



# Civil Resolution Tribunal

Date Issued: July 16, 2024

File: SC-2023-005363

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yip v. Lew Plumbing and Heating Ltd.*, 2024 BCCRT 682

B E T W E E N :

JEFFREY CHING-WAH YIP

**APPLICANT**

A N D :

LEW PLUMBING AND HEATING LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Maria Montgomery

## INTRODUCTION

1. This is a dispute about HVAC installation services.
2. The applicant, Jeffrey Ching-Wah Yip, hired the respondent, Lew Plumbing and Heating Ltd. (LPH), to remove 2 rooftop HVAC units, re-install one and replace the

other unit with a new one. Mr. Yip paid a \$10,000 deposit on a \$29,500 estimate for the job in 2020. LPH did not complete the work, although each party says the other ended the agreement in March 2021.

3. Mr. Yip says LPH overcharged for the work it did complete and seeks a refund of \$4,906.90. Mr. Yip represents himself.
4. LPH says this claim is false and brought outside the limitation period. LPH is represented by a director.

## **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. In resolving disputes, the CRT must apply principles of law and fairness.
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. To some extent, both sides to this dispute question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, it is not necessary for me to resolve the credibility issues that the parties raised. 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.
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 court.
8. 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.

## **ISSUES**

9. The issues in this dispute are:

- a) Is Mr. Yip's claim out of time?
- b) Did LPH breach the parties' agreement, and if so, what are the appropriate remedies?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mr. Yip, as the applicant, must prove his claim 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.
11. The following is undisputed. The parties made an agreement on November 18, 2020, for LPH to remove 2 rooftop HVAC units from a commercial building, re-install a 4-ton unit and replace a 10-ton unit with a new 7.5-ton unit. The applicant paid a \$10,000 deposit the same day. LPH removed the old 4-ton unit and stored it in the parking lot. A new roof cover was completed. Before installing the two HVAC units, LPH asked for an additional \$10,000 payment.
12. Mr. Yip agreed to pay a second deposit once the units were delivered to the roof. LPH refused to proceed without the second deposit and offered to stop work and send a final bill. Mr. Yip says that, after he attempted unsuccessfully to contact LPH by phone, he asked for a refund on the balance of the deposit. LPH sent an invoice for an additional \$3,036.20.
13. Mr. Yip says LPH breached the contract when it refused to complete the work as the second deposit was not required by the contract. Mr. Yip argues the charges for the completed work should be \$5,326 and he seeks the balance of his \$10,000 deposit, which is \$4,674. Although Mr. Yip claimed \$4,906.90 in the Dispute Notice filed at the outset of this proceeding, he lowered this amount to \$4,674 in his submissions.

14. LPH says Mr. Yip terminated the agreement by refusing to pay a progress payment and by making changes to the scope of work. LPH did not provide details on what changes Mr. Yip made. LPH did not file a counterclaim for payment of the second invoice.

### ***Limitation Period***

15. LPH argues that this claim is not within the required 2-year limitation period. A limitation period is the period within which a person may bring a claim. If that period expires, the right to bring the claim ends, even if the claim would have been successful. In British Columbia, the *Limitation Act* provides that a claim generally must be started within 2 years of when it was discovered. The *Limitation Act* applies to CRT disputes.
16. This claim was first brought to the BC Provincial Court in October 2021. Later, the parties wanted to have the matter decided by the CRT. Mr. Yip brought his claim to the CRT more than 28 days after a court order contrary to section 13.3 of the CRTA. A former CRT vice chair issued a preliminary decision in January 2024 allowing Mr. Yip's late filing. The vice chair noted the above history and that the BC Provincial Court stayed the proceeding rather than dismiss it to avoid a limitation period issue arising. As Mr. Yip became aware of his claim in March 2021, I find this claim was filed within the time period required by the *Limitation Act*.
17. I turn to the merits of Mr. Yip's claim.

