



Civil Resolution Tribunal

Date Issued: March 1, 2018

File: SC-2017-002679

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dill v. Greater Vancouver Gutters Inc.*, 2018 BCCRT 58

B E T W E E N :

David Dill

APPLICANT

A N D :

Greater Vancouver Gutters Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about gutters that in around October 2015 the respondent Greater Vancouver Gutters Inc. (GVG) installed on the home of the applicant David Dill (Gutters). At the time of the Gutters' installation, Mr. Dill had already removed the original gutters on the house.

2. Mr. Dill never paid GVG, as he disputed the quality of GVG's work in October 2015. In November 2015, GVG filed a lien against Mr. Dill's property but never pursued any related remedy and never pursued collection of its \$1,306 plus tax invoice and does not do so now. However, following discussions between the parties, in September 2016 GVG sent staff to remove the Gutters from Mr. Dill's home as GVG stated it was unfair for Mr. Dill to keep the Gutters that he never paid for. GVG submits that at the time Mr. Dill had told him "do what you have to do", and submits his staff were unable to complete the removal as Mr. Dill asked them to leave.
3. Mr. Dill claims damages in the amount of \$4,945.89, which he submits is the difference between GVG's quote and a new quote he received to install new gutters in place of the damaged Gutters. Mr. Dill also claims \$54.11 in damages for "mental, emotional and trauma" relating to GVG's alleged threatening conduct in its attempted removal of the Gutters in September 2016, which Mr. Dill says was vandalism and an act of revenge. It appears the \$54.11 amount was to bring Mr. Dill's total claims within the tribunal's \$5,000 monetary limit. Mr. Dill also claims reimbursement of \$175 in tribunal fees paid.
4. The parties are self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear

this dispute through written submissions, and I note that neither party requested an oral hearing.

7. Much of the evidence in this dispute amounts to a “he said, he said” scenario with each party calling the other a liar about certain alleged facts. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. As noted in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA), the assessment of what is the most likely account depends on its harmony with the rest of the evidence. In considering what is most likely to be the truth, I consider what “a practical and informed person would readily recognize as reasonable in that place and in those conditions”. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court also recognized the tribunal’s process and that oral hearings are not necessarily required where credibility is in issue.
8. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Did GVG breach its contract with Mr. Dill to supply and install the Gutters?

- b. Was the applicant entitled to retain the Gutters in September 2016?
- c. To what extent, if any, is the applicant entitled to his claimed remedies?

EVIDENCE AND ANALYSIS

- 11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
- 12. It is undisputed that it was an implied term in the parties' contract that GVG's work would be completed in a professional manner, as set out in the *Sale of Goods Act*.
- 13. The parties disagree about whether GVG's workers threatened and swore at Mr. Dill and whether Mr. Dill swore at them. The witness statements provided by each party are in direct conflict on this issue. Ultimately, I find I do not need to resolve those issues. My reasons follow.
- 14. Based on the photos in evidence, I find that the applicant has established some isolated areas that did not appear satisfactory. In particular, a roof shingle was damaged by GVG and in another case a corner seam of the Gutter was open so it is apparent anything in it would leak through. The difficulty for the applicant is that in 2015 GVG agreed to fix certain deficiencies, and in one email specifically referenced the "damaged shingle". GVG paid for the shingles at issue. This is not a case where an applicant seeks reimbursement for money paid to a contractor who did a poor job. As noted above, Mr. Dill never paid GVG anything.
- 15. Contrary to Mr. Dill's submission, as noted above I have the discretion to accept evidence in various forms, including the audio evidence recorded and submitted by GVG. It is permitted in Canada for one party to record a conversation even if the other party is not aware of the recording. I find that I am reasonably able to discern from the context when it was Mr. Dill speaking and when it was GVG's principal, Mr. Elliott. I accept Mr. Elliott took the audio evidence on his cell phone during site visits with Mr. Dill in October 2015. I accept that during the recording Mr. Elliott

remained calm and was looking for a solution to Mr. Dill's ongoing concerns. I also accept that at the end of one recording GVG's worker "Mike" said he was "done" and Mr. Dill replied "awesome". Yet, based on the evidence before me Mr. Dill then refused to pay as he said GVG still had not completed the job properly.

