



Civil Resolution Tribunal

Date Issued: July 27, 2018

File: SC-2017-006047

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chartrand v. O'Neill*, 2018 BCCRT 387

B E T W E E N :

Rima Chartrand

APPLICANT

A N D :

Marcia O'Neill

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about payment for kitchen renovation work. The applicant, Rima Chartrand, says the respondent, Marcia O'Neill, failed to pay her full invoice for work performed. The applicant seeks an order that the respondent pay \$2,718, which includes 5% interest.
2. The respondent says the applicant's work was poorly performed, incomplete, and caused damage. She also says the applicant's claim exceeds the quoted and agreed-to price for the work.
3. Both 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 issue in this dispute is whether the respondent must pay the applicants for kitchen renovation work, and if so, how much.

EVIDENCE AND ANALYSIS

9. 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.
10. The parties agree that the respondent performed work in the applicant's kitchen in early 2017. This work included removing old cabinets and countertops, installing new cabinets and countertops, and painting.
11. The parties had no written contract, and there was no written estimate. There was a verbal agreement between the parties, but its terms are harder to prove than if the contract were written.
12. For the reasons that follow, I find the applicant has not met the burden of proving that she is entitled to her claimed payment of \$2,588.57 plus 5% interest (for a total claim of \$2,718).
13. The respondent submits that in December 2016 the applicant provided a verbal quote to perform the work for \$1,065. The respondent says she accepted that quote, and the applicant began work in January 2017. The applicant disagrees, and submits that the parties did not agree on a price of \$1,065 for the work.

14. I find that the best evidence about any quoted price is set out in the parties' email correspondence of February 4 and 6, 2017. I find these emails persuasive because they were set out in writing around the time of the events in question.
15. In paragraph 5 of her February 4 email, the respondent wrote that the applicant's quote to do the kitchen renovation was \$960, and that the respondent agreed to pay an additional \$35 per hour for painting. In her February 6 reply email, the applicant wrote as follows:

We did not agree that it would stand. I had stated that I've never assembled kitchen cabinets before. I had then told you during the assembly process that I would charge you \$50 pre box to assemble and \$50 per box to install.

[All quotations reproduced as written.]

16. Reading contextually, I find "it would stand" in the applicant's email refers to the quoted price.
17. Based on the evidence before me, I find there was no clear agreement between the parties about the price for the work. Also, the applicant agreed in her February 6, 2017 email to the respondent that she did not finish the work because the respondent refused to allow her to do so.
18. Because the parties agree that the applicant performed some work, I find the applicant is entitled to some payment on a quantum meruit basis. Quantum meruit is a legal term meaning a reasonable sum of money to pay for work done when the amount due is not set out in a legally enforceable contract.

Amount of Payment for Completed Work?

19. While the respondent says the applicant's faulty work caused damage that cost money to fix, the respondent has not provided any evidence to support that assertion, and has not filed a counterclaim. I therefore put no weight on that

submission, and find no basis to deduct from payment for work performed due to damage.

20. The applicant has not met the burden of proving her claim for payment of \$2,588.57. There are 4 different invoices for the same work in evidence, each with a different amount, and none approach the claimed amount of \$2,588.57:
 - February 6, 2017 - \$1,905
 - March 16, 2017 - \$1875
 - March 23, 2017 - \$1,595
 - November 29, 2017 - \$1,520 plus interest
21. The applicant's emails indicate that the February 6 and March 16 invoices included amounts to pay an electrician, whom she acknowledged as paid in her March 23, 2017 email. I therefore put aside the February 6 and March 16 invoices.
22. It is unclear why the March 23 and November 29 invoices do not match. They both include \$1,100 for assembling and installing kitchen cabinets, and \$120 for painting. The March 23 invoice shows a \$95 charge to install new countertops, while the November 29 invoice indicates \$150 for the same job. The March 23 invoice includes a \$130 charge for unspecified materials. That charge is not included in the November 29 invoice.
23. I find the fact that the applicant's invoices are inconsistent indicates that even she was uncertain of any agreed price for the work. Her invoices do not set out hourly rates, nor hours of work performed. Given this, I prefer the evidence in the respondent's February 4, 2017 email that the quoted price for the work was \$960 plus an extra hourly amount for painting.
24. The evidence shows that on February 6, 2017, the respondent sent the applicant an e-transfer payment in the amount of \$1,141.25, made up of \$1,065 for renovations and painting, plus \$76.25 for materials.

25. The applicant declined the February 6, 2017 payment, and the respondent sent a second e-transfer on February 8, 2017 for \$1,138.25 (the previous amount minus the cost of the e-transfers).
26. In summary, there was no agreed-upon price for the work, the applicant's invoices are unspecific and inconsistent, and the applicant has not provided receipts to support charges for materials. The applicant did not complete the work. Also, she did not respond to the respondent's assertions about deficiencies in the work other than to say the respondent did not complain about the work until receiving the invoice. This is inconsistent with the applicant's February 6, 2017 email, which says the respondent refused to allow her to finish.
27. For all of these reasons, I find on a judgment basis that \$1,138.25 is a reasonable price for the work performed. Since the initial payments were declined, I order the respondent to pay the applicant \$1,138.25. If the applicant refuses or declines that payment, the respondent has no further obligation to pay.
28. Because the respondent tried to pay the applicant in February 2017, I find the applicant is not entitled to interest. Even if I ordered interest, it would not be at the 5% rate claimed by the applicant, as there is no contract to support that rate.
29. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. However, because the applicant was only partially successful in this dispute, and because she refused payment of the amount ordered in this decision in February 2017, I find she is not entitled to reimbursement of the \$125 she paid in tribunal fees.

ORDERS

30. I order that within 30 days of this decision, the respondent pay the applicant a total of \$1,138.25.
31. If the applicant refuses or declines the payment, the respondent has no further obligation to pay.

32. 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.
33. 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