from his submissions that Mr. Patel lost confidence in DirectBuy's ability to diagnose the problem.
15. Mr. Patel says he then started dealing directly with Home Depot to try and find a solution. The evidence shows that Mr. Patel also contacted a third-party IBC authorized dealer, Milani Plumbing, Heating & Air Conditioning (Milani), to look at the boiler installation work. Mr. Patel says Milani identified several missing parts. He provided Milani's February 22, 2021 estimate to Home Depot, which included taking steps such as checking the zone valves, and installation of an outdoor sensor and a mixing valve. Mr. Patel says he provided Milani's estimate to Home Depot, but it did nothing to act on Milani's recommendations.
16. The evidence shows Home Depot sent Mr. Patel a March 8, 2021 letter advising that it was unwilling to do any of the work suggested in Milani's estimate because it was unnecessary. It stated DirectBuy had confirmed with IBC technicians that its install "looks great". So, Home Depot stated that no further action was required, and it was closing its file.
17. I note that Home Depot did not provide any supporting evidence about its or DirectBuy's alleged communications with IBC's technical support team, or any documentation showing that an IBC technician confirmed DirectBuy had correctly installed the boiler.
18. Ultimately, Mr. Patel hired a different IBC authorized dealer, Neighbourhood Plumbing & Heating Ltd. (Neighbourhood), to fix his temperature fluctuation problem. Neighbourhood's April 15, 2021 invoice shows it supplied and installed various equipment, such as a thermostatic mixing valve control, an IBC outdoor sensor, a dirt separator, a 3-way tempering valve, and a thermo expansion tank. It also relocated

an air separator, reconfigured the boiler piping to accommodate the changes made, flushed the system, and added inhibitor.

19. Mr. Patel says that since Neighbourhood completed its work, he has not had any problems with the temperature in his home. Neighbourhood's invoice for this alleged remedial work totaled the claimed \$3,675.
20. Mr. Patel provided an October 25, 2021 statement from Michael Ashton, Neighbourhood's head technician who performed the work on Mr. Patel's boiler system. Mr. Ashton stated he has been a licensed plumbing and heating professional for more than 25 years, and he has been installing IBC boilers and indirect storage tanks for over 15 years. I find Mr. Ashton has the necessary qualifications to provide an expert opinion about Mr. Patel's boiler and heating system and installation, and I accept his opinion as expert evidence under CRT rule 8.3.
21. Mr. Ashton explained in his statement that while DirectBuy's boiler installation was "fairly good", it was missing some key components to monitor and control the floor temperature and distribute heat throughout the home. He stated an outdoor temperature sensor was required to ensure an accurate outdoor ambient temperature is relayed to the control system so it can supply the correct temperature to the in-floor piping to regulate the indoor air temperature, and the thermostatic mixing control was required to prevent shocking the in-floor radiant piping with water that was too hot for the piping and floors. He also stated that because Mr. Patel's previous system was made of steel with polybutylene piping, the dirt separator was required to catch any steel material or debris before it entered the IBC boiler. Finally, Mr. Ashton stated the 3-way tempering valve and thermo expansion tank were required by local plumbing code to limit hot water temperature for piping protection and safety.
22. Home Depot relies exclusively on DirectBuy's interpretation of the boiler's installation manual to argue that Neighbourhood's work was all unnecessary according to the manufacturer's recommendations. However, given DirectBuy is not an IBC authorized dealer, I prefer Mr. Ashton's evidence that the parts and labour he performed were necessary for Mr. Patel's boiler and heating system to operate

properly. This is supported by the fact that Mr. Ashton's work rectified the temperature fluctuation problems.

