



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Harbar v. Ric's Plumbing Inc.* 2022 BCCRT 643

B E T W E E N :

DANETTE HARBAR

APPLICANT

A N D :

RIC'S PLUMBING INC.

RESPONDENT

A N D :

DANETTE HARBAR

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about alleged negligent plumbing work and deficiencies. The applicant and respondent by counterclaim, Danette Harbar, says she hired the respondent and applicant by counterclaim, Ric's Plumbing Inc. (RPI), to provide various plumbing services in her home. She says the work was not completed, and the work done was incorrect and caused damage to her home. She also says she did not have water for 6 days. Ms. Harbar collectively claims \$3,750 for lost rental income, and the costs of hiring another plumber and contractors to fix the damage and reinstate the water.
2. RPI disputes Ms. Harbar's claims. RPI says its work was of the highest quality, and says RPI's dismissal was racially motivated. RPI says it completed the plumbing work, and counterclaims \$2,356 for its unpaid invoice.
3. Ms. Harbar is self-represented. RPI is represented by its owner, Richard Hansen.

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.

ISSUES

7. The issues in this dispute are:
 - a. To what extent, if any, is RPI responsible to pay Ms. Harbar \$3,750 in damages?
 - b. To what extent, if any, is Ms. Harbar responsible to pay RPI \$2,356 for its invoice?

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Ms. Harbar must prove her claims on a balance of probabilities (meaning more likely than not). RPI must prove its counterclaim to the same standard. I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.

Counterclaim

9. I will first address RPI's counterclaim for payment of its invoice. RPI submitted an October 12, 2021 invoice totaling \$2,856.00. The parties agree Ms. Harbar paid \$500 towards RPI's work. As noted, RPI claims \$2,356 for the unpaid portion of the invoice. RPI says Ms. Harbar requested the work in the invoice be completed, but has not paid for it.
10. It is undisputed that Ms. Harbar hired RPI to provide plumbing services. However, the parties dispute the extent of services agreed upon. Ms. Harbar says she hired RPI to install a handheld shower in the lower suite, install a pressure regulating valve (PRV)

for the whole house above the lower suite bath and shower, and address a faulty toilet and seized faucet handles in the main floor bathroom.

11. An unsigned September 9, 2021 quote in evidence says RPI will:

- a. Install a handheld shower in the lower suite, including moving and reinstalling a hot water tank, shower valve and white hardboard cover over the removed drywall
- b. Install an appropriately sized PRV for the whole house above the bath/shower stall in the lower suite, including installing a white hardboard cover over the removed drywall.
- c. The quote also noted that a faulty toilet and seized set of faucet handles in the main floor bathroom were mentioned by Ms. Harbar, but indicated that:
 - i. The toilet would “probably not be a problem” when the water pressure is properly regulated.
 - ii. The seized hot water valve on the faucet may require parts that are not known at this time.

12. The quote did not break down labour and material costs. For reasons unexplained, the quoted price was \$890 plus \$106.80 in taxes for a total of \$996.80, payable on completion of the PRV and shower valve.

13. Ms. Harbar says she only agreed to the services set out in RPI’s September 9, 2021 quote and should not have to pay more than the quoted amount. RPI disputes this and says the quote only applied if Ms. Harbar did not make any changes, but she made several.

14. Despite Ms. Harbar’s submissions, I find the quote is best characterized as an estimate. I find the work was not defined with enough detail to be considered a fixed-price contract. See *Savings v. Mark Swallow Thompson Allard & Co.*, 1996 (CanLII) 1152 (BCSC).

