



# Civil Resolution Tribunal

Date Issued: August 11, 2022

File: SC-2022-001143

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Malburg Pump & Boiler Ltd. v. Rastgoo*, 2022 BCCRT 908

BETWEEN:

MALBURG PUMP & BOILER LTD.

**APPLICANT**

AND:

HEIDI RASTGOO

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about payment for gasfitting services.
2. The applicant, Malburg Pump & Boiler Ltd. (Malburg), says it was hired by the respondent, Heidi Rastgoo, to fix a gas stove leak. Malburg says it completed the

leak repair, but that Ms. Rastgoo has failed to pay its invoice. Malburg claims \$378.62 for its unpaid invoice.

3. Ms. Rastgoo says Malburg damaged the cooktop by forcing the oven back into the cabinet. Ms. Rastgoo says the cooktop was not repairable because the broken part was discontinued, so she had to buy a new cooktop. She also says she lost her tenant because the suite did not have a working stove. Ms. Rastgoo did not file a counterclaim.
4. Malburg is represented by its owner, George Malburg. Ms. Rastgoo is self-represented.

## **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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. 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.

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. Malburg submitted late evidence after the parties had completed submissions. The evidence consists of an email exchange between Mr. Malburg and Ms. Rastgoo's former tenant, SG. Malburg says it only obtained SG's contact information from the evidence Ms. Rastgoo filed for this dispute, so Malburg says it could not have obtained this evidence earlier. I find the late evidence is relevant to this dispute. I also find Ms. Rastgoo will not be prejudiced if the late evidence is admitted because she was given the opportunity to comment on it, though she chose not to. Given the CRT's mandate that includes flexibility, I admit the late evidence and have considered it in my reasons below.

## **ISSUE**

10. The issue in this dispute is to what extent, if any, Ms. Rastgoo must pay Malburg's \$378.62 invoice for gasfitting work.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Malburg must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
12. On February 12, 2020, Ms. Rastgoo called Mr. Malburg about a natural gas leak in her apartment after SG had advised Ms. Rastgoo that he smelled gas. Mr. Malburg

agreed to come and fix the leak. When Mr. Malburg arrived, he pulled the oven out to repair the gas piping under the cooktop. He ordered a new gas regulator and asked Ms. Rastgoo to pick it up while he continued working. When he finished the repair work, Mr. Malburg pushed the oven back into place. Both he and Ms. Rastgoo noticed the oven did not fit all the way into the cavity under the cooktop. None of this is disputed.

13. The evidence shows that Malburg emailed its invoice to Ms. Rastgoo on September 3, 2020. The invoice is for materials (including a gas regulator) and 3.5 hours of labour, totaling the claimed \$378.62. Malburg emailed Ms. Rastgoo on January 30, 2021 to follow up on payment of the invoice.
14. Ms. Rastgoo does not deny that Malburg completed the work set out in its invoice or dispute the amounts charged. Given that Ms. Rastgoo has admittedly not paid anything, I find she owes Malburg \$378.62, subject to any set-off for deficiencies.
15. While Ms. Rastgoo did not specifically say this, I infer that she did not pay Malburg's invoice because she takes the position Malburg's work was deficient and her costs to remedy the deficiencies were higher than what she owed Malburg. As Ms. Rastgoo did not file a counterclaim, I infer she is claiming a set-off based on the law about deficiencies.
16. When a customer alleges that a contractor's work was below a reasonably competent standard, the customer must prove the deficiencies: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61. Generally, expert evidence is required to prove a professional's or trade's work was below a reasonable standard: *Bergen v. Gulliker*, 2015 BCCA 283. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard: *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112.
17. Ms. Rastgoo says that SG left the country after Malburg completed its work and did not use the stove. When Ms. Rastgoo next rented her suite on July 15, 2020, her new tenant advised her that the stove did not work. Ms. Rastgoo says another gasfitting

company, EF, discovered the stove's gas regulator was damaged. Ms. Rastgoo alleges that Mr. Malburg caused the damage by forcing the oven back into place.

18. For the following reasons, I find Ms. Rastgoo has not proven that Malburg caused any damage to the stove.
19. First, Ms. Rastgoo did not provide any evidence about how the gas regulator broke. I find that is a technical matter requiring expert evidence to prove, and Ms. Rastgoo did not provide any expert evidence. Notably, there is no statement from EF about the broken regulator. I note it is also unclear whether this was the same regulator Malburg replaced or a different part. In the absence of expert evidence on this point, I find Ms. Rastgoo's submission about how the regulator broke is unproven.
20. Second, even if I accepted that the regulator broke due to the oven being pushed back by force, I find it unproven that Mr. Malburg was the individual who did so. As noted, Ms. Rastgoo was present when Mr. Malburg pushed the oven back into place. While it is undisputed that he was unable to get the oven all the way into the cabinet, Ms. Rastgoo does not say Mr. Malburg was particularly forceful in his efforts to push the stove back.
21. Further, Mr. Malburg says after he had pushed the stove back, he tested the gas and confirmed all the burners on the stove were working. Ms. Rastgoo did not specifically respond to this submission. However, I find it more likely than not that Mr. Malburg would perform such a test after completing his repair work.
22. Finally, in the email exchange between Mr. Malburg and SG referenced above, SG confirmed that the stove worked after Malburg repaired the gas leak on February 12, 2020. While SG left the country at some point after the repair work, he stated that his daughter continued living in the suite and did not report any issues with the cooktop before SG's tenancy with Ms. Rastgoo ended in mid-April 2020. Had Mr. Malburg broken the cooktop, I find it likely would have been discovered long before Ms. Rastgoo's new tenant reported it in July 2020.

23. For all the above reasons, I find Ms. Rastgoo has not established Malburg was responsible for the broken cooktop. As Ms. Rastgoo has not alleged any other deficiencies with Malburg's work, I find Malburg is entitled to the claimed \$378.62.
24. The *Court Order Interest Act* applies to the CRT. I find Malburg is entitled to pre-judgment interest on the \$378.62 from October 2, 2020, 30 days after the date of the invoice, to the date of this decision. This equals \$3.71.
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. I find Malburg is entitled to reimbursement of \$125 in paid CRT fees. Neither party claimed any dispute-related expenses.

## ORDERS

26. Within 21 days of the date of this decision, I order Ms. Rastgoo to pay Malburg a total of \$507.33, broken down as follows:
  - a. \$378.62 in debt,
  - b. \$3.71 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
27. Malburg is entitled to post-judgment interest, as applicable.
28. 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 British Columbia.

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Kristin Gardner, Tribunal Member