



# Civil Resolution Tribunal

Date Issued: November 2, 2022

File: SC-2022-001832

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chan (dba Doall Industries) v. Cheng*, 2022 BCCRT 1200

B E T W E E N :

BARRY CHAN (Doing Business As DOALL INDUSTRIES)

**APPLICANT**

A N D :

HARRY K CHENG also known as HARRY K. C. CHENG

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about payment for repairs to a heating system.
2. The applicant, Barry Chan (dba Doall Industries), says the respondent, Harry K Cheng also known as Harry K. C. Cheng, owes him \$1,000 for repairing Mr. Cheng's heating system.

3. Mr. Cheng denies Mr. Chan's claim. He says Mr. Chan overcharged him and misrepresented the nature of the repair and the cost of the parts. He also alleges Mr. Chan overcharged him for a previous job to repair a leak he says he paid for under duress. On Mr. Cheng's assessment of the total cost of the two repairs and money he already paid Mr. Chan for the leak repair, he says he is prepared to pay Mr. Chan \$207.69.
4. The parties are each 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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.
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.

### ***Preliminary Matters***

9. Mr. Cheng alleges Mr. Chan trespassed on his property and intimidated his tenants. I make no findings about these allegations as Mr. Cheng did not file a counterclaim despite having the opportunity to do so.
10. Mr. Cheng also says he contracted with “DoAll Industries Inc.” not with Mr. Chan in his personal capacity and that the claim should be dismissed because the wrong applicant was named. However, Mr. Cheng has not provided evidence that DoAll Industries is an “Inc.” or a corporate entity, such as by submitting a company search or any invoice, text, email, or agreement showing that Mr. Cheng contracted with a corporation. The Dispute Notice was amended during the CRT facilitation process to update the parties’ names, including Mr. Chan “doing business as Doall Industries”. So, on the evidence before me, I find the contracting parties are properly named in the amended Dispute Notice.

### **ISSUES**

11. The issues in this dispute are:
  - a. Does Mr. Cheng owe Mr. Chan \$1,000 for the heating system repair?
  - b. Is Mr. Cheng entitled to a set-off from any amount owed?

### **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, as the applicant, Mr. Chan must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find

relevant to provide context for my decision. I note Mr. Chan did not submit any documentary evidence, despite having the opportunity to do so.

***Does Mr. Cheng owe Mr. Chan \$1,000 for the heating system repair?***

13. On November 19, 2021, Mr. Chan attended at Mr. Cheng's property to fix a leak. Mr. Cheng paid Mr. Chan \$1,260 for his services. On November 22, 2021, Mr. Chan attended the property to repair the heating system. None of this is in dispute.
14. Mr. Cheng says he contracted with Mr. Chan for the leak repair on November 19, 2021 and authorized work for the heating system repair on November 20, 2021. The evidence indicates these were verbal agreements. In the absence of any written contract showing otherwise, I find these were separate agreements. I say this because the evidence shows Mr. Cheng contacted Mr. Chan about the heating system repair after he had completed the leak repair and after Mr. Cheng had paid for it.
15. Mr. Cheng says Mr. Chan agreed to a rate of \$168 per hour for labour for the leak repair. He calculated labour costs for the heating system repair using the same rate. I find from the evidence Mr. Cheng agreed the cost of parts would be extra. Mr. Chan does not dispute any of this. So, I find the parties contracted for the heating system repair at a rate of \$168 per hour for labour plus parts.
16. As noted, Mr. Chan says Mr. Cheng owes him \$1,000 for the heating system repair. Significantly, Mr. Chan did not submit an invoice in evidence and Mr. Cheng says he never received one. Without an invoice, I cannot assess the work done, the time taken to complete the work, or the cost of parts. These factors are clearly relevant to the claimed amount and parties are told during the CRT process to submit all relevant evidence. Ordinarily, failure to provide the relevant invoice would be fatal to a claim.
17. However, it is undisputed Mr. Cheng received the benefit of Mr. Chan's heating repair work. Mr. Cheng said he conducted "market research" to determine the parts' costs, which were lower than Mr. Chan's quotes of several hundred dollars each for a valve and an actuator and \$100 for a thermostat. In a November 22, 2021 email between

the parties, Mr. Cheng calculated the cost of the heating system repair at \$787.70, broken down as:

- a. \$672 for 4 hours' labour (at \$168 per hour), and
- b. \$115.70 for 2 parts.

18. Mr. Cheng also alleges Mr. Chan “misrepresented” the nature of the repair. A misrepresentation is a false statement of fact made during negotiations or an advertisement that has the effect of inducing a reasonable person to enter the contract (see *O’Shaughnessy v. Sidhu*, 2016 BCPC 308). I infer here that the misrepresentation relates to Mr. Cheng’s assertion Mr. Chan quoted him costs for 3 parts when his research showed he only needed 2 parts.

19. Mr. Cheng did not provide any evidence of misrepresentation – for example, an opinion from a qualified professional in heating systems to support his claim Mr. Chan only needed 2 parts for the repair. So, I do not find Mr. Chan misrepresented the nature of the repair. In any event, nothing turns on this, because without an invoice setting out the cost for labour and parts, I accept Mr. Cheng’s calculation as reasonable. I find he owes Mr. Chan \$787.70 for the heating system repair, subject to any set-off discussed below.

***Is Mr. Cheng entitled to a set-off from any amount owed?***

20. Mr. Cheng says he is only prepared to pay Mr. Chan \$207.69 because Mr. Chan overcharged him for the leak repair. He says he paid \$1,260 for the leak repair under duress but should have only paid \$679.99 for labour and parts. Essentially, Mr. Cheng alleges Mr. Chan owes him \$580.01 for the leak repair.

21. As noted, Mr. Cheng did not file a counterclaim. I infer Mr. Cheng argues he is entitled to a set-off against the \$787.70 I find he owes. Because Mr. Cheng is alleging the set-off, the burden to prove the set-off shifts to him.

22. A set-off is a right existing between parties that owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the

residue (see *Black's Law Dictionary*, revised 4<sup>th</sup> edition at paragraph 1538). When the desired set-off is closely enough connected with an applicant's claimed rights that it would be unjust to proceed without permitting a set-off, equitable set-off may be applied (see *Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34).

23. Mr. Chan disputes Mr. Cheng's argument for a set-off. He says the leak repair job is not related to the heating repair job and it "was paid and done, end of story." I agree. I find equitable set-off does not apply here because the mutual alleged debts address underlying obligations arising from different transactions for work completed on different appliances on different days. So, I make no findings about whether Mr. Cheng overpaid for the leak repair and no order about it.
24. In summary, I find Mr. Cheng must pay Mr. Chan \$787.70 for the heating system repair.

## **INTEREST AND CRT FEES**

25. The *Court Order Interest Act* applies to the CRT. Mr. Chan is entitled to pre-judgment interest on the \$787.70 from November 22, 2021, the date of the heating system repair, to the date of this decision. This equals \$6.73.
26. 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. Mr. Chan was largely successful so I find he is entitled to reimbursement of \$125 in CRT fees. Mr. Chan did not claim any dispute-related expenses, so I award none.

## **ORDERS**

27. Within 30 days of the date of this order, I order Mr. Cheng to pay Mr. Chan a total of \$919.43, broken down as follows:
- a. \$787.70 as payment for the heating system repair,

- b. \$6.73 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

28. Mr. Chan is entitled to post-judgment interest, as applicable.

29. 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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Megan Stewart, Tribunal Member