15. It is undisputed that some of the work completed by RPI was different than what is listed in the quote. Both Ms. Harbar and RPI say that the PRV was installed outside, instead of inside as quoted. RPI also says that Ms. Harbar asked for additional work to be completed while at her home. Ms. Harbar disputes this and says she asked for help for a few minutes, and RPI insisted on performing some work on her toilet to prevent flooding.
16. RPI says it completed the work on October 8, 2021. The invoice indicates that RPI removed and reinstalled a hot water tank three times, installed a shower valve, rebuilt a wall, and installed a PRV outside. The invoice charged \$2,550 for “time + material”, plus taxes. The invoice also noted that “the many many changed works as directed by [Ms. Harbar] are included in this bill”. However, the invoice did not detail the changes Ms. Harbar requested, did not further detail the completed work, and did not break down the labour and material costs for any of the completed work.
17. Ms. Harbar says RPI is not credible because it claims she has not paid when she has already paid RPI \$500. I place no weight on this submission because RPI does not dispute that Ms. Harbar has already paid \$500 and RPI only claimed \$2,356 in its counterclaim, which is \$500 less than the total invoiced amount.
18. Ms. Harbar also says RPI inconsistently claimed payment of different amounts. In support of this, she submitted an October 12, 2021 text message that I find shows RPI asking for payment of “the \$1,500 you owe us”. I find that the \$1,500 payment amount requested in the text message is inconsistent with the amount now claimed by RPI based on its invoice of the same date. RPI did not explain the discrepancy between the \$1,500 it claimed was owing on the morning of October 12, 2021 by text message, and the \$2,356 it now claims is owing based on the October 12, 2021 invoice. I find this inconsistency, and RPI’s lack of explanation for it, calls into question the accuracy of RPI’s invoice of the same date. RPI did not further explain how it arrived at the total amount owing in its invoice.
19. Based on the available evidence, I find it is unclear how RPI arrived at the claimed amount of \$2,356. This amount is significantly higher than the quoted amount, and

also significantly higher than the amount RPI requested by text message on October 12, 2021. I accept that some of the work performed by RPI was different than the work listed in the quote, including installing the PRV outside instead of inside, which required excavation and backfilling. However, RPI has not explained why this resulted in the invoice being more than double the quoted amount. I find RPI has not adequately explained the work it completed, or how it billed for the work it completed. Without a detailed invoice or detailed submissions from RPI, I am unable to determine how RPI arrived at the invoiced amount, or whether it is reasonable. As the applicant by counterclaim, RPI bears the burden of proving its claim. Without a reasonable explanation for the difference between the quoted amount, the \$1,500 claimed via text message, and the \$2,356 now claimed, I find RPI has not proved it is entitled to payment of its invoice in full.

20. Despite this, as noted above, Ms. Harbar's says she agreed to the amount quoted on September 9, 2021. While RPI has not proved its invoiced amount, I find it is reasonably entitled to payment for its completed work. Given that Ms. Harbar does not dispute that she agreed to the quoted amount, I find RPI is entitled to payment of the \$996.80 quoted, minus \$500 already paid by Ms. Harbar. I find RPI is entitled to payment of \$496.80, subject to any reduction for proven deficiencies or damage.

Ms. Harbar's claims

PRV and shower installations

21. Ms. Harbar says RPI installed the PRV backwards, it was leaking, and it was not protected from dirt. She also says RPI installed a shower set incorrectly. Although she does not use these words, I find Ms. Harbar alleges RPI's PRV and shower installations were negligent, and breached an implied term of the parties' contract that the work would be done to a professional standard. Ms. Harbar also alleges other deficiencies with RPI's work which I will address further below.
22. To prove negligence, an applicant must show that the respondent owed the applicant a duty of care, the respondent breached the standard of care, the applicant suffered damage, and the damage was caused by the respondent's breach.

23. Given the technical nature of RPI's plumbing work, I find the standard of care in the circumstances is beyond the knowledge and experience of an ordinary person. In such cases, the party asserting a breach of the standard of care must often provide expert evidence to establish the standard of care (*Bergen v. Guliker*, 2015 BCCA 283).
24. Ms. Harbar says that after RPI installed the PRV, she lost water to her home. She says she called another plumbing company, Wade Roberts Plumbing Ltd. (WRP), to come address the problem. Ms. Harbar submitted in evidence a November 10, 2021 letter from WRP, that includes its technician's notes from an October 14, 2021 visit to Ms. Harbar's home. The WRP technician's notes indicated the following:
- a. WRP responded to a concern that there was no water in the home after an in-ground PRV was installed by another plumbing company.
 - b. WRP investigated the water pressure, and determined based on the reading that the PRV had failed.
 - c. WRP installed a new PRV at the site of the failed device, but proper water flow did not return to the home.
 - d. With further investigation WRP determined that the main water line from the city meter must have an underground loop that was not visible, thus leading to the original PRV being installed backwards, rendering it useless and causing it to fail.
 - e. WRP reoriented the new PRV, and tested the home for full and constant water flow. The home's water pressure was adjusted to within the recommended pressure allowance.
 - f. WRP informed Ms. Harbar about the directionality of her water main to prevent this from occurring in the future.
25. I accept that WRP's technician is qualified to provide expert evidence on plumbing work. I find the WRP's technician's notes prove that RPI installed the PRV backwards.