16. I find that GVG returned to Mr. Dill's home on at least 3 occasions to remedy concerns raised by Mr. Dill. Mr. Dill remained unsatisfied and made further demands for additional corrections. GVG was not prepared to continue to return to make those corrections in repeated visits. Nothing turns on the parties' submissions about "the lower roof", and whether they were part of the contract, since it is undisputed that GVG ultimately installed Gutters in that area for free.
17. On balance, I find the applicant has not proven that GVG breached their contract or unreasonably failed to perform its contractual obligations. Even if GVG had repudiated the contract, or refused to complete it, Mr. Dill's remedy would be to seek damages. But what were his damages? Mr. Dill never paid GVG and he removed his original gutters because he intended to have them replaced. In other words, Mr. Dill was in no worse position in November 2015, except that he had the Gutters installed, unsatisfactorily by his account, without having paid for them. The only exception is any charge the next company Precision Gutters may have billed Mr. Dill for the removal of the Gutters, but there is no such evidence before me as "remove and recycle existing gutters" was included in their \$4,825.81 plus tax quote.
18. To the extent Mr. Dill may claim he had no choice but to pay more for gutters after the Gutters were removed, I find that is not established on the evidence. The new quote appears to be for a different type of gutter than the "Super 5" Gutters Mr. Dill says GVG agreed to install and in any event there is no explanation from Mr. Dill as to the vast difference in price. I am not satisfied Mr. Dill has proven that he had no choice but to pay more for replacement gutters after the Gutters were damaged and later removed.

19. Nothing in this decision addresses GVG's lien against Mr. Dill's property, as that is outside the tribunal's jurisdiction, although I note it appears that the lien expired.
20. I turn then to what happened on September 23, 2016.
21. The applicant says when GVG's lien neared expiry, GVG came to his house and vandalized the Gutters, without his consent and in doing so trespassed on his property. GVG had sent an email in October 2015 offering to remove the Gutters at its expense, or, Mr. Dill could pay its invoice. Mr. Dill says he expressly told Mr. Elliott that he was not authorized to go on his property or to remove the Gutters. Mr. Dill says he does not know what Mr. Elliot refers to by "do what you have to do", but that he did not mean GVG had consent and that he told Mr. Elliot he would call the police. In contrast, GVG submits it took "do what you have to do" as permission to remove the Gutters.
22. The parties each have different versions of what the outcome was from the police involvement after GVG attempted to remove the Gutters. Neither party introduced evidence from the police about it, and I therefore place little weight on that aspect of their evidence, bearing in mind again that the applicant bears the burden of proof.
23. GVG candidly acknowledges that it intended to remove the Gutters and that they would not be usable afterwards. GVG says that in the absence of Mr. Dill paying for them, it was not reasonable for Mr. Dill to keep the Gutters. I find this answers Mr. Dill's "vandalism" concern in GVG's favour. That said, I find GVG likely ought to have been more certain about its entitlement to enter onto Mr. Dill's property. However, this dispute is not a claim for damages for trespass, although if it were I would not award damages in the circumstances.
24. I turn to the applicant's \$54.11 claim for mental distress damages. As noted, there is a dispute about whether GVG's worker made threats against Mr. Dill and his tradesperson on site, and I find the overall evidence suggests the claims are exaggerated. I find that at most, GVG's worker said words to the effect, "pay the

bill or else” and I am not satisfied that Mr. Dill has proven on a balance of probabilities that even those words were said. I accept Mr. Dill and his tradesperson were alarmed at the situation of GVG showing up to remove the Gutters. However, having weighed all of the evidence I am not satisfied GVG’s attempt at removing the Gutters and damaging them warrants any award for mental distress damages.

25. Given my conclusions above, I dismiss the applicant’s claims. As the applicant was not successful, I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

26. I order that the applicant’s dispute is dismissed.

Shelley Lopez, Vice Chair