



Civil Resolution Tribunal

Date Issued: October 31, 2023

File: SC-2023-000637

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Le v. B.C. Wide Home Services Ltd.*, 2023 BCCRT 933

BETWEEN:

NGA LE

APPLICANT

AND:

B.C. WIDE HOME SERVICES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. In February 2021, the applicant, Nga Le, hired the respondent, B.C. Wide Home Services Ltd., to install a new boiler in her home. The applicant says the respondent negligently installed the boiler and it made loud banging noises from the outset. In

December 2022, the boiler stopped working altogether. The applicant hired a different repair technician who she says identified the issues and completed the necessary repairs for \$1,795.50. She claims that amount, plus \$3,200 for emotional and mental distress. In total, the applicant claims \$4,995.50.

2. The respondent says it installed the boiler correctly and the initial issues were related to the applicant's thermostat. It disputes the findings of the applicant's furnace repair technician and says the applicant's claims should be dismissed.
3. The applicant represents herself. The respondent is represented by its General Manager, SH.

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.
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.

ISSUES

7. The issues in this dispute are:
 - a. Did the respondent negligently install the boiler?
 - b. If so, is the applicant entitled to reimbursement of the \$1,795.50 repair costs?
 - c. If so, is the applicant entitled to damages for mental distress?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. On February 17, 2021, the respondent installed a new boiler, zone valve and expansion tank in the applicant's home. The total price was \$6,440.70.
10. I summarize the applicant's evidence about the boiler issues as follows. Right after the installer, E, left, the applicant heard a loud explosive noise. E returned that night but could not identify the problem. The loud bangs continued and eventually the respondent sent a different technician, J. J heard the bangs but was unable to identify what caused them. At the applicant's request, J visited again on January 12, 2022, before the boiler's 1-year warranty was to expire, but still could not identify the issue. J promised to continue searching for a solution even after the warranty expired and said if another technician fixed the issue and found an installation error, the respondent would pay that technician's invoice. The applicant accepted this, but the loud banging continued whenever the boiler was in use until December 2022, when it stopped working altogether. On December 28, 2022, J visited and identified that the vent damper motor assembly needed replacement. He said the part would cost \$900, not including installation labour charges. On December 30, 2022, the applicant hired a different technician, Gabriel Khoo, to replace the part. I return to Mr. Khoo's findings

and invoices below. I note the respondent did not charge the applicant for any of J or E's follow-up visits.

11. The respondent's evidence confirms the January 12, 2022 visit and the December 28, 2022 visit and findings that a vent damper motor needed to be replaced. However, the respondent says it quoted \$900 for parts *and labour*. The respondent also says it was called to the applicant's home on March 9 and 17, 2021 for what turned out to be thermostat issues.
12. The respondent's evidence does not acknowledge banging noises until January 12, 2022. However, the respondent does not specifically deny that E returned the same day he installed the boiler because of banging noises. Nor does it specifically deny that J made at least 2 visits related to banging noises. The respondent relies on a timeline of events that SH created on February 21, 2023, after the Dispute Notice was issued. The timeline contains a mix of fact and argument and is largely repeated in the respondent's submissions. SH does not explain what records or information she relied on to create this timeline. There are no contemporaneous service logs or invoices in evidence. Further, there is no statement from E or J denying that the boiler made a banging noise right from installation. For those reasons, I accept the entirety of the applicant's evidence about the timeline of events between installation and contacting Mr. Khoo. This means I find the boiler made an intermittent banging noise from installation that never stopped until after Mr. Khoo's repairs. I also accept that E, on the respondent's behalf, offered to pay the reasonable invoice of any technician who found a mistake in the boiler's installation, although nothing turns on this given my ultimate conclusion on the negligence issue, explained below.

Did the respondent negligently install the boiler?

13. Generally, when a person alleges that a professional's conduct fell below a reasonable standard, they must provide expert evidence about the standard of care within that industry. This is because the standard expected of a professional, such as a boiler technician, is outside the common knowledge of an ordinary person. The two exceptions to this rule are where the standard relates to non-technical matters within

the knowledge of an ordinary person, or where the alleged breach is egregious and therefore obvious (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196).