### ***The Parties' Contract***

18. Both parties refer to a document labeled "Estimate" as their contract. It gave \$29,500 as an amount for "materials, labour, equipment disposal and gas permit." The contract said a 30% deposit was required to secure the work. It did not reference progress payments. The contract listed the following as the scope of work:
- a) Disconnect ducting, gas, and electrical to existing 10-ton and 4-ton units.
  - b) Remove existing 4-ton unit off roof and place on property site.

- c) Remove all existing ducting and 10-ton unit from premises.
  - d) Supply and install the following: Lennox 7.5-unit, standard economizer, 14” downflow – hybrid curb, Honeywell thermostat, curb adapter for existing York package 4-ton roof top.
  - e) Supply and return ducting below roof top for new 7.5-ton unit.
  - f) Extend gas piping through separate flashings for both units.
  - g) Extend electrical wiring through separate flashing for both units.
  - h) Crane service to remove and lift units off roof.
19. The law of contracts says that unless the parties’ agreement is terminated, they must fulfil their express and implied obligations under it. Repudiation is when a party indicates that they no longer intend to be bound by a contract’s terms. When one party repudiates a contract, the other party can accept the repudiation or affirm the contract: see *Tang v. Zhang*, 2013 BCCA 52. In other words, a repudiation is a rejection of the contract or a refusal to perform it.
20. Here, the parties’ contract only contemplated one initial deposit and did not require that Mr. Yip make progress payments. I find that LPH repudiated the parties’ contract when it refused to perform further work without a second payment. So, Mr. Yip was entitled to treat the contract as terminated and sue for damages.

### ***The Appropriate Remedy***

21. Mr. Yip seeks \$4,674 in damages for LPH repudiating the contract. This amount is the remaining balance of his \$10,000 deposit after subtracting the value of the work performed by LPH.
22. Based on the evidence before me, I find LPH completed items a, b, c and h listed above. In his claim, Mr. Yip does not seek the return of \$936 spent on curb pieces for the roof as he says this work was completed. Mr. Yip also agrees with the crane

service fees which LPH invoiced at \$1,310. I find these charges against Mr. Yip's deposit are reasonable and represent some of the benefit Mr. Yip received under the contract.

23. LPH's invoices included a \$3,080 charge for labour. Mr. Yip disagrees this represents the time spent by LPH on this project. However, other than saying LPH did not spend more than 10 hours of labour on the project, Mr. Yip does not explain how he came to that number or provide any supporting evidence. I find LPH's labour charges to be reasonable and supported by the parties' contract.
24. LPH charged \$2,210.73, \$1,885.97 and \$1,192.73 for restocking, freight and "plenum drops." These charges relate to the 7.5-ton HVAC unit that was not installed or provided to Mr. Yip. So, I find that this amount should not be subtracted from the deposit.
25. LPH invoiced for a \$1,800 fee for removal of the old 10-ton unit and related disposal fees. However, LPH did not provide receipts for the disposal fee and did not explain why the removal was charged in addition to the existing labour charges. For these reasons, I find the \$1,800 fee should not be subtracted from Mr. Yip's deposit.
26. So, I find that charges of \$5,326 represent the benefit of the work completed under the contract and Mr. Yip is entitled to \$4,674 as the remaining balance of his deposit.
27. The *Court Order Interest Act* applies to the CRT. Mr. Yip is entitled to pre-judgment interest on the \$4,674 from the date of the breach of contract on March 24, 2021, to the date of this decision. This equals \$418.13.
28. 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. Yip is entitled to reimbursement of \$200 in CRT fees. Mr. Yip has not claimed dispute-related expenses.

## ORDERS

29. Within 30 days of the date of this order, I order LPH to pay Mr. Yip a total of \$5,292.13, broken down as follows:
- a. \$4,674 in damages,
  - b. \$418.13 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$200 in CRT fees.
30. Mr. Yip is entitled to post-judgment interest, as applicable.
31. This is a validated decision and order. 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.

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Maria Montgomery, Tribunal Member