



# Civil Resolution Tribunal

Date Issued: January 3, 2024

File: SC-2023-000880

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tian v. LNA Plumbing & Heating Ltd.*, 2024 BCCRT 5

B E T W E E N :

YE TIAN

**APPLICANT**

A N D :

LNA PLUMBING & HEATING LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr, Vice Chair

## INTRODUCTION

1. Ye Tian hired LNA Plumbing & Heating Ltd. to fix his boiler. Mr. Tian paid LNA \$1,732.50 for a new heat exchanger, but LNA was unable to repair the boiler and he had to buy a new one. He says LNA agreed to refund the heat exchanger's cost, less a 25% restocking fee, but later insisted he get the refund directly from the

manufacturer. He initially claimed a full \$1,732.50 refund, but in submissions reduced his claim to \$1,320 to account for the restocking fee. He is self-represented.

2. LNA says it never agreed to provide a direct refund. It says the heat exchanger's manufacturer offered the 75% refund, but Mr. Tian never took the heat exchanger back. LNA is represented by its owner, Michael Wilkinson.

## **JURISDICTION AND PROCEDURE**

3. 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 says 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.
4. 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. In some respects, both parties of this dispute question the credibility, or truthfulness, of the other. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I am properly able to assess and weigh the evidence and submissions before me and make the necessary credibility findings. There is no other compelling reason for an oral hearing, especially considering the CRT's mandate to provide proportional and speedy dispute resolution. I therefore decided to hear this dispute through written submissions.
5. Section 42 of the CRTA says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
6. Mr. Tian refers to the *Business Practices and Consumer Protection Act's* (BPCPA) provisions about "misrepresentations", likely referring to sections 4 and 5, which prohibit deceptive acts and practices. Section 171 says that the BC Provincial Court

has jurisdiction over claims that a supplier has breached the BPCPA. This means that the CRT cannot adjudicate those claims. I therefore decline to address Mr. Tian's arguments about the BPCPA.

## **ISSUE**

7. The issues in this dispute is whether LNA must provide Mr. Tian any refund for the heat exchanger.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, Mr. Tian as the applicant must prove his case on a balance of probabilities, which means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. Mr. Tian contacted LNA in late December 2022 to fix his boiler. Mr. Wilkinson determined that there was a small leak in the boiler's heat exchanger, presumably based on photos as Mr. Wilkinson did not personally inspect the boiler. Mr. Wilkinson says that he recommended replacing the boiler at that time, but Mr. Tian opted to have it repaired. The parties agreed that LNA would replace the heat exchanger. LNA required Mr. Tian to pay for the part in advance, which was \$1,732.50 after tax. Mr. Tian paid this on January 3, 2023.
10. Mr. Wilkinson attended Mr. Tian's home on January 6. He was unable to repair the boiler even with the new heat exchanger. He says that he discovered stripped threading on the boiler's igniter, which created a safety hazard. Mr. Tian questions this explanation, but ultimately nothing turns on it. Mr. Wilkinson did not install the heat exchanger and left it with Mr. Tian. Mr. Wilkinson offered to either order another part or replace the boiler.
11. On January 7, Mr. Tian texted Mr. Wilkinson that he would replace the boiler. He also asked if Mr. Wilkinson could reach out to the heat exchanger's manufacturer about a

partial refund. Mr. Wilkinson agreed to do this. Mr. Tian followed up on January 9, asking if LNA could install the new boiler the next day. Mr. Tian says Mr. Wilkinson did not respond. I note that only portions of the parties' text message history are in evidence, so I cannot tell if Mr. Wilkinson responded.

