



Civil Resolution Tribunal

Date Issued: June 19, 2018

File: SC-2017-005711

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Richer v. Lanton*, 2018 BCCRT 267

B E T W E E N :

Alain Richer

APPLICANT

A N D :

Nicole Lanton

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Alain Richer did some exterior painting work on the respondent Nicole Lanton's home. The applicant says the parties agreed to an hourly rate, and

claims \$4,977.24 for outstanding unpaid time. The respondent says the applicant billed for too many hours. The parties are self-represented.

JURISDICTION AND PROCEDURE

2. 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.
3. 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.
4. 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.
5. 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

6. The issue in this dispute is to what extent, if any, is the applicant entitled to payment of his outstanding \$4,977.24 invoice?

EVIDENCE AND ANALYSIS

7. 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.
8. In the respondent's Dispute Response, she simply stated "I haven't hired this contractor". In her submissions, the respondent stated that the August 10, 2017 contract was between "Painter's Paint" and her husband Michael. Painter's Paint was the unincorporated business name of the applicant. I am satisfied that the respondent is a proper party, given her ongoing negotiations with applicant for payment, both before and during this dispute. I also note Michael's March 19, 2018 email to the tribunal facilitator that acknowledged he asked his wife to respond on his behalf and that he offered to settle with a payment of \$3,300.
9. The respondent acknowledges the applicant sent Michael time sheets showing details of who worked at their property and for how long on any particular day. The respondent says the three listed workers (1 is the applicant) have "very much exaggerated" their hours and have "very much fabricated" their time sheets. However, the respondent says that because her CCTV camera was not on during their claimed work hours, she is "forced to agree with their hours". I place little to no weight on the respondent's alleged exaggeration and fabrication, which is entirely unsupported in the evidence. I do not find she is "forced to agree", and instead interpret that submission as that she does not have any evidence to support the allegations. That does not mean she is forced.
10. In any event, the respondent agrees to pay for 206.88 hours, based on the timesheets, at the agreed rate of \$55/hour plus 5% GST, having deducted entries for a specific different address. That different address is the applicant's address

and the entries for the applicant's address occurred once only, on August 16, 2017, by each of the applicant's other 2 workers. The respondent acknowledges that work started on August 16, 2017, and I note the applicant himself did not bill any time for that date. The respondent acknowledges there were 3 workers on the job, including the applicant. On balance I find the 2 other workers' entries for the applicant's address were in fact their time entries for their first day on the job at the respondent's address.

11. The respondent also agrees to pay \$568.83 for stain and paint materials used, but excludes any additional claims for paint brushes as she says the applicant painter should be expected to carry such items. The respondent therefore agrees to pay a total of \$12,516.15. As she has already paid \$10,414.56, she says this leaves only a \$2,101.59 balance owing. I disagree with the respondent. I also note there is no explanation for why the respondent has not yet paid the balance she acknowledges is owing.
12. Based on the time sheets, I find the total hours worked at the respondent's address, being the appropriate billable hours, total 248.24 hours. I find the applicant is entitled to payment for the claimed 247 hours worked.
13. I also accept the applicant's position that he reasonably billed the respondent for paint brushes, as they cannot necessarily be re-used and that it could cost more to clean them than replace them. I accept that the applicant disposed of the brushes after the job was finished. The agreed quote was "plus material", which I find included brushes. I find the applicant is entitled to the disbursements for "material" as claimed.
14. In summary, I find the applicant has proved he is entitled to payment of \$4,977.24, the balance amount set out in his final invoice. The applicant is entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA), from October 9, 2017 the next business day after the date of the final invoice. I note the tribunal's \$5,000 monetary jurisdiction is exclusive of applicable interest, tribunal fees, and dispute-related expenses.

15. I dismiss the applicant's request for an order that his "reputation remain intact". The request is unclear as to what he wants the tribunal to order the respondent to do. Further, the tribunal does not have jurisdiction over defamation, and there is no evidence before me that the respondent or her husband have engaged in what might be considered defamatory statements about the applicant.
16. In accordance with the Act and the tribunal's rules, I find that the successful applicant is entitled to reimbursement of \$175 in tribunal fees and \$14.35 in dispute-related expenses for serving the respondent with the Dispute Notice.

ORDERS

17. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$5,202.43, broken down as follows:
 - a. \$4,977.24 as payment of the applicant's final invoice,
 - b. \$35.84 in pre-judgment interest under the COIA,
 - c. \$175 in tribunal fees, and
 - d. \$14.35 in dispute-related expenses.
18. The applicant is also entitled to post-judgment interest, as applicable. The applicant's request for an order that his "reputation remain intact" is dismissed.
19. 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.
20. 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.

Shelley Lopez, Vice Chair