



Civil Resolution Tribunal

Date Issued: July 23, 2018

File: SC-2017-005818

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leyland v. Louie*, 2018 BCCRT 359

B E T W E E N :

Nicholas Leyland

APPLICANT

A N D :

Lenore Louie

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about payment for an exterior painting job the applicant, Nicholas Leyland, did on the home owned by the respondent, Lenore Louie. 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, because I find that there are no significant issues of credibility or other reasons that might require 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.

ISSUE

6. The issue in this dispute is whether the applicant is entitled to payment of his \$4,880.40 invoice for an exterior painting job he did on the respondent homeowner's house.

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 referenced the evidence and submissions as necessary to give context to my decision.
8. There is no dispute that the applicant completed the painting job on the respondent's home. I find there is also no dispute that the applicant did not complete it to an acceptable standard.

9. The applicant starting the exterior painting work on October 3, 2012. The agreed total price for the applicant's work was \$6,507.20. In October, it was the beginning of the rainy season, heading into winter. On October 3, 2012, the applicant paid a \$1,626.80 deposit, by cheque payable to "Westmount Painting", which is the applicant's former business name. On October 19, 2012, the respondent paid the applicant another \$1,500.
10. In this dispute, the applicant claims an outstanding balance of \$4,880.40 on his December 23, 2015 invoice #W152312 for \$6,507.20. That invoice, from the applicant's new business name of "Plain and Simple Painting", described the exterior painting job as caulking, filling, and sanding window casing, and 2 coats of paint to all siding, door and window frames, beams and posts, and garage doors. It appears the applicant has failed to deduct from his claim the \$1,500 payment referenced above. Further, on April 23, 2013, the applicant emailed the respondent's general contractor, Derek Porter, noting the balance owing on the respondent's exterior job was \$2,700. The applicant has not explained these inconsistencies.
11. It is undisputed there were deficiencies, and the applicant says he was not given an opportunity to correct them and finish the work, bearing in mind that the time to do so would have been the following spring in 2013. Photos show the painted finish with streaks, which I accept occurred because the painting was done while it was raining and/or when there was morning dew and moisture on the outdoor surfaces. I also accept that the paint peeled off.
12. I acknowledge that the parties had no contact with each other after the spring of 2013, until mid-2017 when the applicant started proceedings against Mr. Porter. However, there is no *Limitation Act* issue, contrary to the respondent's submission. For contractual claims that arose before June 1, 2013, the applicable limitation period is 6 years. I find that this claim arose before June 1, 2013, because the applicant knew by May 2013 that he had not been paid and had not been

permitted to fix the deficiencies. This dispute was started in October 2017, less than 6 years after June 1, 2013, and therefore was filed in time.

13. The applicant says the respondent chose the time of year to do the painting, and that he confirmed he would do his best to complete the work, weather depending. In contrast, the respondent says she made it very clear on several occasions that she was concerned about weather conditions. She says she explicitly stated that all that was required was priming the bare/raw wood for the winter to protect it, and that she would be content to wait for the spring to have the painting done. However, she says the applicant assured her on several occasions that the weather would not be a problem, and so she deferred to his professional opinion at that point. I find the more likely scenario is that the respondent reasonably relied upon the applicant's professional opinion that the painting job could be properly completed.
14. The respondent denies that she inappropriately prioritized a landscaping project so as to prevent the applicant from completing the deficiencies. Quite apart from her concerns set out above, she says the landscaping project was in March and April, and it would have been too wet to paint at that time. I accept this evidence, which the applicant did not dispute in reply submissions. Instead, the applicant submits that the respondent and Mr. Porter continually pushed back the timeline for the applicant's repair work, giving reasons like "a lot of dew on the ground in the morning". However, the applicant has not provided any evidence to support this claim.
15. The respondent agrees she had planned to have the applicant return to do the repair work. However, she says the applicant became increasingly aggressive, impatient, and would show up at her home unannounced and be somewhat harassing. She therefore decided to discontinue the working relationship as she was no longer comfortable having the applicant around her house. The applicant denies this behaviour and submits he made an attempt to come to an agreement and that the respondent was non-responsive to phone or email.

16. I find the most likely scenario is that the respondent did want to be sure it was not wet at all, given the prior problems with the applicant's paint job. I find the applicant likely pressed the respondent to let him finish the job so he could get paid. The respondent says she accepted the opinion of her general contractor, Mr. Porter, that she should not pay the applicant the remaining 50% of his contract price, because she would need that money to pay another painter to finish the job.
17. This is the crux of this dispute: whether the respondent unreasonably failed to permit the applicant from returning in the spring of 2013 to fix the inadequate painting job he completed in October 2012.
18. The applicant asks that I refuse to admit the evidence of Mr. Porter because he allegedly has "unfair biases" towards the applicant, in part because the applicant says he obtained a Provincial Court order against Mr. Porter for certain unpaid invoices unrelated to this dispute. Mr. Porter's statement is that the applicant's claims against him were "thrown out". I have no record from the Provincial Court before me. As noted above, the applicant bears the burden of proof. The tribunal's flexibility in accepting relevant evidence is described above. Mr. Porter's evidence is relevant and I admit and place weight on it.
19. In particular, I am unable to conclude that Mr. Porter is unfairly biased. Mr. Porter acknowledges the applicant's claims against him personally, but I cannot agree Mr. Porter's description of the applicant's approach to the respondent's job is unfair. Mr. Porter acknowledges that he himself is not an expert painter, but names 3 independent painting contractors he asked to review the applicant's exterior paint job. Mr. Porter says that he observed a "patchy inconsistent paint finish", which I find is apparent from the photos. Mr. Porter says the common consensus among him and the experts he consulted was that the exterior paint was applied too late in the season and that moisture caused the paint to fail. None of this is particularly disputed.
20. In his statement, Mr. Porter also refers to the respondent's concerns that the applicant was aggressive, and that he asked the applicant not to show up

unannounced at the respondent's home. Mr. Porter wrote that it became clear that the applicant was not going to respect the respondent's wishes. This is consistent with a May 29, 2013 email from Mr. Porter to the respondent in which Mr. Porter describes the applicant as their "mutually and increasingly unstable painter friend" and that the applicant "shows up all the time" and was aggressive. This evidence pre-dates the Provincial Court action that I understood occurred in 2017, and which I find supports the respondent's submission about the applicant's harassing behaviour. On balance, I accept that by May 2013 the applicant had increasingly engaged in behaviour that the respondent reasonably found to be harassing in nature. I find that in the circumstances it was not unreasonable for the respondent to choose to have someone else finish the painting job.

21. Contrary to the applicant's submission, I do not agree that the respondent's quotes from other painters are irrelevant. They confirm that the applicant's paint job was inadequate, which I find is not particularly disputed. These quotes are each for an amount well in excess of the balance owing on the applicant's invoice.
22. On a balance of probabilities, I find the applicant has not proved he is entitled to any further payment from the respondent. The applicant's original paint job was deficient. I have found the respondent reasonably concluded in about May 2013 that she needed to have the job finished by someone else.
23. In accordance with section 49 of the Act and the tribunal's rules, as the applicant was unsuccessful, I find he is not entitled to reimbursement of tribunal fees.

ORDER

24. I order that the applicant's claims and therefore this dispute are dismissed.

Shelley Lopez, Vice Chair