



# Civil Resolution Tribunal

Date Issued: June 27, 2018

File: SC-2017-003729

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Metric Stone Ltd. v. Biling*, 2018 BCCRT 287

B E T W E E N :

Metric Stone Ltd.

**APPLICANT**

A N D :

Baljinder Biling

**RESPONDENT**

A N D :

Metric Stone Ltd.

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. The applicant Metric Stone Ltd. (Metric) and the respondent Baljinder Biling had an agreement about installation of custom cut granite countertops. Metric says Ms. Biling has not paid for the countertops it installed, despite providing various free services at her request, and seeks \$4,500 as the outstanding balance owing on its invoice.
2. In her counterclaim, Ms. Biling says the respondent did not fix the mistakes, and that their agreement was she would pay Metric only if the job was fully completed. Ms. Biling says she had to have another contractor come in to complete the job at a cost of \$3,850, which is the amount of her counterclaim. Ms. Biling says therefore she can pay Metric \$650. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.

6. 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.
7. I note the parties make a number of submissions about the lien Metric placed against Ms. Biling's house. The tribunal has no jurisdiction over builder's liens and therefore I make no further comment about the lien. The BC Supreme Court has jurisdiction over builder's liens.

## **ISSUES**

8. The issue in this dispute are: a) to what extent did Metric complete the granite countertops job under its agreement with Ms. Biling, b) to what extent is Metric entitled to payment of its outstanding \$4,500 invoice balance, and c) to what extent is Ms. Biling entitled to offset the \$3,850 she paid to another contractor to finish the job?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as these, the applicant bears the burden of proof, on a balance of probabilities. This means Metric must prove it is entitled to payment of its invoice. In her counterclaim, Ms. Biling must prove the \$3,850 is a reasonable offset to Metric's claimed invoice. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. An October 4, 2016 handwritten receipt signed by Metric's principal and Ms. Biling sets out that Metric's total contract was for \$12,500.00 cash, and that Ms. Biling had on October 15, 2016 paid a \$8,000 deposit towards work done to date. The rest of the note is difficult to understand in parts, but I find the relevant term is that Ms. Biling would pay Metric \$4,500 one week after the job was completed.
11. Metric had started cutting the granite countertops on September 9, 2016. It installed them on September 19, 2016. Metric did not finish the work it did

complete until late October 2016, leaving several outstanding problems at that point. Ms. Biling says Metric's delays cost her thousands in mortgage and interest payments while the home sat waiting (presumably, empty), although she does not counterclaim for the delay. Ms. Biling's counterclaim is for the \$3,850 she paid on May 16, 2017 to another granite company, B&B Granite Ltd., as an offset to Metric's claim for payment of its \$4,500 invoice.

12. Metric's position is that it did complete the job, or that anything outstanding was relatively minor and Ms. Biling did not give Metric a reasonable opportunity to fix things. I find Metric has not proven it reasonably completed the job so as to entitle it to payment, for the reasons that follow.
13. First, Metric says Ms. Biling asked Metric to stop the job because she thought the stone was the wrong colour. I find the parties' text messages support Ms. Biling's position that Metric never remedied the colour concern. Certainly, Metric has not proven that it remedied the problem.
14. Metric says Ms. Biling also complained it cut the wrong size hole, but this was incorrect. Metric says it always cuts a hole  $\frac{1}{4}$ " bigger "so the plumber has room to adjust". Ms. Biling says the professional plumber confirmed the hole was cut to the wrong size. Ms. Biling says she asked Metric to come several times to fix this mistake, but Metric refused. I find the evidence, including B & B Granite Ltd.'s invoice, supports Ms. Biling's position. In particular, I find it more likely than not that Ms. Biling paid B&B Granite Ltd for the granite repairs because Metric had not done the job properly.
15. Ms. Biling also complained about a gap between the countertop and the wall, but Metric says this is the first mention of this concern. Metric says this could have been covered by a backsplash or pushed in by cutting the drywall. Metric adds, "I am not sure that was our job. How could they prove that this was our job". Based on the photo in evidence, the gap is obvious and I find it was likely the result of Metric's poor installation.

