Civil Resolution Tribunal

Date Issued: August 28, 2024

File: SC-2023-002381

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bricor Mechanical Ltd. v. Madarasz*, 2024 BCCRT 838

BETWEEN:

BRICOR MECHANICAL LTD.

APPLICANT

AND:

OTTO MADARASZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about payment for plumbing and heating services. The respondent, Otto Madarasz, hired the applicant, Bricor Mechanical Ltd., which does business as Ace Plumbing and Heating, to upgrade their heating and hot water system. The applicant says the respondent refuses to pay for some of the upgrade expenses. It claims a total of $4,705.23 for 4 unpaid invoices. The applicant is represented by its owner.

2. The respondent says the applicant installed an inefficient system and was not what they had agreed to. The respondent denies owing the applicant any more money. The respondent represents themself.

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 hearing's format. Here, although the parties raise some credibility concerns about the other, I find the dispute largely turns on the documentary evidence. So, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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, nor was one requested.

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 court.

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 the respondent must pay the applicant $4,705.23, or some other amount, for services provided.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant 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. In August 2022, the respondent's former plumber, JD, contacted the applicant about the respondent's plumbing project. For reasons that are not before me, JD was unable to complete the respondent's plumbing upgrade, and recommended the applicant. After a site visit, the applicant provided an August 24, 2022 quote for the installation. The respondent agreed to the quote and paid a deposit on September 6, 2022.

10. The applicant performed the majority of the upgrades from September 19 to 23, 2022. The upgrades were to tie into existing components at the respondent's home. Once complete, the respondent paid for those upgrades in full. One of the optional upgrades was a "hydronic unit heater" for the respondent's garage, but the applicant notified the respondent the unit was backordered at the time it provided the quote, so this work was not completed or invoiced in September 2022.

11. On October 23 and 28, 2022, the applicant performed the necessary electrical work and then supplied and installed the unit heater. The applicant billed $626.26 for the electrical and $3,150 for the unit heater. The respondent has not paid either invoice.

12. On December 1, 2022, the respondent called the applicant to complain of low water pressure. The applicant's invoice says it drained the pressure and hot water storage tanks and found lots of pressure. The applicant noted the pump was the issue, which its technician had already recommended the respondent replace. The applicant invoiced $514.21 for this service call, including $108.72 for water filters it left with the respondent. This invoice also remains unpaid.

13. Finally, on December 14, 2022, the respondent called the applicant because they had no heat. The applicant attended and determined the respondent's propane tank

was empty. As the respondent had somewhat recently filled the tank, the applicant investigated its upgrades and suggested there may be a leak in the propane tank. It invoiced $414.75 for this service call. The respondent refused to pay.

14. In total, the applicant's unpaid invoices total $4,705.22. I infer the difference in the amount claimed in the applicant's Dispute Notice is a typographical error.

15. Generally, the respondent says the applicant installed an inefficient system and their heating costs have increased instead of decreased as expected. So, they refuse to pay the applicant's remaining invoices. As the party alleging deficiencies, the respondent has the burden of proving them (see: *Absolute Industries v. Harris*, 2014 BCSC 287, at paragraph 61). I will address the respondent's allegations and each of the invoices in turn.

16. First, the respondent says the applicant failed to install an on-demand system, as requested. The applicant says the parties never discussed an on-demand system, and it installed what it quoted and the respondent accepted. Neither the quote in evidence nor any of the applicant's invoices refer to an on-demand system. While the respondent says it was their understanding that an on-demand system was being installed, I find that is not consistent with the evidence. The applicant's August 24, 2022 quote clearly has a line item for an "indirect hot water tank". This same item was invoiced on the applicant's August 25, 2022 invoice, which the respondent paid in full. I find the respondent knew the applicant was installing a hot water tank, not an on-demand system.

17. In any event, that invoice is not the subject of this dispute, and the respondent did not file a counterclaim alleging any damages for the allegedly wrong system the applicant installed.

18. Similarly, to the extent the respondent alleges the applicant's work was otherwise substandard or negligently installed, I find they have not proven this. The respondent provided a letter from Samuel Veach, Mechanical Systems Advisor at CE Plumbing & Heating. Samuel Veach's specific qualifications are not before me,

which is a technical requirement for expert evidence under the CRT's rules. However, CRT rule 1.2(2) allows me to waive the strict application of a rule to facilitate the fair resolution of a dispute. Here, both parties rely on Samuel Veach's letter, so I find it is fair to accept their evidence as expert evidence despite imperfect compliance with the CRT's rules.

19. In their letter, Samuel Veach says that the boiler system the applicant installed is "technically sound" and "acceptable", but is not the "most efficient way" to heat the respondent's home. As I have found the applicant installed the system the respondent agreed to, I find whether it was the most efficient or not is irrelevant. The parties' agreement was not to install "the most efficient" system, it was to install the specific system that the applicant quoted, which it undisputedly did.

20. With that, I turn to the invoices. The respondent says the hydronic unit heater is severely undersized for the garage where it is installed. Samuel Veach agrees. The applicant also agrees. However, the applicant says the respondent told it they wanted to "take the chill off" the garage, not keep the garage at a "livable temperature". So, it says it installed the hydronic unit heater that it quoted and the respondent accepted. It says if the heater were any bigger, the boiler would have needed to be bigger. Other than complaining it is undersized and that the system altogether is inefficient, the respondent does not say the unit heater does not work. I find the respondent must pay the applicant for the electrical work and hydronic unit heater installation. This totals $3,776.26.

21. Next, the low pressure service call out on December 1, 2023. The respondent does not address the applicant's argument that the issue was due to the respondent's existing, but inadequate, pump. However, the respondent does say they never asked for nor wanted the water filters left by the applicant. The applicant did not explain why the water filters were necessary, or that the respondent agreed to pay for them. So, I find the applicant is entitled to $405.49 for the December 1, 2023 service call, which is the invoiced amount of $514.21 for the service call minus $108.72 for the water filters.

22. Finally, the December 14, 2021 service call out. The respondent acknowledges the applicant attended because the propane tank was ultimately empty. They say this is when they realized the system's inefficiency. While the applicant thought the propane tank may have had a leak, Superior Propane attended later that day and found no leak. The respondent says the applicant's system is so inefficient it wastes propane, but this is not supported by any evidence. Samuel Veach says in their report that another factor of poor heating performance at the respondent's home is the wall fin baseboards that are outdated and inefficient, which were tested and diagnosed by Samuel Veach's technician on site. Samuel Veach also noted that there "could potentially be some issues in the system piping between the boiler and the wall fin baseboard heaters". The applicant did not install the baseboard heaters or the piping that leads to them. On balance, I find the respondent has not shown that it was the applicant's allegedly inefficient system that caused the propane usage. I find the applicant is entitled to payment for its December 14, 2021 service call, which equals $414.75.

23. In total, I find the respondent must pay the applicant a total of $4,596.50. The CRT small claims monetary limit of $5,000 is exclusive of *Court Order Interest Act* interest and CRT fees. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from each invoice's due date, this equals $375.81.

24. 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. As the applicant was successful, I find the respondent must reimburse it $175 in paid tribunal fees. No dispute-related expenses were claimed.

ORDERS

25. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of $5,147.31, broken down as follows:
    a. $4,596.50 in debt,

b. $375.81 in pre-judgment interest under the *Court Order Interest Act*,

c. $175 in tribunal fees.

26. The applicant is also entitled to post-judgment interest, as applicable.

27. 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.

Andrea Ritchie, Vice Chair