



# Civil Resolution Tribunal

Date Issued: March 18, 2024

File: SC-2023-001745

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *General Northwest Homes and Structures Inc. v. Aspire Plumbing & Heating Ltd.*, 2024 BCCRT 279

B E T W E E N :

GENERAL NORTHWEST HOMES AND STRUCTURES INC.

**APPLICANT**

A N D :

ASPIRE PLUMBING & HEATING LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## INTRODUCTION

1. This dispute is about allegedly negligent gas-fitting and plumbing work.
2. The applicant, General Northwest Homes and Structures Inc. (General), hired the respondent, Aspire Plumbing & Heating Ltd. (Aspire), to do work in a new home under construction. General says Aspire's work was faulty and dangerous. As a remedy,

General seeks a refund of \$2,169.75 it paid to another contractor to fix Aspire's work. General is represented in this dispute by its manager.

3. Aspire says its work was not negligent or deficient. Aspire says General mentioned no deficiencies for a year after the work was complete, Aspire was never asked to do any warranty work, and the work was approved by an inspector. Aspire is represented by its owner.
4. For the reasons set out below, I find in favour of General in this dispute.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. As the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

### ***Preliminary Issue – Aspire Not Operating***

8. Aspire says this CRT dispute cannot proceed because Aspire shut down in August 2023. I accept that Aspire stopped operating in September 2023. However, General filed this dispute in February 2023, which was before Aspire stopped operating. More importantly, the BC Company Summary says that as of March 13, 2023, Aspire was

still an active corporation in British Columbia. This means that Aspire still existed as a legal entity when the dispute was filed, even if it was no longer doing business.

9. In any event, section 346(1)(b) of the *Business Corporations Act* says a legal proceeding may be brought against a dissolved company within 2 years after its dissolution. So, even if Aspire had been dissolved in 2023, this dispute could still proceed.
10. For these reasons, I find this dispute is not barred because Aspire stopped operating.

## **ISSUE**

11. Is General entitled to a refund of \$2,169.75?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, General, as the applicant, must prove its claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
13. Text messages in evidence show that in November 2021, General hired Aspire to install and hook up the gas lines for a fireplace and hot water system in a new house.
14. Further text message show that General complained about some aspects of Aspire's work while it was in progress, or shortly after it was completed. For example, there is a text about a "sewer smell", and another text about a "flood". However, there is no evidence before me about the specifics of these problems, such as where they occurred or why. General admits that it paid all of Aspire's invoices upon receiving them.
15. Then, in November 2022, General texted Aspire stating that the home recently became occupied, and General discovered that "everything your company did was done improperly and we had to pay someone to redo the entire job." Aspire requested documentation, which it appears General did not provide. General requested a "full

refund”. Aspire said a full refund was not fair because they were not given any opportunity to fix the work, and because Aspire also did unrelated plumbing work in the home.

16. The parties did not reach an agreement, and General filed this CRT dispute.
17. As the party alleging deficient work, General has the burden of proving the deficiency: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61. Generally, expert evidence is required to prove that a professional’s work falls below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry, which I find includes gas-fitting and plumbing installation.
18. General provided copies of 2 invoices from Prosper Plumbing & Heating Ltd. (Prosper). General says it hired Prosper to fix Aspire’s deficient work. Prosper’s first invoice, dated October 24, 2022, says:
  - The Rinnai water heater unit was not running, due to lack of gas.
  - There were 3 gas line Code violations:
    - The gas regulator was installed incorrectly.
    - The water heater was receiving insufficient BTUs (British Thermal Units) because the wrong size pipe was used.
    - The water heater’s venting was installed incorrectly, causing exhaust to re-enter the unit and the home.
  - Prosper re-ran the gas piping, installed a new regulator, and new shut-off valves.
  - The water heater was still not working after this, so the technician re-tested and found steam coming into the unit through the air intake. The technician removed the venting and re-installed it.

- Prosper installed a new water pressure reducing valve and a dual check valve on the main water line coming into the house.
- Prosper charged \$1,891.50 for this work, including tax.

19. Prosper's second invoice, dated November 22, 2022, says:

- Prosper's technician spoke with the home's tenant, who described a smell coming from the bathroom vanity.
- The technician discovered the vent piping in the attic was not supported on the horizontal run, so water was pooling inside the vent pipe.
- Due to the cold temperature in the attic, the water in the pipe froze, so air could not flow through the vent pipe.
- The technician changed the piping's run to a proper grade, and supported it.
- The vent should terminate through the room in a 3 inch pipe, and not the 1.5 inch pipe that had been installed.
- Prosper charged \$278.25 for this work, including tax.

20. I find Prosper's invoices do not meet the CRT's requirements for expert evidence, because the author's qualifications are not provided. However, I place significant weight on the invoices as a description of what the technician observed at the home. Also, Aspire did not provide any contrary evidence establishing that these aspects of its work met reasonable industry standards. Rather, Aspire's text messages confirm there were some problems with Aspire's work. Most significantly, in one text message, Aspire admitted that its gas-fitter made errors, and that it reported the errors to the gas inspector. Aspire said the gas-fitter would be "facing consequences."

21. Based on Prosper's invoices and the text messages in evidence, I find that Aspire's work was deficient.

22. Aspire says it should have been given the opportunity to send out another gas-fitter to fix the work under warranty. A contractor is generally entitled to a reasonable opportunity to fix deficiencies in their work. If the customer does not provide that opportunity, they cannot claim damages for having someone else complete the work: *Lind v. Storey*, 2021 BCPC 2 at paragraph 91.
23. However, there were safety problems with Aspire's work, specifically Code violations and exhaust entering the home, and General raised some of these problems with Aspire in text messages in November and December 2021. So, I find it was reasonable in the circumstances for General to hire a different contractor to repair the work.
24. Prosper's invoices total \$2,169.75, which is the amount General claims in this dispute. For the reasons set out above, I find General is entitled to reimbursement of this amount.
25. The *Court Order Interest Act* (COIA) applies to the CRT. I find General is entitled to pre-judgment interest from November 22, 2022 (the date of Prosper's final invoice). This equals \$130.18.
26. As General was successful in this dispute, under CRTA section 49 and the CRT's rules I find it is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

## **ORDERS**

27. I order that within 30 days of this decision, Aspire must pay General a total of \$2,424.93, broken down as follows:
  - a. \$2,169.75 in damages,
  - b. \$130.18 in pre-judgment interest under the COIA, and
  - c. \$125 in CRT fees.

28. General is entitled to post-judgment interest under the COIA, as applicable.
29. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

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Kate Campbell, Tribunal Member