



# Civil Resolution Tribunal

Date Issued: May 11, 2018

File: SC-2017-003392

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marfleet v. Optimal Roofing Systems Inc.*, 2018 BCCRT 180

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

Bruce Marfleet

**APPLICANT**

**A N D :**

OPTIMAL ROOFING SYSTEMS INC.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

### **INTRODUCTION**

1. This dispute is about a leaky roof and the appropriate steps and cost to repair it.

2. In April 2015, the applicant Bruce Marfleet retained the respondent Optimal Roofing Systems Inc. to install a new “Enviroshake” roof, at a cost of \$39,900. In late December, 2016, the applicant discovered a leak.
3. In mid-February 2017, the applicant ultimately had the roof repaired by another company, and claims \$2,448.60 for those repair costs. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
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. An oral hearing was not requested.
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.

8. At this point, I note an inspection report the applicant obtained in November 2017 from *InspectRight* Property Inspection Services (the inspection report). In it, a variety of issues with the applicant's roof are identified, that go beyond the particular repair at issue in this dispute. For clarity, I find the broader issues identified in that report are not properly before me. Nothing in this decision prevents the applicant from pursuing those issues that are not the subject of this dispute.

## **ISSUES**

9. The issues in this dispute are whether the respondent is responsible for the applicant's December 2016 roof leak and associated repair, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

10. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
11. As referenced above, in April 2015 the respondent installed a new roof on the applicant's house. As part of the new roof installation, the respondent installed gutters lined with a rubber "EPDM" membrane.
12. The applicant says it discovered the leak in his front bedroom closet. He called the respondent, who came on December 27, 2016 to investigate. There was snow on the roof and without a ladder the respondent said it had to return. On December 30, 2016, the respondent returned with a ladder, and said it was too cold to repair the leak. It is undisputed that the respondent did not permanently fix the leak.
13. However, the parties dispute whether the respondent provided a 'temporary fix' to the roof leak when it attended on December 30, 2016. I find that whatever the respondent did on December 30, 2016, if anything, could not even be called a temporary fix. The leak continued.

14. I find that the applicant's second contractor, BestWest Roofing Inc (BestWest), likely performed that temporary fix seen in photos when it attended on January 27, 2017. I say this because BestWest issued an invoice for that repair and I find it unlikely that it would have done so if the temporary fix had already been done. The respondent does not say what its temporary fix was exactly, but based on photos I find BestWest's temporary fix was to deposit a gluey substance over the leaking area. As discussed further below, there is no evidence before me how long such a temporary fix could be expected to last.
15. I do not accept the respondent's submission that the leak was not penetrating into the applicant's home, which I find is contrary to all of the other evidence before me. The photos also show the roof leak is to a roof dormer, not over the garage. This is relevant because the respondent says it was reasonable to leave the leak situation as it was on December 30, 2016. I disagree, and accept the applicant's submission that the leak continued after December 30, 2016. I find this is the most likely conclusion given the applicant at that time pursued further investigations and repairs at his own cost, rather than under a warranty. This conclusion also supports my finding that the respondent did not complete a temporary fix on December 30, 2016, at least not one that worked.
16. I turn next to the November 2017 inspection report. Given all the evidence and submissions before me, including photos, I accept the report's conclusion that the respondent's failure to fully adhere the EPDM membrane caused the December 2016 roof leak:

The opening created by small mammal activity within the EPDM box gutter membrane which permitted the movement of rainwater to occur within the subject structure was made possible as a direct result of the roof system contractor's omission of placing the gutter liner to the gutter trough and attached roof assembly components in a one hundred percent (100%) fully adhered fashion

Had the EPDM membrane been fully adhered within the gutter trough of the box gutter assembly as is required by the manufactures of such roof system membranes the small mammals would not have been able to physically manipulate the membrane to rip and or chew through the membrane to gain access **into the attic space** of the subject structure for nesting purposes

... it is our professional and certified opinion that the roof system contractor who installed the roof system and gutter liner is responsible for any breach of the membrane and as a result **the roof system contractor should have immediately repaired the open void observed within the membrane which permitted the rainwater movement into the subject structure to occur**

[reproduced as written; bold emphasis added]

