



Civil Resolution Tribunal

Date Issued: January 11, 2024

File: SC-2023-004122

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. v. Appelt*, 2024 BCCRT 29

BETWEEN:

ASLAN ELECTRICAL, PLUMBING, GASFITTING, REFRIGERATION &
SHEETMETAL SERVICES LTD.

APPLICANT

AND:

GARRY APPELT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about electrical and plumbing services. The respondent, Garry Appelt, hired the applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan), to perform some electrical repairs to his air conditioning system and tighten a fitting in his bathroom. Aslan says it has not been paid for its services and claims \$2,098.53. Aslan is represented by an authorized employee.

2. Mr. Appelt says Aslan improperly damaged a water line when tightening the fitting, leading to a leak. Mr. Appelt says he paid Aslan 50% of its invoice, a total of \$1,049.27, and does not owe anything further. Mr. Appelt represents himself.

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 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.
4. Section 39 of the CRTA says that 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, the parties in this dispute call into question the credibility, or truthfulness, of the other. 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.
5. Section 42 of the CRTA says that 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.
6. 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

7. The issue in this dispute is whether Aslan is entitled to the claimed \$2,098.53 for unpaid repair work.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant Aslan must prove its claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
9. On July 11 and 12, 2022, Aslan attended Mr. Appelt’s vacation home to repair his air conditioning unit and “tighten a fitting under the sink”. Aslan did not invoice Mr. Appelt for this work until February 2023. Aslan acknowledges its delay in sending the invoice, and says it was due to being behind in their invoicing, “mostly due to Covid”. Despite the delay, Mr. Appelt is still responsible to pay for Aslan’s services.
10. In general, contractors are entitled to be paid for their work once the work is substantially complete. If there are deficiencies in the contractor’s work, the customer may claim damages. Here, there is no dispute Aslan completed the work as billed in its February 2023 invoice, and there is no suggestion Mr. Appelt is unhappy with the air conditioning work. So, I find Aslan is entitled to the invoice’s payment, subject to any set off and payments already made.
11. A set off is a right between parties that owe each other money such that their respective debts are mutually reduced, leaving an applicant to recover only the residue. A set off must be closely enough connected with an applicant’s claim that it would be unjust to proceed without permitting a set-off (see: *Jamieson v. Loureriro*, 2010 BCCA 52). The burden to prove a set off shifts to the party claiming it (see: *Lund v. Appleford*, 2017 BCPC 91). For the following reasons, I find Mr. Appelt has met that burden.
12. As noted, Mr. Appelt says Aslan negligently tightened the sink’s fitting such that its technician damaged the water line, causing a leak. Mr. Appelt’s son discovered the leak and he and Mr. Appelt cleaned up the mess, remediated the damage, and another plumber, Fox Plumbing Heating Cooling Electrical Ltd. (Fox), repaired the water line for \$103.95.

13. Aslan's arguments about the water damage are inconsistent. Initially, in its Dispute Notice and submissions, Aslan said its technician was asked to tighten a sink fitting due to an ongoing leak, to stop the leak until a plumber arrived, which they did. So, Aslan said the leak was likely the result of Mr. Appelt's failure to hire a plumber in a timely way. In any event, it said if Mr. Appelt had notified it of the leak and resulting damage, it could have used its insurance.
14. In response, Mr. Appelt says he did not contact Aslan about the leak because he did hear from them, or receive an invoice, so he believed Aslan decided not to invoice him given the damage it caused. Mr. Appelt also stated he asked the technician to tighten the fitting because the spigot had rotated and he wanted it tightened into place, not because there was any leak. He says the technician agreed to do this. Although Aslan says its technician was not a plumber, Mr. Appelt says he was never told the technician, whether a plumber or not, was unable to complete the repair.
15. In its final reply submissions, Aslan changed its position and argues it spoke to the technician who performed Mr. Appelt's repairs and says the technician did not touch the spigot and was not asked to. Notably, Aslan did not provide a statement from its technician in evidence. Based on Aslan's inconsistent positions, and its failure to provide a statement from its technician, I find Aslan's submissions are unreliable and I prefer Mr. Appelt's version of events. Therefore, I find that Aslan's technician did tighten the fitting and that it ultimately led to a leak.
16. In general, a contractor must be given the chance to repair non-urgent deficiencies (see: *Lind v. Storey*, 2021 BCPC 2). Here, I find the leak required urgent attention, and was dealt with by Mr. Appelt as necessary. I find it was reasonable for Mr. Appelt to deal with the repairs himself given Aslan failed to invoice him in a timely way for the work it completed. As noted, Fox repaired the water line for \$103.95. Additionally, Mr. Appelt says he had to paint a discoloured ceiling as shown in photos, but could not find the paint receipt, though he valued it at \$45. Aslan does not dispute this amount. Mr. Appelt also says he spent a whole day cleaning up and painting, so what he has paid Aslan so far is sufficient. I find Mr. Appelt reasonably incurred the \$103.95

and \$45 expenses as a result of the leak. Additionally, on a judgment basis, I find \$250 is a reasonable amount for Mr. Appelt's time cleaning and painting, given the limited evidence on the extent of the remediation work. So, I find a total of \$398.95 must be deducted as a set off from any amount owing to Aslan.

17. What about the prior payment? Mr. Appelt says he already paid Aslan \$1,049.27 by e-transfer, which was automatically deposited into Aslan's account. Mr. Appelt did not provide any evidence of this payment, but Aslan does not deny the payment was made and the payment is reflected in Aslan's invoice. Aslan does not explain why it continues to claim the invoice's full amount.
18. In summary, I find Mr. Appelt must pay Aslan a total of \$650.31. This is Aslan's total invoice amount of \$2,098.53 minus the \$1,049.27 payment, and minus the \$398.95 set off for water leak damage expenses.
19. Aslan is entitled to pre-judgment interest on this amount under the *Court Order Interest Act*. There is no date on Aslan's invoice, but the parties agree Aslan sent it to Mr. Appelt sometime in February 2023. On a judgment basis, I award pre-judgment interest from February 28, 2023. This totals \$27.
20. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Aslan was only partially successful, so I award it \$62.50, half its CRT fees. Neither party claimed dispute-related expenses.

ORDERS

21. Within 21 days of the date of this decision, I order Mr. Appelt to pay Aslan a total of \$739.81, broken down as follows:
 - a. \$650.31 in debt,
 - b. \$27 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in tribunal fees.

22. Aslan is also entitled to post-judgment interest, as applicable.
23. 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.

Andrea Ritchie, Vice Chair