



# Civil Resolution Tribunal

Date Issued: April 16, 2018

File: SC-2017-003839

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stringer v. Miller*, 2018 BCCRT 133

**B E T W E E N :**

Nigel Stringer

**APPLICANT**

**A N D :**

Dustin Miller

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. The applicant, Nigel Stringer, seeks a \$2,242.03 refund because he says concrete stairs, which he hired the respondent Dustin Miller to build, collapsed. The applicant also seeks \$572.89 for demolition of the faulty stairs, \$141.66 for cleanup of concrete waste left at the jobsite, and for inspection, demolition, and cleanup costs, and \$710.50 for dispute-related expenses and tribunal fees.
2. The respondent denies the claims. He says the stairs collapsed because the applicant ignored his instructions and removed the concrete forms too soon.
3. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the 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.
5. 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 because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
6. 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.

7. Under tribunal rule 126, 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**

8. The issues in this dispute are:
  - a) Is the respondent required to pay the applicant a refund for the stairs?
  - b) Is the respondent required to pay the applicant for demolition of the collapsed stairs?
  - c) Is the respondent required to pay the applicant for cleaning up concrete waste left at the jobsite?
  - d) Is the respondent required to reimburse the applicant for dispute-related expenses and tribunal fees?

## **EVIDENCE AND ANALYSIS**

9. 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.
10. A May 1, 2017 email from the respondent shows that he contracted with the applicant to build a set of concrete stairs for \$2,300. The parties agree that the bottom portion of the stairs collapsed shortly after the concrete forms were removed.

### *Refund for Stairs*

11. The applicant says the respondent failed to build the stairs correctly, as he used insufficient concrete and reinforcing bars (rebar), and did not place the rebar properly to support the weight of the stairs.

12. The applicant is effectively claiming that the respondent was negligent. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure did cause the claimed damages.
13. The applicant relies on a report from an engineer, who examined the collapsed stairs at the jobsite on June 8, 2017, who wrote as follows:
  - The stairs did not meet any of the criteria in the concrete design code in the *British Columbia Building Code*, and were not built to currently required building industry standards.
  - The suspended staircase initially broke under its weight, then collapsed.
  - The rebar was not continuous throughout the stairs, and there was little or no overlap of the rebar at the spliced locations. This is especially evident at the place where there stairs initially broke.
  - The rebar was not adequately covered with concrete. The throat depth (width of concrete below the stair treads) ranged from 5 inches to as little as 1 inch.
  - The rebar was not "chaired up" (supported) adequately.
  - Even if the builder had used properly placed continuous rebar, calculations show that the stairs would have likely failed.
14. Based on the respondent's May 1, 2017 email, I find that he owed the applicant a duty of care, and that duty of care included building stairs that were consistent with the applicable building codes. I find that the evidence contained in the engineer's report establishes that the respondent failed to meet the standard of care, as he did not meet the required building codes. I find that the engineer's report also

establishes that the stairs would have collapsed regardless of when the concrete forms were removed.

15. The respondent says he built the stairs correctly. He says he never promised that the stairs would be engineered, so the engineer's opinion is void. He says he had multiple carpenters and concrete finishers look at photographs of the stairs, and they all "passed them."
16. I do not accept these arguments. It is accurate that the initial contract, as set out in the May 1, 2017 email, did not require plans or approval by an engineer. However, in agreeing to build stairs for a residence the respondent, who was in the construction business, was required to follow the applicable building codes. The engineer's report indicates that the building code requirements were not met, and the respondent has not provided any contrary evidence on this point. I prefer the written opinion of a qualified engineer who examined the collapsed stairs and jobsite, and performed detailed calculations to assess the loads and forces at play, over the respondent's assertion that unnamed tradespeople "passed" the stairs based on photographs.
17. I also place some weight on the fact that the respondent never visited the jobsite after the stairs collapsed. He therefore did not assess the breaking points or damage firsthand. For that reason, I am not persuaded by his opinion about why the stairs collapsed.
18. The respondent asserts that the applicant removed the forms 5 days after the concrete was poured, but the applicant says he removed the forms after 7 days, which was two days after the respondent promised to remove them. I accept the applicant's evidence that he removed the forms after 7 days because it is consistent with the email he sent the respondent on the day the stairs collapsed. Also, since the respondent was not present, he could not know when the forms were removed. The engineer's report accounts for the fact that the concrete forms were removed after 7 days, and says they would have failed regardless due to their design.

