



Civil Resolution Tribunal

Date Issued: July 28, 2022

File: SC-2022-001046

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Magel v. Attwood*, 2022 BCCRT 863

BETWEEN:

TYRELL MAGEL

APPLICANT

AND:

WADE ATTWOOD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. The respondent homeowner, Wade Attwood, hired the applicant, Tyrell Magel, in early November 2021 to install a gas line for a new gas dryer (gasfitting job). This

work followed Mr. Magel's October 2021 installation of a fan hood/microwave above a gas stove (fan job), discussed further below. Mr. Magel claims \$1,240.29 for the gasfitting job.

2. Mr. Attwood says Mr. Magel overcharged him for both jobs and says he is still entitled to a more detailed accounting for the fan job. Mr. Attwood did not file a counterclaim but I infer he seeks a setoff against the money he already paid for the fan job.
3. The parties are each 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). CRTA section 2 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. CRTA section 39 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, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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.
8. To some extent the parties make submissions about alleged harassment. There is no recognized tort of harassment in BC (see *Total Credit Recovery v. Roach*, 2007 BCSC 530). Further, neither party makes a claim for damages for harassment so I will not discuss that issue further or make any findings about it.
9. Finally, I note Mr. Magel's invoices are issued under the business name "BX Mechanical Plumbing Heating Gas Fitting". There is no indication of any corporate designation on the invoices. It is undisputed this was Mr. Magel's operating business name. So, I find Mr. Magel is entitled to claim payment in his personal capacity, which is not disputed.

ISSUES

10. The issues are whether Mr. Magel is entitled to the claimed \$1,240.29 for the gasfitting job and whether Mr. Attwood is entitled to any setoff for an alleged overpayment on the fan job.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Magel must prove his claims on a balance of probabilities (meaning "more likely than not"). As the party alleging a setoff, Mr. Attwood bears the burden of proving that issue. I have reviewed the submitted evidence and the parties' arguments, but only refer to what is necessary

to give context to my decision. Mr. Magel chose not to make final reply submissions, though he had the opportunity to do so.

12. In a jointly submitted Statement of Facts, the parties agree:
 - a. Before the gasfitting job, Mr. Magel provided Mr. Attwood with services (invoice #689 dated November 2, 2021, which Mr. Attwood paid in full). These services were for the fan job.
 - b. Mr. Magel attended Mr. Attwood's home on November 4 and 8, 2021.
 - c. The gasfitting job installation was not completed because Mr. Attwood cancelled the parties' verbal agreement before the new dryer arrived.
13. The parties had no formal written agreement for either the fan job or the gasfitting job. There are also no texts or emails about Mr. Magel's agreed rate before either job was done. More on this below.
14. As noted above, Mr. Attwood argues he overpaid Mr. Magel for the earlier fan job, which was a \$623.69 charge billed under Mr. Magel's November 2, 2021 invoice #689. The body of that invoice described: move the cabinet 1 inch up and install the microwave fan hood and run 6 inch ducting to outdoor. The invoice does not set out an hourly rate or a materials and labour breakdown.
15. Mr. Attwood felt invoice #689 was too high but his wife paid it in good faith, because Mr. Magel was scheduled to come on November 8. Mr. Attwood does not otherwise explain why he did not raise any concern with Mr. Magel about his billing and yet permitted him to proceed with the gasfitting job. I find this does not support Mr. Attwood's position that Mr. Magel overcharged for the fan job. In any event, as Mr. Attwood is the party alleging an overcharge and the setoff, he has the burden to prove them. I find he has not done so, given there is no evidence before me about the fan job apart from Mr. Magel's invoice and the parties' own submissions. So, I find Mr. Attwood is not entitled to any setoff against Mr. Magel's gasfitting job invoice based on the fan job payment.

