



Civil Resolution Tribunal

Date Issued: April 20, 2023

File: SC-2022-004704

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Copper-Tip Plumbing and Heating Ltd. v. Bourassa*, 2023 BCCRT 322

B E T W E E N :

COPPER-TIP PLUMBING AND HEATING LTD.

APPLICANT

A N D :

SIMONE BOURASSA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about the installation of a water tank. The applicant, Copper-Tip Plumbing and Heating Ltd. (Copper-Tip), replaced a water tank in the respondent,

Simone Bourassa's, home. Copper-Tip says Ms. Bourassa owes \$1,915.46 for the work.

2. Ms. Bourassa agrees that Copper-Tip completed the work but says it damaged her belongings and bathroom tiles during the installation. She says the cost of the property damage exceeds the cost of Copper-Tip's installation work, so she does not owe Copper-Tip anything. Ms. Bourassa did not file a counterclaim, so I infer that she is claiming a set-off for the value of the alleged property damage.
3. Copper-Tip is represented by its owner. Ms. Bourassa is self-represented.

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). 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.
5. 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.
6. 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.

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 Ms. Bourassa must pay Copper-Tip \$1,915.46 for the water tank installation.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant, Copper-Tip must prove its claims on a balance of probabilities. Both parties provided evidence and submissions. Copper-Tip declined to provide reply submissions despite having the opportunity to do so. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
10. It is undisputed that in April 2021 Copper-Tip replaced the water tank in Ms. Bourassa's home. During the installation process some water spilled onto the floor and entered the crawlspace. When Ms. Bourassa noticed the water she immediately notified Copper-Tip who sent an employee to her home to remove the water with a vacuum. At some point during Copper-Tip's work, some of the tiles in Ms. Bourassa's bathroom cracked. None of this is disputed.
11. First, I must determine whether Copper-Tip is entitled to payment for the installation work. Copper-Tip says it sent Ms. Bourassa a quote for the installation work which she approved by email on March 30, 2021. Copper-Tip did not submit this quote into evidence, nor did it submit an invoice to support its claim. However, Ms. Bourassa agrees that Copper-Tip completed the installation work, and she says she does not dispute the cost of the work. Rather, as noted she says the amount of the property damage Copper-Tip caused exceeds the cost of its installation work, so she asks for a set-off for the full amount of Copper-Tip's claim.

12. Given Ms. Bourassa's position, I find Copper-Tip is entitled to payment of the full amount claimed, subject to any proven set-off. An equitable set-off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the residue. An equitable set-off may be applied when the desired set-off is connected closely enough with an applicant's claimed rights that it would be unjust to proceed without permitting one (*Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34). I find that an equitable set-off applies here because the mutually alleged debts arise from the same circumstances surrounding Copper-Tip's installation of the water tank. Since Ms. Bourassa is claiming the set-off, she is responsible for proving her entitlement to any set-off amount.
13. While Copper-Tip's accepted quote is not in evidence, I find it was an implied term of the parties' agreement that Copper-Tip would take reasonable steps to avoid damaging Ms. Bourassa's property during the installation.
14. Ms. Bourassa says Copper-Tip's water spill caused permanent damage to her "irreplaceable" belongings in the crawl space. However, she failed to provide any details, photos, or other evidence about which items were allegedly damaged by the water, or the items' value. In the absence of any supporting evidence, I find Ms. Bourassa has not proven that she is entitled to a set-off for water damage to her belongings in the crawlspace.
15. Ms. Bourassa also says Copper-Tip broke some tiles in her bathroom while vacuuming the excess water. She says that while Copper-Tip was vacuuming she heard a "large bang," and after Copper-Tip left she noticed the broken tiles. She believes Copper-Tip dropped something heavy on the floor which broke the tiles. She submitted photos showing that at least 3 tiles surrounding the crawlspace door in her bathroom are significantly cracked. She says she contacted Copper-Tip about the damaged tiles, and Copper-Tip instructed her to get a quote from a flooring company to repair the tiles. Ms. Bourassa says she obtained the requested quote and sent it to Copper-Tip but never received a response.

