Civil Resolution Tribunal

Date Issued: October 31, 2022

File: SC-2022-003242

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Seppanen v. Sprint Electrical Services Ltd.*, 2022 BCCRT 1188

B E T W E E N :

CHARLES SEPPANEN

APPLICANT

A N D :

SPRINT ELECTRICAL SERVICES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about money paid towards a generator's purchase. On November 25, 2021, the applicant, Charles Seppanen, paid $6,000 to the respondent, Sprint

Electrical Services Ltd. (Sprint), for its supply and installation of a generator that cost over $12,000. Mr. Seppanen later cancelled the order and requested a refund. Sprint agreed to provide a refund but only refunded $2,856, having charged Mr. Seppanen certain fees discussed below. Mr. Seppanen says Sprint never mentioned these fees before and that it told him he would get a full refund. Mr. Seppanen claims $3,144, which is the balance from his $6,000 payment.

2. Sprint says after Mr. Seppanen cancelled his order it told him it would "do our best" on his refund request. Sprint says at the time Mr. Seppanen ordered the generator he did not ask if there were fees or penalties if he cancelled and says it never promised him a full refund. Sprint says it was entitled to withhold money for the fees and says it owes nothing.

3. Mr. Seppanen is self-represented. Sprint is represented by a manager.

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. 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.

ISSUE

8. The issue in this dispute is whether Mr. Seppanen is entitled to the claimed $3,144 refund, or, whether Sprint was entitled to retain that money for various fees after Mr. Seppanen cancelled the generator order.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Seppanen must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read the parties' submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.

10. The parties did not have a formal written contract or agreement. Instead, I find the parties' series of November 25, 2021 emails, together with Sprint's November 25, 2021 invoice, comprised their agreement. I discuss the relevant terms below.

11. Sprint's invoice charged Mr. Seppanen $6,720 ($6,000 plus $420 PST and $300 GST) as a "deposit" towards a "12.5K Champion generator with automatic transfer switch". There is nothing in the invoice about the deposit's refundability or timing for delivery of the generator. However, Sprint's November 25, 2021 email said that installation would be 2 to 3 weeks from Mr. Seppanen's order date. Mr. Seppanen ordered the generator and asked for its installation "asap". Sprint confirmed the order that afternoon and then sent the deposit invoice.

12. Sprint undisputedly then had the generator shipped from Ontario to BC. On December 28, 2021, Sprint advised it expected to receive the generator on January 6 or 7, 2022. Sprint said in the meantime it wanted to send its electrician to Mr. Seppanen to create a material list for the installation. Mr. Seppanen agreed.

13. Mr. Seppanen says that the electrician explained the installation would be very difficult and that there would be holes cut causing damage. Sprint submitted no witness statement to the contrary from its electrician, so I accept this as true. In a January 5, 2022 email to Sprint, Mr. Seppanen explained the concerns about damage and said he wanted to cancel the generator order. He requested a refund of the $6,000. Later that day, Sprint responded, "I suppose I can send it back but I will have to ask", and that it would speak to the electrician to see if there were other options. There is no evidence the electrician ever came up with alternatives.

14. On January 12, 2022, Sprint advised that it had shipped the generator back and was "waiting on our refund" so it could then "settle up with you." The parties exchanged similar emails between January and April 2022.

15. None of the parties' emails mention any restocking fee or shipping fees that would be deducted from the refund. In one April 13, 2022 email, Sprint simply said the refund was "on its way". In the final email exchange on April 21 and 24, 2022, Mr. Seppanen asked for a $6,000 cheque and Sprint did not dispute that sum, and only said the cheque was in the mail and that it would not issue a replacement.

16. Sprint issued an April 8, 2022 cheque to Mr. Seppanen for $2,856. The accompanying statement reflected Mr. Seppanen's $6,000 payment, less the $2,856 refund, with the following breakdown of the amounts withheld: a $1,344 "20% Champion restocking charge", $750 for shipping from Ontario to Vancouver, $750 for shipping from Vancouver to Ontario, and $300 for "site visit and travel" (collectively, the Charges).

17. In short, there is nothing in the parties' agreement, comprised of the invoice and their emails, that said the deposit was non-refundable or that any restocking or shipping fees would apply if Mr. Seppanen cancelled the generator order.

18. Notably, the agreement also did not say Mr. Seppanen could cancel the order and receive a refund. However, as summarized above, I find Sprint clearly agreed to cancel the order and offered a refund. The issue is the amount of the refund, as discussed below.

19. I turn next to the law around deposits. In law, a true deposit is designed to motivate contracting parties to carry out their bargains. A buyer who repudiates the contract (refuses to pay for what they previously agreed to purchase) generally forfeits a true deposit. In contrast, a partial payment is made with the intention of completing a transaction, such as with a down payment to cover work to be done or materials to be purchased under the contract. For a seller to keep a partial payment, the seller must prove actual loss to justify keeping the money received. See *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30 and *Drozd v. Evans et al*, 2006 BCSC 1650 at paragraph 34.

20. However, here I do not need to decide whether the $6,000 was a true deposit or a partial payment. This is because Sprint undisputedly agreed to provide a refund and so it does not argue Mr. Seppanen forfeited the deposit.

21. So, the central question is whether Sprint was entitled to withhold the Charges from the deposit refund. As noted, there is no evidence Mr. Seppanen ever agreed to Sprint withholding anything. Significantly, until the time Sprint provided the partial refund Sprint also undisputedly never mentioned any Charges to Mr. Seppanen.

22. As noted above, the case law says Sprint must prove actual loss to justify keeping any of Mr. Seppanen's partial payment. Here, apart from its own submissions and invoice, and the parties' emails, Sprint submitted no supporting documentary evidence that would support its entitlement to the Charges. In particular, there are no records of shipping costs, and nothing from Champion showing it applied a 20% restocking charge. Similarly, Sprint submitted nothing to support the $300 charge for "site visit and travel". So, I find it unproven that Sprint sustained any actual loss that would permit it to retain any of the $6,000 partial payment. With that, I find Mr. Seppanen is entitled to the claimed $3,144. I order Sprint to pay him that amount.

23. Mr. Seppanen expressly waives any claim to pre-judgment interest, so I make no order for it.

24. 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. While Mr. Seppanen was successful, he expressly says he does not wish to claim reimbursement of CRT fees or dispute-related expenses. So, I make no order for them.

ORDERS

25. Within 21 days of this decision, I order Sprint to pay Mr. Seppanen a total of $3,144 in debt.

26. Mr. Seppanen is entitled to post-judgment interest, as applicable.

27. 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.

Shelley Lopez, Vice Chair