23. I find it was a stated term of Mr. Patel's contract with Home Depot that DirectBuy would install the IBC boiler to a reasonably competent and professional standard. On balance, I find Mr. Patel has established that DirectBuy's boiler installation work was deficient and fell below a reasonably professional standard. In coming to this conclusion, I place significant weight on Mr. Patel's evidence from 2 ICB authorized dealers that several parts were missing.
24. Based on Home Depot's March 8, 2021 letter to Mr. Patel, which stated that checking the zone valves was unnecessary because DirectBuy had used new parts, I find it is unlikely that either Home Depot or DirectBuy offered to upgrade the standard zone valves as a solution to the temperature fluctuation issues, as alleged. Home Depot also provided no evidence to support its position that replacing the zone valves would have fixed the problem. Overall, I find Mr. Patel provided Home Depot with sufficient opportunity to rectify any deficiencies with DirectBuy's boiler installation, but no solutions were found or offered to Mr. Patel.
25. Therefore, I find Home Depot is responsible for Mr. Patel's expenses to remedy the deficiencies with DirectBuy's installation work. However, I find the outdoor sensor Neighbourhood installed was not included in Mr. Patel's contract with Home Depot. This is confirmed in Home Depot's March 8, 2021 letter, which stated an outdoor sensor would come at an extra cost. Neighbourhood's invoice did not separate out its charges for parts and labour, and Home Depot did not say how much it would charge for an outdoor sensor. On a judgment basis, I find \$125 including tax is a reasonable amount for the outdoor sensor, and I find that amount should be deducted from Neighbourhood's invoice because Mr. Patel would have had to pay Home Depot for it in any event.
26. Given that Home Depot does not specifically argue the other parts Neighbourhood installed were not part of the parties' contract, I am satisfied that the remaining parts were included in DirectBuy's estimate. Further, given the undisputed warranty on

labour in the parties' contract, I find Home Depot is responsible for the amount set out in Neighbourhood's invoice, less the \$125 for the outdoor sensor part. I order Home Depot to pay Mr. Patel \$3,550 (\$3,675 - \$125), for the cost to remedy the deficiencies with DirectBuy's boiler installation.

***Is Home Depot responsible for the lost rebate?***

27. It is undisputed that the boiler Mr. Patel purchased was eligible for a FortisBC "double rebate" offer, which expired on December 31, 2020. As the estimate shows an applicable FortisBC rebate of \$2,000, I infer the standard rebate was \$1,000, which was doubled under the offer.
28. Mr. Patel says DirectBuy failed to provide him with the necessary documentation to apply for the double rebate until January 9, 2021, and it failed to include a required promo code. Mr. Patel provided evidence that he received only a \$1,000 rebate from FortisBC, and says he lost out on the other \$1,000 rebate due to DirectBuy's delay and carelessness.
29. Home Depot alleges that Mr. Patel did not receive the double rebate because he requested to be billed in 2021 for tax purposes. However, I find the evidence does not support this allegation. Rather, the evidence shows that FortisBC advised Mr. Patel in an April 9, 2021 email that he did not receive a double rebate because no promo code had been registered under his account number between the offer dates of October 1 and December 31, 2020.
30. I find that DirectBuy advised Mr. Patel in a November 8, 2020 email that he could apply for the applicable FortisBC rebate in January 2021 when the permit was obtained, but DirectBuy asked Mr. Patel to confirm that he had already applied for a FortisBC promo code for the double rebate application. There is no evidence before me that Mr. Patel responded to DirectBuy's inquiry about a promo code.
31. I find the weight of the evidence suggests that Mr. Patel had to apply for the relevant promo code to receive the double rebate, and he failed to do so. I find Mr. Patel has not established that Home Depot was responsible for obtaining the promo code or for



any failure to provide Mr. Patel with the documentation required to obtain the FortisBC double rebate. So, I dismiss Mr. Patel's claim relating to the lost rebate.

## **INTEREST, CRT FEES AND DISPUTE-RELATED EXPENSES**

32. The *Court Order Interest Act* applies to the CRT. Mr. Patel is entitled to pre-judgment interest on the \$3,550 from April 15, 2021, the date he paid Neighbourhood's invoice, to the date of this decision. This equals \$12.92.
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 find Mr. Patel was substantially successful, so he is entitled to reimbursement of \$175 in CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

34. Within 30 days of the date of this decision, I order Home Depot to pay Mr. Patel a total of \$3,737.92, broken down as follows:
- a. \$3,550 in damages for the boiler's repair,
  - b. \$12.92 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
35. Mr. Patel is entitled to post-judgment interest, as applicable.
36. I dismiss Mr. Patel's remaining claims.
37. 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.

38. 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