16. Metric says Ms. Biling also said it cut the wrong size for the range. Metric says it always tries to limit the gap between the range and the counter, which can be adjusted at the job site, when the range is on site. Metric says Ms. Biling said the range was 30". I agree with Ms. Biling that if the problem truly was so minor and would only take 10 minutes as alleged by Metric, then Metric could and should have long ago remedied the problem. Further, if Metric felt it had insufficient information to properly cut the hole for the range, it should have raised the issue. Again, I find B&B Granite Ltd.'s invoice supports Ms. Biling's claim. I come to the same conclusions about the bar faucet, which B&B Granite Ltd. fixed.
17. On October 27, 2016, Metric asked Ms. Biling for payment, and she refused as there were still problems outstanding, and the bar faucet in particular.
18. As for Ms. Biling's \$3,850 invoice, Metric says it is excessive. Metric says the company B&B Granite Ltd. is operated out of a house without a fabrication plant. Metric says, for instance, that a 4" backsplash is "almost free now" and that 5 years ago Metric could only charge \$5 per linear foot. Metric says cooktop cutting cost is \$50 per cutout, and that it only takes 10 minutes to cut a countertop to fit a range. I do not agree that B&B Granite Ltd.'s invoice is unreasonable in the circumstances, given the outstanding problems and Metric's failure to adequately address them.
19. I find the supporting evidence, including the parties' lengthy text exchange and their own submissions, leads to the conclusion that Metric did not complete the job and that what it did do, it did not complete in a timely way. As referenced above, Metric says it completed the job in October 2016, with only a few "easy" things to fix. I disagree. As of March 2017, I accept that the above items remained outstanding, in addition to polishing and finishing edges. Metric's own February 2017 emails support the conclusion that they had not properly completed the job, as it was then asking for a list of items to be done so that they could come and fix them. Given the evidence of the parties' exchanges, I do not agree that Ms. Biling failed to give Metric a reasonable opportunity to remedy the problems.

20. On balance, I find that Ms. Biling is entitled to payment of \$3,850, the amount of her counterclaim. This is slightly less than B&B Granite Ltd.'s invoice, which I have found was reasonable. Ms. Biling was successful in her dispute and is therefore entitled to reimbursement of \$175 in tribunal fees and \$10.72 in registered mail expenses for serving Metric. Ms. Biling is entitled to \$39.51 in pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$3,850, from May 16, 2017. This totals \$4,075.23, which will offset the amount Ms. Biling must pay Metric, as set out below.
21. Metric claimed \$4,500. Metric is entitled to the difference between \$4,500 and \$4,075.23: \$424.77. Metric is also entitled to \$4.36 in pre-judgment COIA interest on the \$424.77 from May 16, 2017, the date I find the parties' contract was finally terminated. Metric also paid \$175 in tribunal fees. I find Metric was substantially unsuccessful and is only entitled to \$87.50, half of its tribunal fees, bearing in mind Ms. Biling had not paid anything towards the outstanding amount. Metric did not claim any dispute-related expenses.
22. Thus, offsetting the \$4,075.23 award in Ms. Biling's favour, I find Ms. Biling must pay Metric \$516.63.

## **ORDERS**

23. Within 14 days of the date of this decision, I order the respondent Ms. Biling to pay the applicant Metric a total of \$516.63, broken down as follows:
  - a. \$424.77 as final payment of its outstanding invoice, having deducted the \$4,075.23 award to Ms. Biling for her counterclaim from the \$4,500 invoice balance,
  - b. 4.36 in pre-judgment interest under the COIA, and
  - c. \$87.50 in tribunal fees.
24. Metric is also entitled to post-judgment interest, as applicable.

25. 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.
  
26. 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