



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Liu v. Priority Appliance Service Ltd.*, 2023 BCCRT 409

BETWEEN:

JIANTIAN LIU

APPLICANT

AND:

PRIORITY APPLIANCE SERVICE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about fridge repairs.
2. The applicant, Jiantian Liu, hired the respondent, Priority Appliance Service Ltd. (Priority), to fix her fridge, which was making a beeping sound. Ms. Liu paid Priority \$1,188.40, but says her fridge continued to beep and Priority refused to refund her.

Ms. Liu says Priority breached the parties' fixed price contract by failing to repair her beeping fridge. She claims \$1,188.40 as a refund of Priority's repair charge. Ms. Liu also claims \$3,600 for pain and suffering she says Priority caused her due to the alleged failed repair, for a total of \$4,788.40.

3. Priority denies any wrongdoing. It says the parties did not have a fixed price contract and that the \$1,188.40 it charged Ms. Liu, and to which she agreed, was for parts and labour that were reasonably used in the repair process. It also says it was willing to continue to work on the problem when Ms. Liu reported her fridge was still beeping, but Ms. Liu refused and insisted on a refund. Priority denies Ms. Liu's claim for pain and suffering, saying any disturbance is the result of her refusal to allow it to continue with the fridge repairs.
4. Ms. Liu is self-represented. Priority is represented by an employee.

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.
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.
9. In reply submissions, Ms. Liu raised a new allegation of discrimination. Since this issue was not identified in the Dispute Notice, I find it is not properly before me and it would be procedurally unfair for me to consider it. In any event, I find generally the Human Rights Tribunal is a more appropriate forum for discrimination claims, not the CRT. I decline to address Ms. Liu's discrimination allegation.

ISSUES

10. The issues in this dispute are:
 - a. Did the parties have a fixed price contract and if so, did Priority breach it?
 - b. Was Priority's repair work deficient?
 - c. Is Ms. Liu entitled to a \$1,188.40 refund for Priority's fridge repair work?
 - d. Is Ms. Liu entitled to the claimed \$3,600 for pain and suffering?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Liu must prove her 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.
12. The background is largely undisputed. On July 6, 2022, Ms. Liu called Priority to service her fridge, which was beeping about once a day. Priority advised Ms. Liu of its \$198 service call fee and its \$24 per 10 minutes labour charge, and scheduled a

service call for July 13. During the July 13 visit, the technician found the fridge's evaporator was only partially frosted. He diagnosed the problem as a possible sealed system leak, which was causing the fridge and freezer not to cool properly and triggering the high temperature auditory alert. The technician quoted Ms. Liu \$2,242.68 to repair the sealed system leak. A return visit to install replacement parts was scheduled for July 28.

13. The technician and a field service manager attended Ms. Liu's home on July 28 to continue the repair. The technician noted the fridge's evaporator was much more frosted than it had previously been, and on rechecking the sealed system, determined that that might not be the problem after all. On further inspection, the technician found the fridge's condenser fan blades were spinning at 950 rpm, slower than the manufacturer specification of 1400 rpm. So, instead of proceeding with the sealed system repair, the technician recommended the condenser fan motor be replaced and adjusted the quote to \$1,188.40.
14. On August 15, the technician returned to replace the condenser fan motor and told Ms. Liu that once the fridge's temperature dropped over the next day, the fridge would stop beeping. Ms. Liu paid the \$1,188.40 charge.

The parties' contract

15. Ms. Liu says after the technician installed the new condenser fan motor, the high temperature alert continued. The evidence shows she contacted the technician between August 16 and 18 and he tried to troubleshoot over the phone. However, Ms. Liu says that did not resolve the beeping. I find it reasonable that Ms. Liu would have expected the beeping to stop once the repairs were completed.
16. Phone call recordings in evidence indicate Ms. Liu also spoke to 2 other Priority employees on August 17 and 19. The recordings confirm Ms. Liu was told she would not be charged an additional service call fee if the technician needed to return, but that she would be charged for any additional parts and related labour to continue the repair.