17. While less persuasive than the inspection report, a letter from Enviroshake's warranty provider also points to the respondent's installation method as the source of the leak. The respondent does not dispute that the EPDM membrane's failure to bond was the leak's source.
18. In its August 2017 Dispute Response, the respondent said that at the time of its visit on December 30, 2016, it was "unfortunately extremely short-staffed and busy", and was not able to repair the roof right away. It said that it offers a full warranty under its installation process, but it had determined that the damage was caused by rodents and therefore **did not qualify for a warranty repair**. The respondent concluded its Dispute Response, "I understand Mr. Marfleet's frustration when we were not responding in a timely fashion, and for this I sincerely apologize, **however the repair required simply had no direct relation to the installation ...**" (bold emphasis added).
19. In its later submissions for this decision, the respondent provides a different position:

We explained that we would return to do a full patching repair when weather permitted. **It was merely 3 weeks later that they decided to contact**

**someone else – when they were still covered under our warranty.** Instead of merely communicating to us, they chose to simply blame us for no “follow-up” phone call.

[bold emphasis added]

20. I do not accept the respondent’s submission that the applicant should have called it for repair. I prefer the explanation in the Dispute Response of the respondent’s mindset, as it was created closer in time the underlying event. I find the applicant gave the respondent an opportunity to address the leak, and the respondent failed to do so because it was too busy at the time and stated then it had no warranty obligations. I find the applicant was reasonable in deciding to hire another contractor to solve the problem.
21. In its later submissions for this decision, the respondent appears to acknowledge that the EPDM membrane had failed, presumably based on the inspection report. Yet, the respondent also submits that “a thorough review needs to be completed” of the inspection report. I find the respondent had a reasonable opportunity to provide submissions in further response to the inspection report, and has not done so.
22. The balance of the respondent’s submissions focus on its allegation that the applicant chose to pay for a more extensive “torch-on” repair, rather than patching the loose EPDM membrane.
23. I accept the respondent’s undisputed evidence that EPDM rubber cannot fully bond when moisture is present, and that on December 30, 2016 the gutters were full of snow. This was the respondent’s explanation for why it did not do the repair that day. However, I find this conclusion also means that the applicant needed some other form of repair. I have found above that the respondent left the applicant with an undetermined response time, because at that time the respondent incorrectly stated the repair was not under warranty. With that information, there was no reason for the applicant to pursue the respondent to fix

the ongoing leak. Given the respondent's advice it was too busy, it was reasonable for the applicant to find another company to do it.

24. Based on the evidence before me, I find that the torch-on repair was reasonable given the weather conditions. That it was beyond the respondent's original scope of work is not determinative. The respondent is responsible for the leak and the torch-on repair, given an EPDM membrane patch would not work during cold or wet weather and given the respondent had refused a warranty repair.
25. Further, there is nothing in the inspection report that would suggest the torch-on repair was inappropriate and nothing to support the respondent's submission an EPDM patch repair would have been reasonable.
26. In summary, I find the respondent must reimburse the applicant for the cost of its roof repairs, given the evidence before me supports a conclusion the respondent was negligent in completing its roof installation contract. I find the respondent must compensate the applicant for its failure to properly install the roof according to the parties' contract and for failing to take responsibility for the repair on December 30, 2016.
27. The applicant produced invoices from BestWest for \$220 for the emergency call-out and temporary fix and for \$2,228.10 for the full repair, for a total of \$2,448.60. This is the amount claimed in this dispute and I order the respondent to reimburse the applicant that sum. I find the applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$2,448.60, from February 20, 2017.
28. The applicant was successful. In accordance with section 49 of the Act and the tribunal's rules, I find the respondent must reimburse the applicant \$125 in tribunal fees.

## **ORDERS**

29. Within 30 days of the date of this decision, I order the respondent Optimal Roofing Systems Inc. to pay the applicant Bruce Marfleet a total of \$2,598.89, broken down as follows:
- a. \$2,448.60 as reimbursement for the applicant's repair costs to fix the December 2016 leak,
  - b. \$25.29 in pre-judgment interest on the \$2,448.60, under the COIA, and
  - c. \$125 in tribunal fees.
30. The applicant is also entitled to post-judgment interest, as applicable.
31. 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.
32. 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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Shelley Lopez, Vice Chair