



Civil Resolution Tribunal

Date Issued: August 3, 2022

File: SC-2021-008478

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Premium Restoration Ltd. v. Hekmatzad*, 2022 BCCRT 874

BETWEEN:

PREMIUM RESTORATION LTD.

APPLICANT

AND:

DAWAR HEKMATZAD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about payment for restoration services. The applicant, Premium Restoration Ltd. (Premium), says the respondent homeowner, Dawar Hekmatzad,

hired it to investigate and deal with water damage. Premium claims \$1,362.77 for its services.

2. Mr. Hekmatzad says there was no water damage to his property and so the work Premium did was unnecessary. So, Mr. Hekmatzad says he owes nothing.
3. Premium is represented by a principal or employee. Mr. Hekmatzad 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). 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. I note I was unable to open a document Premium submitted in evidence, namely a work authorization that it says Mr. Hekmatzad signed. At my request, CRT staff sought a viewable copy but neither party responded. So, I have not considered that document's contents in my analysis below. That said, I note Mr. Hekmatzad does not deny he signed a work order.

ISSUES

9. The issues are whether Premium's work was reasonably necessary and if so whether Mr. Hekmatzad must pay Premium the claimed \$1,362.77 for its emergency services.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Premium must prove its claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the submitted evidence and the parties' arguments, but only refer to what is necessary to give context to my decision. Mr. Hekmatzad did not submit any documentary evidence, and Premium chose not to make final reply submissions, though each party had the opportunity to do so.
11. As noted above, Premium claims \$1,362.77 for its December 22, 2020 invoice for "emergency services". The invoice's terms are "due upon receipt".

12. Mr. Hekmatzad admits he hired Premium to investigate discolouration on his roof as he was concerned about water damage. Nothing turns on the fact Mr. Hekmatzad contacted his “strata and insurance” about his concern and that Premium attended at either the strata’s or the insurer’s request. It is undisputed Mr. Hekmatzad was the party responsible for paying Premium.
13. Premium’s “preliminary report” found water damage from an unknown source at the time of Mr. Hekmatzad’s after-hours call. Premium wrote the damage was to an upper level bathroom, upper level ensuite bathroom, and main level kitchen. Premium wrote Mr. Hekmatzad would call his own plumber to locate the leak and repair the source.
14. In Premium’s preliminary report, it wrote that in the 2 bathrooms it removed the baseboards, applied an anti-microbial product, and reinstalled the baseboards. In the kitchen, Premium wrote that it protected the site, removed the ceiling drywall, and applied the anti-microbial product. Some of the photos appended to Premium’s report appear to show some damage under the removed trim, though I cannot tell from the photos alone that it is water damage as opposed to some other damage. While there are photos of moisture readings attached to the report, I cannot tell from the photos whether the readings showed excessive moisture. However, Premium’s photos also show that it brought in dehumidifiers, which is undisputed.
15. Mr. Hekmatzad’s sole defence is that the work Premium did was allegedly unnecessary. Mr. Hekmatzad says the day after Premium was there, he called a plumber who checked: the pipes, the wall opening Premium created, and water discolouration on the roof. Mr. Hekmatzad says the plumber told him there was no moisture or leak of any kind, and that water from the shower hit the floor of Mr. Hekmatzad’s bathroom and seeped through. Mr. Hekmatzad says there was no damage and also says that the dehumidifiers Premium installed were misdirected away from the alleged leak source.

16. The difficulty for Mr. Hekmatzad is that he bears the burden of proving that Premium completed unnecessary work, since Mr. Hekmatzad is the party asserting that position and because it is undisputed Mr. Hekmatzad asked Premium to attend due to a water concern. While Mr. Hekmatzad says he spoke to a plumber, he submitted no witness statement or any supporting evidence at all. Parties are told during the CRT's process to submit all relevant evidence. I find evidence supporting Mr. Hekmatzad's position that the completed work was unnecessary is clearly relevant. So, I find it unproven that Premium's completed work was unnecessary.
17. I find the amount of Premium's invoice reasonable, particularly since the December 10, 2020 service call was undisputedly after-hours and reasonably required overtime rates. As noted, Mr. Hekmatzad has submitted no supporting evidence to suggest otherwise. Given my conclusions above, I find Mr. Hekmatzad must pay Premium the claimed \$1,362.77.
18. The *Court Order Interest Act* (COIA) applies to the CRT. I find Premium is entitled pre-judgment interest on the \$1,362.77. Calculated from Premium's December 22, 2020 invoice date to the date of this decision, this interest equals \$11.41.
19. 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 Premium was successful, I find Mr. Hekmatzad must reimburse Premium \$125 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

20. Within 21 days of this decision, I order Mr. Hekmatzad to pay Premium a total of \$1,499.18, broken down as follows:
 - a. \$1,362.77 in debt,
 - b. \$11.41 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.

21. Premium is entitled to post-judgment interest, as applicable.
22. 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