



Civil Resolution Tribunal

Date Issued: April 20, 2018

File: SC-2017-004983

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Humble Paintbrush Ltd v. Mckay*, 2018 BCCRT 146

B E T W E E N :

The Humble Paintbrush Ltd

APPLICANT

A N D :

Dan Mckay

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about an unpaid invoice for painting a home.
2. The applicant provides professional painting services. The applicant says it completed a paint job on the respondent's home, to a high standard.

3. The respondent says the paint job was unsatisfactory. He has not paid the full invoice for the work.
4. Both 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 because I find that the credibility issues involved in this matter can be resolved without an oral hearing.
7. 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.
8. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Did the applicant complete the paint job satisfactorily?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. The applicant bears the burden of proving their claim on a balance of probabilities. While I have reviewed all of the evidence, I have addressed it only to the extent needed to explain my decision.
11. On August 4, 2017, the applicant gave the respondent a written quote for a paint job. The quote is for \$2,080 for all exterior wood trim to be painted in two coats, \$90.00 for the front door to be sanded and painted two coats, \$200.00 for the garage door to be painted “with a spray finish on exterior side” and other exterior doors to be painted two coats on exterior side, at \$40.00 each. Three exterior doors were painted as part of the job.
12. The paint job was completed on September 6 and 7, 2017.
13. On September 7, 2017, the applicant’s manager did a walk-through of the completed paint job with the respondent’s wife. At that time, the respondent’s wife raised a concern about an area of the lower front patio that had received only one coat of paint. The manager agreed and addressed her concern by painting the area with a second coat of paint. The manager provided evidence that this problem was due to a miscommunication with one member of the painting crew.
14. According to the manager, the respondent’s wife then indicated she was satisfied with the walk-through.
15. On the other hand, the respondent says his wife was not satisfied with the paint job. He says she works from home, and watched the work personally, observing

that only one coat of paint was used on the deck, front windows, exterior doors, exterior door jam, garage door and garage trim.

16. I do not accept the respondent's wife's evidence on this point. In working from home, I find it likely she would have been engaged in her work rather than watching the painters all day. As such, her evidence about the work is not reliable. Further, the fact that the invoice was provided to her on September 7 supports the finding that she was satisfied with the work, but for the patio touch up that had already been addressed.
17. I find that the respondent's wife told the manager she was satisfied with the paint job on September 7.
18. The manager provided her with the invoice which lists a total cost of \$2,572.50, less the \$1,000 deposit paid earlier, for a total outstanding of \$1,572.50. For the same reasons, I find the respondent's wife said she would send an e-transfer payment that evening.
19. The respondent's wife referred to speaking to another paint company. She wrote that they were told the industry standard was for two coats of this type of paint, and that the 3 exterior doors needed to be sanded and re-sprayed. She wrote that the company gave the respondent a quote for re-painting the 3 doors. The respondent did not file a statement or the quote from that paint company in evidence. I do not place much weight on her reference to the other paint company because (i) there is no evidence that the second paint company examined the doors and (ii) there is no direct evidence from the second paint company.
20. The photographs filed in evidence show that the exterior trim paint work and paint work on the garage door were completed to a satisfactory standard. There is no show through of underlying paint colour, nor any transparency of the paint. The applicant's manager gave evidence, which I accept, that the deck trim problem was due to a single incident of miscommunication with one of the crew. There is no reliable evidence of an attempt to complete the paint job with one coat of paint.

21. I find that two coats of paint were applied in most places outlined in the quote, but for a few small areas around door hardware where brush painting was used.
22. The applicant did not receive payment of the invoice.
23. The next day, September 8, 2017, the applicant's principal Andrew Dekezel received a phone call from the respondent, who demanded that problems with the paintwork be addressed. The respondent mentioned having video surveillance of the work. No video was filed in evidence.
24. Mr. Dekezel was surprised by the tone of the call, and offered to provide another walk-through of the work that had been completed, and to rectify any deficiencies. An appointment was arranged for Monday September 11, 2017 at 5:30, when the respondent said he was next available.
25. On September 11, 2017, Mr. Dekezel and his manager attended at the property. He says the paint job looked good, and all dark coloured exterior trim was painted with two coats. I find this is consistent with the photographic evidence.
26. The respondent submits there were deficiencies with:
 - (a) the garage door trim;
 - (b) exterior doors (he says two coats of paint were not applied, and that the quality of the job was not satisfactory);
 - (c) exterior door jam trim; and
 - (d) deck trim.
27. On the September 11 walk-through a spot on the right side of the garage door trim was identified and the respondent agreed to repaint the entire arm of the garage door frame. The photographs filed in evidence show, and I find, that the deficiency with this side of the garage door trim was in the underlying wood and not the paint

work. I therefore decline to adjust the respondent's obligation to pay the invoice for paint work services for the garage door trim issue.

28. The respondent's wife identified some brush texture on the side door. The respondent explained that hardware on the door would have been brushed around to ensure coverage. The photographs filed in evidence show some brush texture on two of the exterior doors, around the door handle and lock area. In the usual course the applicant would have touched up these areas prior to completing the walk-through.
29. Both parties agree that another deficiency identified was a thin painted area under the deadbolt on one of the exterior doors. The applicant offered to touch it up before leaving. However, the respondent and his wife then left and went back into the house, not allowing the applicant access to the leftover paint needed for touch ups. This parting of ways occurred after the respondent's wife asked for the exterior doors to be re-sprayed, and the applicant refused.
30. Later that evening, the applicant wrote an email to the respondent offering, in part, to reduce his invoice by 10% to account for the minor touch ups. He pointed out that there were no grounds, in his opinion, to hold back the invoice payment over these minor issues, nor would he agree for all exterior doors to be "re-sprayed".
31. The written quote did not provide for spray painting of the doors. I find that the doors were not required to be "re-sprayed". The use of brush work around the door hardware was appropriate, though on two doors minor touch ups were needed.
32. On September 12, 2017, the applicant issued a \$150 invoice for the attendance on September 11, 2017 for the second walk-through.
33. The applicant says the paint work services were completed according to the quote. The applicant says the respondent failed to pay his full invoice, and then tried to leverage the payment owing to have their exterior doors re-sprayed.

34. I have found that two coats of paint were applied to most areas covered by the quote. As well, the defects identified were minor, and defects to the deck were corrected during the first walk-through. The garage door trim issues arose from the building material, not the paint work. This leaves a few minor issues in paint work around the hardware on two of the exterior doors. The applicant accepts these minor issues and, in the usual course, says he would have fixed these up during or shortly after the walk-throughs once they were brought to his attention.
35. Having found that the paint job was substantially completed as contemplated in the quote, to a satisfactory standard, I find that the respondent is obliged to pay the outstanding invoice, less an \$80 discount for the minor deficiencies in paintwork on two of the exterior doors, for a total payment of \$1,492.50.
36. I do not allow the claim for the \$150 dollar invoice for the visit on September 11, 2017. There was evidence that industry practice includes touch ups during a final walk-through. These were not requests for additional paint work, and should have been covered by the invoice for the complete job.
37. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the applicant has been largely successful, I find it is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim dispute-related expenses.

ORDERS

38. Within 7 days of the date of this order, I order the respondent to pay the applicant a total of \$1,626.13, broken down as follows:
 - a. \$1,492.50 for the invoice for paint work services;
 - b. \$8.63 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$125.00 in tribunal fees.

39. The applicant is entitled to post-judgment interest, as applicable.
40. 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.
41. 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.

Julie K. Gibson, Tribunal Member