



Civil Resolution Tribunal

Date Issued: February 8, 2024

File: SC-2023-001901

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lysyk v. Thomson Industries Ltd.*, 2024 BCCRT 127

BETWEEN:

GERALD LYSYK

APPLICANT

AND:

THOMSON INDUSTRIES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This dispute is about a heat pump.
2. The applicant, Gerald Lysyk, hired the respondent, Thomson Industries Ltd. (Thomson), to install a heat pump in his home. Mr. Lysyk says that Thomson promised that the heat pump would be eligible for the Canada Greener Homes Grant

(CGHG), however it did not qualify. Mr. Lysyk claims \$4,000 for the CGHG and \$600 for an energy audit rebate which he did not receive.

3. Thomson says the CGHG is administered through a third party and that it did not guarantee that the heat pump was eligible for this grant. It says that it installed the heat pump and fulfilled all its obligations under the parties' contract.
4. Mr. Lysyk is self-represented. Thomson is represented by an authorized 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.
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.

Preliminary Issue - Settlement

8. Thomson indicated that this case settled during the CRT's facilitation phase. Mr. Lysyk did not agree that the parties settled their dispute and proceeded to the tribunal decision phase. Mr. Lysyk provided emails showing that the parties discussed

settlement, however he never agreed to the terms of the settlement agreement drafted by Thomson. So, I find that the parties have not settled this dispute.

9. CRT rule 1.11 states that settlement discussions are confidential and must not be disclosed during the CRT decision process. I have not considered the parties' settlement communications in reaching my decision below.

ISSUE

10. The issue in this dispute is whether Thomson must pay Mr. Lysyk \$4,000 for the CGHG or \$600 for the energy audit rebate.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Lysyk must prove his claims on a balance of probabilities. 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. I note that Thomson did not provide any evidence or submissions, apart from its initial Dispute Response, despite being given multiple opportunities to do so.
12. It is undisputed that Mr. Lysyk hired Thomson to install a heat pump in his home. Mr. Lysyk says that when he contacted Thomson he was told that the heat pump would be eligible for multiple government rebates, including the CGHG. Mr. Lysyk says he hired Thomson on this basis. Mr. Lysyk initially asked for a 2 ton heat pump, however the parties later agreed to increase the price so that Thomson could install a 2.5 ton heat pump that would work on all the floors of Mr. Lysyk's home.
13. Thomson's initial quote for Mr. Lysyk did not mention the CGHG or the type of heat pump that would be installed. Mr. Lysyk says Thomson's employee said the CGHG was not mentioned because certain heat pump models were still being added to the CGHG's eligibility list and Thomson needed to confirm the model.
14. Mr. Lysyk says that Thomson installed the heat pump without any issues. Thomson's finance manager said in an email to Mr. Lysyk that Mr. Lysyk must apply for the

CGHG himself. The CGHG requires a registered energy consultant to audit the heat pump before the rebate can be issued. Mr. Lysyk retained an energy consultant recommended by Thomson.

15. Mr. Lysyk provided an email from the energy consultant confirming that the heat pump Thomson installed was not eligible for the \$4,000 CGHG because it was not certified by Energy Star. Mr. Lysyk was also not eligible for a \$600 energy audit rebate because he did not qualify for the CGHG.
16. When Mr. Lysyk raised this issue with Thomson, a Thomson employee confirmed that the 2.5 ton heat pump is not eligible for the CGHG. In a later email, Thomson offered to replace the existing heat pump with another CGHG eligible heat pump for an additional \$4,500 plus tax.
17. I turn to the applicable law and my conclusions.
18. Section 18(a) of the *Sale of Goods Act* (SGA) says that there is an implied warranty in every sale of goods contract that the goods sold will be reasonably fit for a particular purpose where (1) that purpose is made known to the seller, (2) the buyer relies on the seller's skill or judgment, and (3) the seller's business is to supply those goods.
19. I find that section 18(a) of the SGA applies to this case. I accept Mr. Lysyk's evidence that he made Thomson aware that he wished to purchase a heat pump that was eligible for the CGHG and relied on Thomson's judgment in choosing the model. As noted above, Thomson failed to provide any evidence or submissions to dispute Mr. Lysyk's statements. Supplying and installing heat pumps is part of Thomson's business.
20. I find that Thomson breached the implied warranty imposed by section 18(a) of the SGA by selling Mr. Lysyk a heat pump that was not eligible for the CGHG. Mr. Lysyk has proven that he did not receive the \$4,000 CGHG or the \$600 energy audit rebate as a consequence of Thomson's breach. So, I find that Mr. Lysyk is entitled to \$4,600 in damages.

21. The *Court Order Interest Act* applies to the CRT. Mr. Lysyk estimated that he would have received the \$4,000 CGHG and \$600 energy audit rebate on April 1, 2022, based on government rebate processing times. I accept Mr. Lysyk's estimate. I find that Mr. Lysyk is entitled to pre-judgment interest on the \$4,600 from April 1, 2022, to the date of this decision. This equals \$281.27.
22. 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. I find Mr. Lysyk is entitled to reimbursement of \$175 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order Thomson to pay Mr. Lysyk a total of \$5,056.27, broken down as follows:
- a. \$4,600 as damages,
 - b. \$281.27 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
24. Mr. Lysyk is entitled to post-judgment interest, as applicable.
25. 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.

Peter Mennie, Tribunal Member