16. I turn to the gasfitting job. Mr. Magel issued Mr. Attwood invoice #694, dated November 8, 2021. Its total is \$1,065.35 including GST. According to Mr. Magel's separate spreadsheet submitted in evidence, \$367.10 was for an itemized list of materials and a gas permit (\$121) Mr. Magel obtained through Technical Safety BC. Mr. Magel's labour was charged at \$95 per hour, with 2 hours or \$199.50 charged as a "minimum callout fee" for November 4 and 3 hours charged for work done on November 8. Another 2 hours was included on the invoice as "upcoming", to install the connection hose between the dryer and the gas stub once the dryer arrived, and for Mr. Magel to then close the gas permit.
17. Invoice #694 itself lacks the hourly breakdown and materials list. However, the invoice reasonably describes the gasfitting job as adding a gasline for a gas dryer: remove one tile block and cut 2x2 hole and run "csst gas line" through the floor to the [mechanical] room. Cut Main gas line to add tee for gas dryer. Check for leak with bubble soap. Connect the gas dryer with flexgas hose" (quote reproduced as written, except where noted).
18. While I accept Mr. Magel's invoices do not have an itemized breakdown, there is no evidence the parties ever had an agreement that such a breakdown was required. The invoices on their face describe the job done. Mr. Magel has provided the breakdown for the gasfitting job, as described below. I find nothing turns on the less-detailed nature of the invoices.
19. The spreadsheet's "job scope" description noted Mr. Attwood had called Mr. Magel in to start the gasfitting job, but Mr. Attwood asked that it be postponed to accommodate his incoming tenants. In his evidence, Mr. Magel described how the mechanical room was in the basement and Mr. Attwood was unable to give him the required access on November 4. While Mr. Attwood further argues that he did not send Mr. Magel away and that Mr. Magel was only coming to assess the job on November 4, Mr. Attwood does not dispute Mr. Magel needed access to the basement mechanical room that was in the suite Mr. Attwood was about to rent out. Text messages in evidence show Mr. Attwood indicated the tenants would be out on

November 8 and so that day would be suitable for Mr. Magel to return to do the work. I find this more consistent with Mr. Magel's version of events than Mr. Attwood's version that Mr. Magel was only supposed to assess the gasfitting job on November 4. On balance, I find Mr. Magel is entitled to be paid for his travel and time spent on November 4. More on the November 4 charge below.

20. However, as noted above, the parties had no formal written agreement, and no agreement about price for the gasfitting job. Price is a fundamental term of any contract. I am unable to conclude that the prior fan job gave Mr. Attwood enough information about Mr. Magel's expected charges for the gasfitting job. So, I find the parties did not have an enforceable contract for the gasfitting job. This means Mr. Magel is entitled to be paid on what is known in law as "*quantum meruit*", meaning value for the work done.
21. Here, Mr. Magel charged \$95 per hour plus materials. Mr. Attwood does not challenge the materials and permit costs and I find the \$367.10 is reasonable. Next, Mr. Attwood says he generally paid other trades around \$75 per hour but submitted no supporting evidence that \$95 was outside the industry norm for a gasfitter. In the absence of expert evidence to the contrary, I find \$95 per hour was reasonable for the gasfitting job.
22. Mr. Attwood also argues he never agreed to a call-out fee for the November 4 visit for the gasfitting job but does not explain why Mr. Magel should have had to attend his home for free that day even if it was only to "assess the job".
23. In any event, Mr. Magel says that while his invoice charged the minimum 2-hour callout fee, on November 4 he took measurements, calculated the load of gas pressure needed, and compiled a list of required materials. I accept he did these things, which Mr. Attwood does not expressly dispute. In his submissions, Mr. Magel says he was actually on site for 1 hour, not the ½ hour Mr. Attwood asserts.
24. I find Mr. Magel is entitled to 1.5 hours for November 4. This allows for his travel time and the time I find he likely spent on site. Given that Mr. Attwood never agreed

to pay a specific minimum callout fee based on 2-hours, I find Mr. Magel is not entitled to the full 2 hours.

25. Next, the November 8 work. As noted, Mr. Magel charged 3 hours and Mr. Attwood says he was only there about 2 hours. I accept Mr. Magel was reasonably entitled to also charge for his time at his materials supplier and for his travel time. I allow the 3 hours.
26. Finally, the “upcoming” work set out in the gasfitting job invoice. Mr. Magel undisputedly has not done that work. I have found above the parties had no enforceable contract and so since this work was not done I find Mr. Magel cannot charge for it on a *quantum meruit* basis.
27. In summary, I find Mr. Magel is entitled to \$815.98, which is \$367.10 for materials and taxes and \$448.88 for labour (4.5 hours x \$95 plus GST).
28. Mr. Magel claims contractual interest of 5% calculated monthly. As noted, there is no evidence the parties had any agreement about interest. Interest cannot be unilaterally imposed in an invoice. So, I do not allow contractual interest.
29. In the absence of an agreement about interest, the *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Magel is entitled pre-judgment interest on the \$815.98. Calculated from the gasfitting job invoice’s due date of November 23, 2021, to the date of this decision, this interest equals \$3.27.
30. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Magel was largely successful, I find Mr. Attwood must reimburse Mr. Magel \$125 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

31. Within 21 days of this decision, I order Mr. Attwood to pay Mr. Magel a total of \$944.25, broken down as follows:

- a. \$815.98 in debt,
- b. \$3.27 in pre-judgment interest under the COIA, and
- c. \$125 in CRT fees.

32. Mr. Magel is entitled to post-judgment interest, as applicable.

33. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of BC.

Shelley Lopez, Acting Chair and Vice Chair