However, I find the notes also confirm that WRP also initially installed the PRV backwards. I find the notes show that a hidden underground loop in the main water line was the reason both RPI and WRP installed the PRV backwards. I find the notes do not identify the required standard of care for a PRV installation, or any other plumbing services. But, I find the notes do not indicate that RPI should have known about the underground loop, or further investigated the water line from the city meter prior to installing the PRV. So, I find RPI was not obviously negligent in installing the PRV backwards.

26. Ms. Harbar also says the shower set in a bathroom was improperly installed. However, WRP's technician's notes did not address any alleged issue with the shower installation.
27. In the absence of expert evidence on the standard of care for PRV and shower installations, I am unable to determine RPI's standard of care in the circumstances, or whether RPI breached that standard when it installed the PRV or shower set. Given this, I find that Ms. Harbar has not met her burden of proving that RPI's PRV and shower installations were negligent or in breach of the implied term of the parties' agreement that the work would be done to a professional standard.

Other deficiencies

28. I now turn to the other alleged deficiencies with RPI's work. Ms. Harbar says drywall was removed and thrown out and a shut-off valve discarded. She also says RPI did not address the bathroom taps, an incorrect bathtub stopper (plug) was used, and the toilet was not fully addressed and continued to run. Ms. Harbar submitted in evidence photographs of removed drywall that exposed piping in the bathroom. Ms. Harbar says RPI's quote included replacement of this drywall, and more was removed than necessary. Ms. Harbar also submitted photographs of a shower that she says was not secured to the wall, and a bathroom stopper sitting in a tub. I find these photographs do not show any deficiencies because I find they show a shower attached to a wall and a plug sitting in the tub.

29. I find the only deficiency Ms. Harbar has proved is that RPI removed drywall, that was not replaced. RPI did not specifically address this alleged deficiency in its submissions. However, RPI says that J, an RPI employee, attended at Ms. Harbar's home on October 10, 2021 to investigate the PRV problem. RPI says J checked the PRV pressure and offered to have a "municipal inspector" attend to check the PRV installation. RPI says that at that point, Ms. Harbar told them to leave and made inappropriate racial comments about J. RPI says Mr. Hansen, RPI's owner, then attended at Ms. Harbar's home, but she refused to have a plumbing inspector come and inspect RPI's work. RPI says when Mr. Hansen left Ms. Harbar's home, there was enough water pressure to operate 2 to 3 plumbing fixtures. RPI says Mr. Hansen and J do not know what happened after Ms. Harbar dismissed them from her property. Ms. Harbar does not dispute that she dismissed RPI as RPI alleges. Given this, I find it more likely than not that RPI was unable to replace the drywall or complete further work because Ms. Harbar dismissed RPI following their dispute about the PRV installation. As noted, Ms. Harbar bears the burden of proving her claims. Here, I find Ms. Harbar has not reasonably explained or provided sufficient evidence to prove that RPI is responsible for the unreplaced drywall or the other deficiencies she alleges. I also note that WRP's technician's notes, discussed above, did not address any of these other alleged deficiencies, including the removed drywall.

30. Given all the above, I find Ms. Harbar has not proved that RPI is responsible for any alleged deficiencies. So, I find she is not entitled to any reduction on the amount I have reasonably found owing to RPI based on its completed work, quote and invoice.

Alleged damages

31. As noted, Ms. Harbar alleges she suffered various damage, including loss of water for 6 days, lost rental income, and the costs of hiring another plumber and other contractors to fix the damage and reinstate the water. However, given that I have found Ms. Harbar has not proved RPI's PRV and shower installations were negligent, or that RPI was responsible for any deficiencies, I find I do not need to address these claims. I dismiss Ms. Harbar's claims.

CRT fees, expenses and interest

32. The *Court Order Interest Act* applies to the CRT. RPI is entitled to pre-judgment interest on the \$496.80 owing from October 12, 2021, the date of RPI's invoice to the date of this decision. This equals \$1.42.
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. However, neither party was entirely successful in their respective claims in this dispute. So, I find it is not appropriate to award reimbursement of CRT fees to either RPI or Ms. Harbar. Neither party claimed any dispute-related expenses, so I award none.

ORDERS

34. Within 30 days of the date of this order, I order Ms. Harbar to pay RPI a total of \$498.22, broken down as follows:
 - a. \$496.80 in debt for RPI's invoice,
 - b. \$1.42 in pre-judgment interest under the *Court Order Interest Act*.
35. RPI is entitled to post-judgment interest, as applicable.
36. I dismiss Ms. Harbar's 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.

Leah Volkens, Tribunal Member