19. The respondent says there was fibre material in the concrete, which doubled its strength, and that this this concrete, combined with the rebar, were strong enough to support the stairs. The applicant says there was no fibre material in the concrete.
20. Because the respondent has not provided any evidence to support his assertion that there was fibre material in the concrete, or that it doubled its strength, I do not accept it. I prefer the opinion set out in the engineer's report. Since the engineer said the stairs were not built consistent with the *Building Code*, I find that the use of fibre is not determinative.
21. Finally, the respondent has not rebutted the engineer's evidence that the building code requires continuous rebar. The photograph provided by the applicant (evidence item A9) shows that the rebar was not continuous down the length of the staircase.
22. For all of these reasons, I conclude that the respondent was negligent in building stairs that did not meet *Building Code* requirements.
23. In a case of negligence, the respondent is generally liable to pay for losses that are reasonably foreseeable, meaning that they could be anticipated by a reasonable person. On that basis, I find that the respondent must refund the applicant \$2,242.03 for the stairs.

#### *Demolition Expenses*

24. The applicant also seeks \$572.89 for demolishing and hauling away the collapsed stairs. I find that the cost of demolishing and removing collapsed stairs was reasonably foreseeable in the circumstances of this case. I also find that the applicant has provided receipts and a detailed invoice to support his claimed demolition and hauling costs. I therefore find that the respondent must also pay the applicant \$572.89 for demolition-related expenses.

### *Concrete Waste Cleanup*

25. The applicant seeks \$141.66 to pay for cleanup of concrete waste, which he says the respondent inappropriately allowed the concrete truck driver to dump at the jobsite during construction.
26. The respondent did not provide a response to this claim, and did not dispute the cleanup amount claimed by the applicant. The applicant provided a photograph of the concrete waste, which I find was substantial. For these reasons, I find that the respondent must pay the applicant \$141.66 for cleanup of concrete waste.
27. Under the *Court Order Interest Act* (COIA), the applicant is entitled to pre-judgment and post-judgment interest on the cost of the stairs and the subsequent demolition. However, I find that the applicant is not entitled to interest on the concrete waste cleanup costs, as he has not yet paid for that work.

### *Dispute-Related Expenses and Tribunal Fees*

28. Tribunal rule 129 states that if a dispute is not resolved by agreement, and a tribunal member makes a final decision, the unsuccessful party will be required to pay the successful party's tribunal fees and reasonable dispute-related expenses unless the tribunal decides otherwise.
29. The applicant seeks reimbursement for the engineer's June 8, 2017 report, and provided an invoice in the amount of \$525. I find that in the circumstances of this dispute it was reasonable to seek the engineer's opinion. I relied upon it in coming to my conclusion. The report is detailed, and contains specific calculations and findings relevant to this dispute. For those reasons, and because the applicant was successful in this dispute, I find that the respondent must reimburse the applicant for the engineer's report, as well as \$10.50 in postage, and \$175 in tribunal fees, for a total of \$710.50 in dispute-related expenses and fees.

## ORDERS

30. I order that, within 30 days of this decision, the respondent must pay the applicant a total of \$3,688.24, broken down as follows:
- a. \$2,814.92 for the stair payment refund and demolition expenses, plus \$21.16 in pre-judgment interest under the COIA,
  - b. \$141.66 for concrete waste cleanup,
  - c. \$535.50 for dispute-related expenses, and
  - d. \$175 as reimbursement of tribunal fees.
31. The applicant is entitled to post-judgment interest under the COIA.
32. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
33. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Kate Campbell, Tribunal Member