



# Civil Resolution Tribunal

Date Issued: July 23, 2018

File: SC-2017-006360

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Seo v. Belkin et al*, 2018 BCCRT 353

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

Jae Woon Seo

**APPLICANT**

**A N D :**

Ellen Belkin and Genna Belkin

**RESPONDENTS**

**A N D :**

Jae Woon Seo

**RESPONDENT BY COUNTERCLAIM**

---

**REASONS FOR DECISION**

---

Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. This is a dispute about payment for residential construction. The applicant (and respondent by counterclaim) Jae Woon Seo says he replaced the stair stringers at the respondents' home, but the respondents refuse to pay. He seeks an order that the respondents pay \$2,520.
2. The respondents (and applicants by counterclaim), Ellen Belkin and Genna Belkin (the Belkins), say that Mr. Seo's work on the stairs was unsatisfactory and unsafe, so they should not have to pay him. They seek an order that Mr. Seo reimburse them \$262.50 for a building inspection report they obtained to check the work.
3. The 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. Must the Belkins pay Mr. Seo \$2,520 for his work on the stairs?
  - b. Must Mr. Seo reimburse the Belkins \$262.50 for the home inspection?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means Mr. Seo must prove his claim that he is entitled to payment for the stair work, and the Belkins must prove that Mr. Seo is obligated to pay for the home inspection. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

### *Payment for Stair Construction*

10. The parties agree that Mr. Seo replaced the wooden stringers on the outdoor front stairs of the Belkins' home in July 2016. Mr. Belkin says that after the work was finished he felt dubious about its safety because the stairs appeared tilted, so he hired a home inspector to check it.
11. The inspector, Francis Lemieux, inspected the stairs on July 19, 2017. He reported that the stair construction did not appear to have been done by a qualified tradesperson, and the work did not meet building code or industry standards. He recommended that the stairs not be used, and be replaced immediately, due to safety concerns. Mr. Lemieux's report listed the following problems with the stairs:

- Stringers poorly supported at the top. Insufficient, poorly fastened, and unreliable.
- Stringers not supported at the bottom. If the top support failed, the stairs could collapse.
- Variations of up to 75 millimeters in riser height between stairs, which is a safety/fall hazard.
- Variations of up to 25 millimeters in run (stair depth), which is a safety/fall hazard.
- Most of the stair treads slope excessively towards the front, which is a safety/fall hazard.
- Insecure attachment of treads to stringers, large gaps between treads and stringers, poorly fit shims. One or more treads could come loose, and the spaces provide an opportunity for water to collect and could reduce the life expectancy of the wood.
- Stringers not plumb, and treads not level.
- Handrails improperly installed, with inadequate fasteners. Loose handrails, which are a safety hazard.

12. Mr. Seo has not disputed Mr. Lemieux's inspection findings, or his qualifications as an inspector. For that reason, I accept Mr. Lemieux's report, which is detailed and well-reasoned, and which includes numerous close-up photographs showing the described deficiencies.

13. Mr. Seo does not assert that the stairs were acceptable. Rather, he says that the Belkins knew he was not an expert in stair construction when they hired him. This may be true, but Mr. Seo provided a detailed written estimate, performed the work, and then submitted an invoice for that work. By accepting the job to perform residential stair construction in exchange for money, Mr. Seo was obligated to

meet the applicable building codes and safety standards. I find that it was an implicit term of the contract between the parties that the stairs would be safe for typical residential use.

14. Based on the report of Mr. Lemieux, I conclude that the stair work performed by Mr. Seo was faulty. Thus, Mr. Seo breached his contract with the Belkins. For that reason, and due to the numerous safety problems identified by Mr. Lemieux, I find that Mr. Seo is not entitled to any payment. While I agree that Mr. Seo paid for materials, he acknowledges that one of the stringers he installed was cracked. It is also unclear that any of the building materials he purchased were fit for re-use after his work was dismantled. The photographs provided by the Belkins show that the stairs were ultimately rebuilt, rather than simply reinforced.
15. Mr. Seo submits that the Belkins ought to have replaced the wooden railings attached to the stairs, as he initially recommended. However, the problems set out in Mr. Lemieux's report would not have been solved with new railings. Rather, Mr. Lemieux said the stringers, stair treads, and railings were all improperly installed.
16. Mr. Seo relies on the fact that after he completed his work, the Belkins corresponded with a new contractor about installing steel stringers. However, I find this is not determinative of the issues in this dispute because the stairs were ultimately repaired by another contractor (Frame West) using wooden stringers.
17. Mr. Seo disputes the amount billed by Frame West for redoing the stair work. He also disputes Frame West's legitimacy, as he says the principal was a friend of Mr. Belkin, and Frame West's GST number was invalid. He also says Frame West billed for additional stair steps, and the Belkins did not prove that Frame West's invoice was paid. However, since the Belkins are not claiming any reimbursement for Frame West's work on the stairs, I find that none of these arguments raised by Mr. Seo are determinative of the issues in this dispute.

#### *Counterclaim – Payment for Home Inspection*

18. The Belkins say that Mr. Seo should pay for the stair inspection because if he had done the job properly, no inspection would have been necessary. I agree with that argument, and also find the invoiced amount of the inspection at \$262.50 was reasonable in the circumstances.
19. I therefore order Mr. Seo to reimburse the Belkins \$262.50 for the stair inspection.

### *Summary*

20. For the reasons set out above, I dismiss Mr. Seo's claim. I allow the Belkins' counterclaim, and find that Mr. Seo must reimburse the Belkins \$262.50 for the stair inspection.
21. The Belkins are also entitled to pre-judgment interest on the \$262.50, pursuant to the *Court Order Interest Act* (COIA).
22. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The Belkins were successful, so I order reimbursement of the \$125 they paid in tribunal fees. Mr. Seo was not substantially successful, so I find he is not entitled to reimbursement of tribunal fees. Neither party claimed dispute-related expenses.

### **ORDERS**

23. I order that within 30 days of this decision, Mr. Seo pay the Belkins a total of \$393.11, broken down as follows:
  - a. \$265.50 as reimbursement for the stair inspection,
  - b. \$2.61 in pre-judgment interest, and
  - c. \$125 in tribunal fees.
24. The Belkins are also entitled to post-judgment interest under the COIA.

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.

---

Kate Campbell, Tribunal Member