16. Copper-Tip admits that it broke the tiles during its work in Ms. Bourassa's home. It does not say when or how it broke the tiles, but it does not specifically dispute Ms. Bourassa's claim that it dropped something heavy on the tiles while vacuuming the excess water.
17. However, Copper-Tip says it is not responsible for breaking the tiles, rather they broke because of pre-existing water damage to the subfloor from the old water tank. It also says the tiles broke because they were not installed properly. Copper-Tip says it explained the pre-existing leak to Ms. Bourassa in its approved quote, but as noted above the quote is not in evidence. I also find an inconsistency in Copper-Tip's evidence on this point. In its Dispute Notice Copper-Tip says it discovered the pre-existing water leak after the installation work. However, in its submissions Copper-Tip says it discovered the pre-existing leak during its initial inspection.
18. Ms. Bourassa denies there was any water damage to the subfloor before Copper-Tip started working in her home. She also denies that the tiles were installed improperly. She says the tiles were installed by the original homebuilder and had been intact for 24 years before Copper-Tip broke them.
19. I find Copper-Tip's explanation for the cause of the broken tiles is beyond common understanding, so expert evidence is required (see *Bergen v. Guliker*, 2015 BCCA 283). In support of its position Copper-Tip submitted 2 emails from Nufloors' general manager ML. These emails suggest that the tiles were installed without sufficient "thinset coverage" which meant the tiles did not completely bond to the subfloor. ML suggests that excessive moisture caused the wooden subfloor to swell which caused the insufficiently bonded tiles to pop off the subfloor and crack.
20. I do not accept ML's emails as expert evidence because ML's qualifications are not in evidence, as required by CRT rule 8.3(2). In any event, I find ML's conclusion does not necessarily support Copper-Tip's position. ML's conclusion is based on the premise that excess moisture seeped into the subfloor, but ML does not specify whether that moisture damage was from Copper-Tip's spill or from a previous leak, as Copper-Tip alleges. ML does not elaborate on the extent of the excess moisture.

It also seems from ML's emails that their conclusion was based solely on photographs. For these reasons I place no weight on ML's emails.

21. I am left with the undisputed fact that Copper-Tip spilled water on Ms. Bourassa's bathroom floor and broke her tiles. I find there is no persuasive evidence to support Copper-Tip's claim that there was pre-existing water damage to the subfloor which could have caused the tiles to crack. I am not persuaded that the tiles were not installed properly since I place no weight on ML's emails, and since Copper-Tip does not dispute Ms. Bourassa's claim that they were intact for 24 years. Given this, and the inconsistencies in Copper-Tip's evidence explained above, I prefer Ms. Bourassa's evidence about how the tiles broke. I find it more likely than not that Copper-Tip accidentally broke the tiles by dropping something heavy on them while vacuuming the excess water.
22. In the circumstances, I am satisfied that Copper-Tip breached the implied term of the parties' agreement to take reasonable steps not to damage Ms. Bourassa's property during its work. I find Ms. Bourassa is entitled to a set-off for the damaged tiles. Next, I must determine the amount of the set-off.
23. Damages for breach of contract are generally meant to put the innocent party in the same position as if the contract had been performed as agreed upon (see *Water's Edge resort v. Canada (Attorney General)*, 2015 BCCA 319). Ms. Bourassa submitted a quote from Nufloors for \$2,275.62 to remove and replace all existing tiles and the subfloor with new materials. The quote also includes replacing the wooden crawlspace door with a metal one.
24. An email in evidence from Ms. Bourassa's partner to Copper-Tip says she could not find extra tiles in her garage to replace the broken ones, and the flooring company was unable to match the existing tiles. I infer that this is the reason Ms. Bourassa is claiming the cost of replacing the entire bathroom floor as opposed to the individual broken tiles. While I find this explanation reasonable, I find that compensating Ms. Bourassa for the entire cost of the quote would put her in a better position than she would have been in had the tiles not cracked, which in law is known as betterment.

In particular, she does not specifically allege that Copper-Tip damaged the subfloor such that it or the wooden crawlspace door require replacing. The quote does not break down the cost of individual items. So, on a judgment basis I find Ms. Bourassa is entitled to a set-off of \$1,000.

25. In conclusion, I find Copper-Tip is entitled to payment of its \$1,915.46 claim, less a set-off of \$1,000, for a total of \$915.46.
26. The *Court Order Interest Act* applies to the CRT. Copper Tip is entitled to pre-judgment interest on the amount owing calculated from April 30, 2021, which is the date by which the work was completed, to the date of this decision. This equals \$8.12.
27. 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. Since Copper-Tip was partially successful, I find it is entitled to reimbursement of half its CRT fees in the amount of \$62.50. Copper-Tip did not claim any dispute-related expenses.

ORDERS

28. Within 30 days of the date of this order, I order Ms. Bourassa to pay Copper-Tip a total of \$986.08, broken down as follows:
 - a. \$915.46 in debt as payment for the water tank installation,
 - b. \$8.12 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
29. Copper-Tip is entitled to post-judgment interest, as applicable.

30. 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.

Sarah Orr, Tribunal Member