



Civil Resolution Tribunal

Date Issued: January 11, 2023

File: SC-2022-003084

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shular v. A & A Major Appliance Service Inc.*, 2023 BCCRT 26

BETWEEN:

HALI JO SHULAR

APPLICANT

AND:

A & A MAJOR APPLIANCE SERVICE INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about refrigerator repairs. The applicant, Hali Jo Shular, hired the respondent, A & A Major Appliance Service Inc. (AAMA), to fix her fridge's icemaker.

Ms. Shular says after 3 visits AAMA still had not fixed the problem. Ms. Shular claims a refund of \$410.90.

2. As discussed below, AAMA denies any wrongdoing. I infer AAMA asks me to dismiss the dispute.
3. Ms. Shular is self-represented. AAMA is represented by an employee.

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, both parties of this dispute call into question the credibility, or truthfulness, of the other. 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.

ISSUES

8. The issues in this dispute are whether AAMA's repair work on the fridge's icemaker was substandard and whether Ms. Shular is entitled to a refund of the claimed \$410.90.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Ms. Shular must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. Beyond its Dispute Response filed at the outset of this proceeding (summarized above in the introduction), AAMA chose not to provide any documentary evidence or written argument, despite having the opportunity to do so.
10. There is limited evidence before me in this dispute. However, I accept the following undisputed evidence submitted by Ms. Shular:
 - a. AAMA charged Ms. Shular \$99.75 for its initial call-out visit. The parties agreed she would unplug the fridge and let it defrost. That did not work.
 - b. Ms. Shular then scheduled the next AAMA visit for November 5, 2021, at which time AAMA replaced the icemaker. Ms. Shular says "that total less the initial call out" was \$214.90. The icemaker still did not work.
 - c. AAMA returned on November 12, 2021 and replaced the fridge's water valve for \$196. At this point, Ms. Shular had paid AAMA a total of \$510.65, or the claimed \$410.90 excluding the initial call-out fee of \$99.75. The icemaker was still not working.
 - d. AAMA was scheduled to return again on November 15, but Ms. Shular had to cancel the visit due to a power outage. After this, Ms. Shular decided to call another company.

11. In its Dispute Response, AAMA said that at its 1st visit it gave a “full diagnosis” and said either the icemaker or the water valve needed to be replaced. AAMA said it “needed to order parts” and said on the 2nd visit it replaced the icemaker. AAMA said the problem persisted and so it ordered a water valve and replaced that on the 3rd visit. AAMA says Ms. Shular did not contact it during its 30-day warranty period and considered the problem resolved. As noted, AAMA submitted no other evidence or argument. So, I have no evidence about what AAMA’s alleged “full diagnosis” was. Nothing turns on this, given my conclusion below.
12. On November 30 and December 26, 2021, another repair company, Platinum Appliance Service Inc. (Platinum), attended. In its service records, Platinum’s technician wrote they could “see the electrical connector wasn’t plugged in properly” and after removing and reinstalling the unit it “tested good from there”. However, the Platinum technician added they “had to fight it” because the wires were not long enough to reach properly and so a fuse was not sitting in the correct spot. The technician wrote they instructed Ms. Shular how to turn the unit off manually. Finally, the technician wrote they would need to replace the icemaker again because “this one obviously isn’t working properly”.
13. I accept Platinum’s evidence and find that AAMA either installed an incorrect icemaker or installed the replacement incorrectly. On the evidence before me, I find AAMA’s repair efforts were of no value to Ms. Shular. I find based on Platinum’s evidence AAMA’s work was substandard. So, I find AAMA was negligent. I also find AAMA breached the parties’ contract and an implied warranty under section 18 of the *Sales of Goods Act* that the icemaker would be of saleable quality. Given the above, I find Ms. Shular is entitled to a refund of the claimed \$410.90, which as noted above does not include AAMA’s initial call-out fee.
14. I note in its Dispute Response AAMA referred to its 30-day warranty. It submitted no evidence about the warranty. Nothing turns on this, because I have found AAMA breached the parties’ contract by failing to properly address her icemaker’s repair. I find no evidence that Ms. Shular was obliged to pursue further repairs through an

AAMA warranty and given AAMA's unsuccessful efforts I find it was reasonable for her to consult Platinum.

15. The *Court Order Interest Act* (COIA) applies to the CRT. I find Ms. Shular is entitled to pre-judgment interest under the COIA on the \$410.90. Calculated from November 30, 2021 (a date I find reasonable in the circumstances) to the date of this decision, this interest equals \$5.15.
16. 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 Ms. Shular was successful, I find she is entitled to reimbursement of \$125 for paid CRT fees. She did not claim dispute-related expenses.

ORDERS

17. Within 21 days of this decision, I order AAMA to pay Ms. Shular a total of \$541.05, broken down as follows:
 - a. \$410.90 in damages,
 - b. \$5.15 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
18. Ms. Shular is entitled to post-judgment interest, as applicable.
19. 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