Civil Resolution Tribunal

Date Issued: January 23, 2023

File: SC-2022-003141

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tidy HVAC Ltd. v. Logan*, 2023 BCCRT 59

B E T W E E N :

TIDY HVAC LTD.

APPLICANT

A N D :

SUZANNE LOGAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about refrigerator repairs.

2. The applicant, Tidy HVAC Ltd. (Tidy), says that it was subcontracted by a third party repair company, EAR, to diagnose and repair a fridge belonging to the respondent, Suzanne Logan. EAR is not a party to this dispute. Tidy says that it replaced a

compressor in Ms. Logan's fridge, but she has refused to pay for the compressor and other materials required to install it. Tidy claims $1,445.68.

3. Ms. Logan says that Tidy broke the existing compressor while doing the initial repair work, and that she never agreed to pay for the new compressor. Ms. Logan says she owes Tidy nothing.

4. Tidy is represented by an employee or principal. Ms. Logan 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. 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.

ISSUE

9. The issue in this dispute is to what extent, if any, Ms. Logan owes Tidy $1,445.68 for its services.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Tidy must prove its claims 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 that Tidy did not provide any written reply submissions, despite having the opportunity to do so.

11. It is undisputed that Ms. Logan initially contacted EAR to diagnose and repair her malfunctioning fridge. Tidy says EAR subcontracted it to do the work, so I infer that Tidy is an independent contractor. As Ms. Logan did not object to Tidy performing the repair services, I find that she agreed to hire Tidy and pay Tidy directly for its services.

12. There is no written contract between the parties, and no evidence of any written estimate or quote for Tidy's work. Overall, I find the evidence is somewhat unclear about Tidy's diagnosis of the fridge's problem, the work Tidy performed on the fridge, and whether Tidy was ultimately successful in fixing the fridge.

13. The parties' text messages indicate that Tidy first assessed Ms. Logan's fridge on March 9, 2022. On March 10, 2022, Tidy texted that it found an evaporator coil in stock and had sent Ms. Logan the quote.

14. Ms. Logan provided a copy of Tidy's March 14, 2022 invoice for parts, which included an evaporator coil, and a regulator with a suction line, together totalling $671.95. It is undisputed that Ms. Logan paid this invoice on March 14, before Tidy installed those parts.

15. The parties' text messages show Tidy returned to Ms. Logan's home on March 16, 2022, which I infer was so that it could install the evaporator coil and regulator. On

March 17, 2022, Ms. Logan texted Tidy to ask when it would be back to "complete the repair". The parties did not explain either in their text messages or submissions for this dispute exactly what needed to be completed.

16. On March 18, 2022, Tidy texted Ms. Logan that it found a compressor and the earliest it could install it was March 23. It is unclear when Tidy discovered the compressor required replacement. Tidy also advised in its text that "at the very least" it would like to be paid for the materials it required to install the new compressor, which Tidy stated would be $412. Tidy further texted that if Ms. Logan wanted to go through with getting the fridge "back up" on March 23, she had to pay the outstanding labour charges for installing the evaporator coil and regulator.

17. Ms. Logan responded to Tidy's text advising that "in good faith" she would pay the "final amount owing" of $709.57 in advance, so long as Tidy sent her the invoice adjustment to do so. Neither party explained their initial agreement about paying for labour or what the reference to an "adjustment" meant.

18. In any event, Ms. Logan provided a copy of Tidy's March 18, 2022 invoice, which stated it was simply for "labour", totalling $709.28. It is undisputed that Ms. Logan paid this invoice in full on March 21, 2022.

19. I turn to the compressor, which is the subject of this dispute. It is undisputed that Tidy installed a new compressor on March 23, 2022. Tidy provided 3 invoices, which together total the claimed $1,445.68. A March 23, 2022 invoice is for Tidy's materials related to removing and replacing the compressor, totalling $479.43. It listed items such as refrigerant, soap, rags, fittings, valves, gas, and truck charges, among others. An April 6, 2022 invoice is for the compressor part, totalling $866.25, and an April 30, 2022 invoice is for a $100 overdue charge.

20. The parties each allege the other was responsible for breaking the existing compressor part. However, I find it is unnecessary to determine why the compressor failed or who was responsible for its failure, so I have not addressed that issue. My reasons follow.

21. It is undisputed that the broken compressor part had only been installed a few months earlier. While it is unclear who completed that installation, I find it was someone other than Tidy. The parties' text messages show that they both believed the compressor part was still covered by a third-party warranty. Specifically, Tidy texted Ms. Logan on March 18, 2022 that "the compressor is 800 something dollars that we are going to get back from the suppliers". Further, Tidy's March 23 invoice for materials stated it related to a "compressor swap, part under 1 year warranty".

22. I infer that Tidy believed its labour to install the new compressor would also be covered by warranty, given it did not charge Ms. Logan anything for labour. This is further supported by Tidy's March 18 text requesting that Ms. Logan pay for its materials to install the compressor because it could not afford to do it all for free.

23. However, there is no evidence before me that Ms. Logan agreed to pay for Tidy's materials. As noted, Ms. Logan referred to Tidy's labour charges for the evaporator coil and regulator installation as the "final amount owing". I find this comment implies that she was unwilling to pay for Tidy's materials to install a new compressor, despite Tidy's request, and that she did not intend to pay anything further.

24. Given that Tidy expressly requested in advance that Ms. Logan pay for its materials for the compressor installation, and that Ms. Logan failed to agree to the request, I find the parties did not have a binding agreement about payment for Tidy's materials. Therefore, I find Tidy has not shown it is entitled to payment for its March 23 invoice totalling $479.43, and I dismiss this aspect of Tidy's claim.

25. What about the compressor part? Tidy says that when it took the broken compressor back to the supplier, it discovered the part was no longer under warranty. The only evidence Tidy provided about this was an October 20, 2021 invoice for a compressor showing EAR as the purchaser. There is an undated handwritten note on the invoice stating: "Wty = 90 day, This is not under warranty". While there is nothing on the invoice directly connecting Ms. Logan to the purchase, I infer it relates to the compressor Tidy replaced, which Ms. Logan does not dispute.

26. Tidy did not provide any other supporting evidence about the compressor's warranty. Further, Tidy did not explain why it failed to advise Ms. Logan that the broken compressor was not covered by warranty before it purchased the new compressor and installed it. I find the evidence shows Tidy knew Ms. Logan was upset that the compressor needed replacement given it was relatively new, and that she had expressed she did not want to pay anything for it or its installation. Given these circumstances, I find Tidy was obligated to advise Ms. Logan about the cost before proceeding with the purchase and installation.

27. I also note that the October 20, 2021 invoice for the compressor part that broke totalled $228.85. Tidy did not explain why it charged Ms. Logan $866.25 for the replacement compressor or provide any evidence showing what Tidy paid for its purchase. While I acknowledge that some mark-up on parts by contractors might be expected, I find Tidy has not established a mark-up of nearly 400% was reasonable.

28. In any event, I find Tidy has not established that Ms. Logan agreed to pay anything for the compressor part. Therefore, I find Tidy is not entitled to payment for its April 6, 2022 invoice.

29. Given my conclusions about Tidy's March 23 and April 6 invoices, I find Tidy is also not entitled to payment for any "overdue charges". I dismiss Tidy's claims.

30. 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. Tidy was unsuccessful in this dispute, so I dismiss its claim for CRT fees. Ms. Logan did not pay CRT fees or claim any dispute-related expenses, so I make no order.

ORDER

31. I dismiss Tidy's claims and this dispute.

Kristin Gardner, Tribunal Member