12. Later in January (the exact date is not clear), Mr. Tian texted Mr. Wilkinson that because Mr. Wilkinson had not set a time to install the new boiler, he was going to hire someone else to do it. Mr. Tian asked for a refund for the heat exchanger. He said that if the manufacturer charged a restocking fee, he would pay it.
13. Mr. Wilkinson did not respond until January 27. He gave Mr. Tian the manufacturer's address but did not otherwise address Mr. Tian's request for a refund.
14. Mr. Tian texted again on February 2, asking about the refund. Mr. Wilkinson responded that it was up to the manufacturer. Mr. Tian said that it should be LNA's responsibility to "figure it out" before Mr. Tian took the heat exchanger to the manufacturer. Mr. Wilkinson insisted that it was "not me or my company" that determines whether Mr. Tian would get a refund. The parties continued to argue about the refund and restocking fee, but ultimately Mr. Tian said we would take the heat exchanger back to the manufacturer and if he did not receive the 75% refund, he would claim compensation from LNA for the difference. On February 23, Mr. Wilkinson texted Mr. Tian that the manufacturer had not received the heat exchanger and asked if Mr. Tian had dropped it off. There is no evidence of any further text messages.
15. Mr. Tian says that Mr. Wilkinson "clearly confirmed" that the heat exchanger was partially refundable if Mr. Wilkinson could not repair the boiler. In effect, he argues that this was a contractual term. There is no written evidence to suggest that the parties agreed to this term, including LNA's invoice for the heat exchanger. LNA denies that it agreed to provide a direct refund. I find it unnecessary to determine whether this was a contractual term, because even if it was, I would still dismiss Mr. Tian's claim.

16. I say this because when a party breaches a contract, the innocent party must take reasonable steps to reduce their financial losses. This concept is called mitigation. If a person could have reduced their financial losses by taking reasonable mitigation steps, their claim will be reduced accordingly. If they could have eliminated their financial losses entirely, their claim will be dismissed.
17. Here, Mr. Tian still has the heat exchanger and never attempted to return it to the manufacturer. If he had, I find that the manufacturer likely would have given him the 75% refund. In reaching this conclusion, I acknowledge that Mr. Wilkinson's text messages to Mr. Tian were somewhat inconsistent. When the parties' working relationship was intact, he said that the manufacturer would give the 75% refund. After their working relationship had fallen apart, Mr. Wilkinson said the manufacturer's refund would be "up to" 75%. Mr. Tian says that he could not accept the possibility that the manufacturer would arbitrarily reduce the refund if he took the heat exchanger in.
18. However, it was likely always the case that the manufacturer had not promised unconditionally to provide a 75% refund. I say this because the heat exchanger was no longer in its original packaging. It is common sense that the manufacturer would want to ensure that it could be resold. Mr. Tian says that other than a small glob of grease, the heat exchanger is new. With that, the manufacturer would have had no reason not to provide the partial refund. In any event, Mr. Tian never attempted to return the heat exchanger so he does not know what the manufacturer might have said or done.
19. I find that a reasonable person in Mr. Tian's situation would have returned the heat exchanger to the manufacturer. He and the manufacturer are in the lower mainland, so there was no significant financial or logistical barrier to doing so. If the manufacturer offered less than 75%, Mr. Tian could have claimed the difference from LNA, as he acknowledged in his own text messages to Mr. Wilkinson. Therefore, Mr. Tian failed to reasonably mitigate his losses. For this reason, I dismiss his claim for a partial

refund. I note that LNA says that the manufacturer remains willing to accept the heat exchanger and provide a partial refund.

20. LNA says that Mr. Tian never paid its invoice for Mr. Wilkinson's time spent picking up the heat exchanger and attending Mr. Tian's house to try to repair the boiler. The invoice in evidence is for \$411.08. However, LNA did not file a counterclaim, so I cannot order Mr. Tian to pay this invoice. It is therefore unnecessary for me to address the parties' arguments about that invoice, and I make no findings about it. Nothing in this dispute prevents LNA from bringing a new claim for payment of that invoice.
21. 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. Mr. Tian was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses.
22. LNA claims \$3,490 in dispute-related expenses for its time spent dealing with this dispute. CRT rule 9.5(5) says that the CRT will not order a party to compensate another party for time spent dealing with a dispute except in extraordinary circumstances. There is nothing extraordinary about this dispute, so I decline to order any compensation for time spent.

## **ORDER**

23. I dismiss Mr. Tian's claim, LNA's claim for dispute-related expenses, and this dispute.

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Eric Regehr, Vice Chair