



# Civil Resolution Tribunal

Date Issued: September 22, 2022

File: SC-2022-002030

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Miller v. Webb Refrigeration Ltd.*, 2022 BCCRT 1043

B E T W E E N :

JAMES MILLER

**APPLICANT**

A N D :

WEBB REFRIGERATION LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about property damage allegedly caused during microwave repairs.
2. The applicant, James Miller, says that he hired the respondent, Webb Refrigeration Ltd. (Webb), to repair his microwave. Mr. Miller alleges that while a Webb employee was performing the repairs, they damaged the microwave door and some kitchen

cabinetry around the microwave. Mr. Miller claims \$2,625.78 for the cost of repairing the cabinetry and microwave door.

3. Webb denies that its employee caused the alleged damage. Webb also says that Mr. Miller has not paid Webb's \$90 invoice for its initial visit, and that it has not yet invoiced Mr. Miller for the \$921.80 in parts and labour charges incurred since its initial visit. Webb says it would like to be paid for the parts it installed in Mr. Miller's microwave, or get those parts back. However, Webb did not file a counterclaim.
4. Mr. Miller is self-represented. Webb is represented by its owner, Brent Webb.

## **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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Webb damage Mr. Miller's cabinetry and microwave, and if so, what is the appropriate remedy?
  - b. Is Webb entitled to a set-off for its services?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Miller must prove his 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.

11. The following background chronology is undisputed:
  - a. Mr. Miller hired Webb to diagnose and fix his microwave because the display panel was not working. Webb came to Mr. Miller's home on November 4, 2021 and determined the microwave's control board needed replacement.
  - b. Webb returned to Mr. Miller's home on December 30, 2021 to install the new control board, but the new part did not fix the problem. Webb advised Mr. Miller that other parts also needed replacement, which Mr. Miller agreed to.
  - c. Webb returned to Mr. Miller's home on January 27, 2022 to install the new parts. Mr. Miller was out of town at the time, and his housekeeper, MA, let the

Webb technician into the house. The new parts also did not fix the microwave's problems.

- d. When Mr. Miller returned from his vacation on February 7, 2022, he notified Webb that the cabinetry underneath the microwave was damaged and the microwave door dented.
12. Photos of Mr. Miller's microwave show it is mounted into the kitchen wall, just above a built-in oven. The appliances are surrounded by laminate cabinetry, with a narrow strip of cabinetry between the 2 appliances. Close-up photos of the claimed damage show the cabinetry is cracked and broken in 2 spots directly under the microwave, along the narrow strip above the oven. The photos also show there are 2 metal prongs on the bottom of the microwave itself that are in the same 2 places where the cabinetry was damaged. I find the cabinetry damage appears consistent with the prongs catching the edge of the cabinetry as the microwave was being pulled out of or pushed back into its cavity. There are also 2 noticeable dents in the lower part of the microwave's door, just under the window area.
  13. Webb denies responsibility for the damage. It provided a statement from its technician, BH, who attended Mr. Miller's home to conduct the repairs on December 30, 2021 and January 27, 2022. BH stated that at no time on either attendance did he completely remove the microwave from its location. He said that on January 27, 2022, he pulled the microwave forward to access the door and control panel, but that he did not cause the claimed damage. While he does not specifically mention it, I infer that BH pushed the microwave back when he completed the part installation, as he did not say that he left it pulled forward.
  14. In contrast, Mr. Miller says that on December 30, 2021, he observed BH remove the microwave from its cavity, and that BH asked him to provide something to set the microwave on, so it did not scratch the counter. Again, although Mr. Miller did not specifically mention it, I infer that BH returned the microwave to its place in the wall before leaving, as he did not indicate the microwave was left on the counter.

15. Mr. Miller also provided a statement from MA about BH's January 27, 2022 attendance. MA stated that she cleaned the kitchen before BH arrived, and there was no damage in the kitchen or to the microwave at that time. She stated that BH asked her for a towel or blanket to put on the counter, and she saw him pull the microwave out of the wall. She specifically noted that BH appeared to be struggling with removing it, as the microwave is at an awkward angle. MA said she was upstairs, so she did not see BH put the microwave back in its cavity, and she says she did not go back into the kitchen again before leaving Mr. Miller's home.
16. As noted, Mr. Miller returned from his vacation on February 7, 2022, when he says he found the microwave in its cavity along with the claimed damage.
17. For the following reasons, I prefer Mr. Miller's and MA's evidence over Webb's evidence. I find BH's statement about his repairs lacked important details. He did not explain where on the microwave the parts were located that he replaced, or how he accessed them without removing the unit from its cavity in the wall. Given that he replaced the control board, I find BH likely had to disconnect the microwave's power. Yet, he did not explain how he did so without pulling the microwave out completely. I also accept Mr. Miller's submission that the service panel is at the back of the microwave, which Webb did not dispute. Overall, I do not accept BH's statement that he did not completely remove the microwave from its cavity on either attendance.
18. However, even if BH did not completely remove it, he admits that he pulled the microwave forward during his January 27, 2022 attendance. Given the shape and location of the prongs under the microwave, I find that pulling the microwave only slightly forward at the wrong angle could have been enough to cause the cabinetry damage.
19. I also find the timeline is consistent with BH causing the damage. BH does not say the cabinetry damage or microwave door dents were already present when he arrived on January 27, 2022. I find there is no reason that MA would have tried to pull the microwave out herself, and I accept her evidence that she did not go back into the

kitchen after BH left. There is no suggestion that anyone else was in Mr. Miller's house before he discovered the damage.