14. I find the respondent is a professional for the purposes of this dispute. The applicant says the respondent installed the boiler's circulating pump upside down, compromising water flow from the outset. She says once Mr. Khoo installed a new pump with the right orientation, the banging stopped. The respondent denies installing the pump upside down. I find that whether or not the pump was installed incorrectly is a technical matter beyond the knowledge of an ordinary person. However, I find that if the pump was installed in the wrong orientation, that is an obvious breach of the standard of care. The respondent does not argue otherwise.
15. The applicant relies on Mr. Khoo's 2 invoices containing notes about his observations. In the December 30, 2022 invoice, Mr. Khoo wrote that on December 29 he made a temporary repair on the boiler and returned the next day to assess and repair the system. He said he found the primary circulating pump had stalled and overloaded the zone control board, causing a blown fuse. He replaced the stalled pump and noticed that it was originally installed "opposed to the designed flow direction of the system." He replaced the vent damper assembly and bypassed the damaged section of the zone control board and started up the boiler, which worked. This work involved 8 hours of labour.
16. Mr. Khoo's January 16, 2023 invoice said he replaced the zone control board. It said the zone control board was compromised due to the circulating pump intermittently stalling and overloading one circuit.
17. For its part, the respondent says the circulating pump could not have been installed upside down because the water would not circulate at all. As for the control board, it says Mr. Khoo has incorrectly assumed that the pump caused issues with the control board. It says the control board controls the boiler's heating cycles, not the water circulation. I put little weight on these submissions for three reasons. First, SH's qualifications are not before me. Second, SH did not install or inspect the boiler and

there are no statements in evidence from E who installed the boiler or J who inspected it about the pump's orientation or the control board. The respondent does not explain why it could not provide statements from J or E. Finally, the general rule is that parties cannot be their own expert witnesses because parties have an interest in the dispute's outcome.

18. Mr. Khoo's qualifications are not in evidence, which is a requirement for expert opinion evidence under the CRT's rules. However, expert fact evidence does not need to satisfy the same admissibility requirements of expert opinion evidence (see *Kim v. Murdoch*, 2023 BCSC 1647, at paragraphs 12-20). Expert fact evidence may include technical observations that go beyond the knowledge of a layperson. Here, I find Mr. Khoo's first invoice contains only factual evidence about his observations and his work. He does not draw inferences or offer an opinion. Accordingly, I accept the statements in Mr. Khoo's first invoice as expert fact evidence, noting it is undisputed that he operated a plumbing, heating and gas business. This means I find the pump was installed incorrectly. This conclusion is also supported by the circulating pump installation manual the applicant provided in evidence, which says the motor must be installed in a horizontal direction and that the pump casing may be rotated to change flow direction. The applicant says her photo shows the pump installed vertically, and the respondent does not specifically dispute this. With that, I find the respondent negligently failed to install the circulating pump correctly.
19. The statements in Mr. Khoo's second invoice are different, and I do not accept them. There, he draws a conclusion that the circulating pump's stalling caused the zone control board to fail. I find this is Mr. Khoo's opinion as it is beyond his direct observation and beyond what the evidence itself reveals. He does not explain how he reached that conclusion or ruled out other possible causes of control board failure. I find this opinion evidence is inadmissible given that it does not meet the requirements for expert opinion evidence under the CRT's rules. I therefore put no weight on it. This means I find the applicant has not proven that the negligently installed pump caused the control board failure.

Damages

20. I find the applicant is not entitled to reimbursement of Mr. Khoo's second invoice for control board replacement for \$549.15. I find the applicant is entitled to reimbursement of the portion of Mr. Khoo's first invoice that relates to the respondent's negligent circulating pump installation. I find this includes the \$287.50 for the replacement pump but not the \$180 for the vent damper motor assembly, which I find was a separate component, not part of the boiler. There is no evidence that the vent damper motor assembly was damaged by the negligent pump installation.
21. This leaves the 8 hours of labour on the invoice, which is not broken down between the 2 issues. On a judgment basis I find the applicants are entitled to reimbursement for 4 hours of labour. Together with the pump cost and GST, the total is \$679.88. I order the respondent to pay the applicant this amount.
22. The applicant claims \$3,200 for emotional and mental distress. Such claims must be supported by objective evidence, such as medical records, and there is no such evidence here. While I accept that the applicant lived with banging noises from the boiler and was frustrated by the respondent's failure to address the issue, I find this alone is insufficient to establish compensable emotional or mental distress damages. I dismiss this aspect of the applicant's claim.
23. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$679.88 from December 31, 2022, to the date of this decision. This equals \$21.49.
24. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicant was partially successful, so I find she is entitled to reimbursement of \$87.50 for half her \$175 CRT fees. Neither party claims dispute-related expenses.

ORDERS

25. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$788.87, broken down as follows:
- a. \$679.88 in damages,
 - b. \$21.49 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in CRT fees.
26. The applicant is entitled to post-judgment interest, as applicable.
27. 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.

Micah Carmody, Tribunal Member