17. As noted above, Ms. Liu says the parties had a fixed price contract for \$1,188.40 to fix her fridge, and that Priority breached the contract when it failed to stop the beeping. She relies on Priority's July 28 \$1,188.40 quote to replace the fridge's condenser fan motor and says the technician told her it was to cover "everything needed to repair the refrigerator's problem." Priority does not explicitly dispute this, nor did it submit a statement from its technician. However, it is clear from the invoice in evidence the \$1,188.40 was for the parts and labour to replace the condenser fan motor, and not for "everything needed to repair the refrigerator's problem."
18. Ms. Liu also says the way the \$1,188.40 was calculated proves the parties had a fixed price contract. She points to the \$435 labour charge, and using Priority's \$24 per ten minutes rate, calculates the total time spent on the job as 181.25 minutes. However, Priority's invoice only records a total time of 170 minutes. Ms. Liu says even if this is rounded up to 180 minutes, it does not account for the additional 1.25 minutes. She also notes the invoice only records 25 minutes of time billed for the July 13 visit and the boxes for time billed on July 28 and August 15 are crossed off. I infer Ms. Liu is suggesting Priority charged her a flat labour fee, indicating a fixed price contract.
19. Priority denies the parties had a fixed price contract. It says its quotes show the agreed work was for specific repairs to address the fridge's underlying cooling problem. In support of this, Priority points to the earlier higher quote to repair the possible sealed system leak and the later lower quote to replace the condenser fan motor. Priority also says had the parties had a fixed price contract, it would not have adjusted its price downward when the scope of the job changed. It does not address Ms. Liu's argument about the slight discrepancy for time billed.
20. A fixed price contract is one where "the work is defined with sufficient [particularity] so that the cost is essentially fixed" (see *Savings v. Mark Swallow Thompson Allard & Co.*, 1996 (CanLII) 1152 (BC SC)). Here, I find the evidence does not show the parties had a fixed price contract to repair the fridge's cooling system and stop the high temperature alert being triggered. My reasons follow.

21. First, I agree with Priority that if the parties had had a fixed price contract, Priority would not have lowered its estimate when the technician re-diagnosed the cooling problem on July 28 as an issue with the condenser fan motor.
22. Second, even if Priority's \$435 charge for time spent on the project does not precisely reflect its \$24 per 10 minutes rate, I find this is not evidence of a fixed price contract. Given the \$3 difference between the \$435 time charge and the \$432 that should have been charged based on the rounded-up time spent on the job, I find the slightly higher figure is likely a calculation error, rather than proof of a fixed price contract.
23. Third, the quotes in evidence are each referred to as a "priority high end estimate" for specific repairs to the fridge, such as fixing the sealed system leak or replacing the condenser fan motor. Similarly, while the invoice identifies the complaint as "beeping continually", it explains the specific work done in terms of the condenser fan motor replacement. I accept the technician anticipated the beeping would stop upon replacing the condenser fan motor, based on his diagnosis of the problem as a cooling issue. However, I find there is no evidence he guaranteed it, particularly since the beeping was undisputedly symptomatic of an underlying problem that may have been caused by something else, as shown by the initial diagnosis of a sealed system leak. I find that whether the technician was reasonably competent in diagnosing and addressing the fridge's problem raises a question about deficient work, which I turn to below.

Deficient work

24. To prove deficient work, a party must show it was below a reasonably competent (but not perfect) standard (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287, at paragraph 61). Generally, expert evidence is required when a party alleges a professional's work fell below a reasonably competent standard because an ordinary person does not know the standards of a particular profession or industry (see *Bergen v. Guliker*, 2015 BCCA 283). The exceptions to this general rule are when the work is obviously substandard, or the deficiency relates to something non-technical

(see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112). I find there are no obvious deficiencies in Priority's work.

25. I find the fact the replacement condenser fan motor did not resolve the fridge's diagnosed cooling problem and the corresponding high temperature alert does not necessarily mean Priority's work was deficient.
26. Instead, I find the question to be answered is whether Priority's technician met the applicable standard in identifying the cause of the beeping as a cooling problem, and then deciding to replace the condenser fan motor to try and resolve that problem. That is, if the technician diagnosed and tried to fix the problem in the manner of a reasonably competent fridge repair service provider, then the work performed was not deficient and Priority was entitled to be paid for it. I find answering this question requires expert evidence, such as from another fridge repair service provider. Ms. Liu did not submit any expert evidence. So, I find it unproven that Priority's work was deficient.
27. For the reasons above, I dismiss Ms. Liu's claim for the \$1,188.40 repair charge.

Damages for pain and suffering

28. Ms. Liu alleges Priority's failure to stop her fridge from beeping daily significantly disturbed her regular life by causing her to be constantly nervous, upset, and unable to relax at home. She also says Priority's conduct exacerbated her pre-existing mental health condition. I find this is essentially a claim for mental distress. As discussed in *Eggberry v. Horn et al*, 2018 BCCRT 224, a non-binding but persuasive decision, for a claim for stress or mental distress to be successful there must be supporting medical evidence. Here, there is no independent evidence of the damages Ms. Liu claims for pain and suffering. In particular, there is no medical evidence establishing Ms. Liu's mental health condition was exacerbated by Priority's actions or conduct. So, I dismiss her claim for damages for pain and suffering.
29. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable

dispute-related expenses. Ms. Liu was unsuccessful, so I dismiss her claim for CRT fees. Priority did not pay CRT fees and neither party claimed any dispute-related expenses, so I make no order for reimbursement.

ORDER

30. I dismiss Ms. Liu's claim and this dispute.

Megan Stewart, Tribunal Member