20. On the evidence before me, I find it is more likely than not that BH caused the cabinetry damage. Given there is no indication that the microwave door dents were pre-existing and there is no other explanation for their cause, I find it is likely BH also caused the dents, which I find are consistent with applying pressure to the door to push the microwave back into the cabinet. I find Webb must compensate Mr. Miller for the damage it caused to Mr. Miller's property.
21. I turn to Mr. Miller's claimed damages.
22. Mr. Miller provided a February 25, 2022 quote from Pentco Industries Inc. for the replacement laminate cabinetry materials, totalling \$1,160.31. The quote included a required minimum 20 square feet of laminate, as well as 2 custom cut outs for the appliances. I find the quote is reasonable and order Webb to pay Mr. Miller \$1,160.31 for the laminate cabinetry materials.
23. Mr. Miller also provided a March 1, 2022 estimate from Northstar Ventures to install the new laminate cabinetry, totalling \$525. The estimate includes uninstalling the wall oven and microwave, removing the surrounding cabinet doors, de-laminating, sanding, and cleaning the face frame, applying the new laminate, and restoring the cabinet doors and appliances. I find the description of work and estimated cost are reasonable, and so I order Webb to pay Mr. Miller \$525 for the cabinetry installation.
24. As for the microwave door, Mr. Miller provided an ad from a secondary parts re-seller for a replacement door totalling \$646.66. However, the undisputed evidence is that Webb was unable to repair Mr. Miller's microwave to working order, which I find was not due to the quality of Webb's work. Further, Mr. Miller's submissions suggest he might replace the microwave completely, rather than repair it. I find it would not be appropriate to compensate Mr. Miller for dents in an appliance that he is going to replace in any event. In other words, he has not suffered a loss in this respect. So, I find Mr. Miller has not proven he is entitled to compensation for the dented door.

25. As noted, Webb also says that Mr. Miller has not paid its initial \$90 invoice, and it has not yet invoiced him for the over \$900 in parts and labour related to its subsequent service calls. Given Webb did not file a counterclaim, I infer that Webb claims a set-off for its services.
26. A respondent can claim a set-off if it is closely enough connected with an applicant's claimed rights that it would be unjust to proceed without considering a set-off: see *Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34. Here, I find Webb's claimed set-off for services rendered is sufficiently connected to Mr. Miller's damage claim, as they both arose from the same continuing repair job. Webb bears the burden of proving its entitlement to a set-off.
27. Webb provided its November 23, 2021 invoice for its initial call to inspect and diagnose Mr. Miller's microwave problem. The invoice totals \$94.50 including tax. Mr. Miller admits he has not paid that invoice, and he does not dispute the amount. I find it is appropriate under the circumstances to set-off Webb's \$94.50 invoice from the amount Webb owes Mr. Miller.
28. However, Webb did not provide its invoice for subsequent service, nor any supporting evidence about the cost of parts or labour relating to that work. Mr. Miller specifically disputes that he agreed to repair costs in the range of what Webb suggests is outstanding. Given the lack of evidence before me, I find Webb has not shown it is entitled to any further set-off.
29. I note that Mr. Miller does not object to Webb retrieving the parts that it installed in Mr. Miller's microwave. However, as Webb has not filed a counterclaim, I decline to make any findings or orders about that issue.
30. In summary, I find Webb must pay Mr. Miller \$1,685.31, less the \$94.50 set-off, for a total of \$1,590.81.
31. There is no evidence before me that Mr. Miller has incurred the cost for the laminate cabinetry repairs, and he expressly waived his right to claim interest, so I decline to order pre-judgment interest on the amount awarded.

32. 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. Miller was generally successful, and so he is entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

33. Within 30 days of the date of this decision, I order the respondent, Webb Refrigeration Ltd., to pay the applicant, James Miller, a total of \$1,715.81, broken down as follows:

- a. \$1,590.81 in damages for cabinetry repairs after setting off \$94.50 for Webb's November 23, 2021 invoice, and
- b. \$125 in CRT fees.

34. Mr. Miller is entitled to post-judgment interest, as applicable.

35. I dismiss Mr. Miller's claims related to the dented microwave door.

36. 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