



# Civil Resolution Tribunal

Date Issued: August 10, 2018

File: SC-2017-002668

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Alpine-Progress Installations Inc. v. Johnston*, 2018 BCCRT 436

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

Alpine-Progress Installations Inc.

**APPLICANT**

**A N D :**

Evan Johnston

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Samuel A. Hyman

## INTRODUCTION

1. This dispute is about an unpaid \$1,207.50 invoice for the applicant, Alpine-Progress Installations Inc. installation of gutters on the respondent's home. The applicant says they have not been paid for the work completed.

2. The respondent, Evan Johnston, says they paid the applicant's employee cash for the gutter installation and do not owe the applicant anything further.
3. For the reasons that follow, I allow the applicant's claim and find that the respondent must pay the outstanding invoice.

## **JURISDICTION AND PROCEDURE**

4. 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.
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. No oral hearing was requested and I find that an oral hearing is not required.
6. This dispute amounts to a "he said, they said" scenario with both sides calling into question the credibility of the other about certain alleged facts. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue.

7. 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.
8. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether the applicant has been paid for the gutter installation on the respondent's home?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. While I have reviewed all of the submissions, evidence and information provided by the parties, I have only addressed the evidence and arguments of the parties necessary to explain my decision.
11. Most of the essential facts of this claim are not in dispute. Both parties agree the applicant was hired to install gutters on the respondent's home. They agree that the work was satisfactorily completed by mid-October 2015. They agree that the applicant provided an invoice to the respondent in the amount of \$1,207.50. They disagree over whether that invoice has been paid. The respondent says that that he paid the applicant's employee in cash for the work.

12. The applicant provided a copy of the original estimate for its work, its invoice dated October 22, 2015, and its written submissions. Essentially, the applicant says it provided their invoice and despite efforts to contact the respondent that invoice remains unpaid.
13. The respondent provided telephone records for his cellphone, screen shots of his email account, emails from the applicant and a copy of his bank statement for October 2015.
14. The respondent says that the applicant took no steps to collect on the outstanding invoice. In contrast, the applicant says that it made phone calls, sent e-mails and eventually visited the respondent at his home.
15. Ultimately, I find that whether or not the applicant took steps to collect on the invoice is not necessarily relevant to the dispute about whether the invoice was not paid. I do not need to make any findings with respect to the alleged collection efforts to decide this dispute.
16. The respondent also says his bank statement shows a withdrawal of \$1,500 on October 14, 2015, approximately 8 days before the invoice in question was issued. The respondent says that this shows that he had withdrawn a sufficient amount to pay the expected invoice amount, based on the original quote. I find this submission to be unpersuasive. I would expect that an individual would await its final invoice before withdrawing a large sum of money to pay for it. In addition, the evidence only shows that this amount was either withdrawn or transferred, and it does not show what it was intended for. The original invoice, also references that payments should be made payable to the applicant. I would expect that if that were the case, the respondent would have requested a bank draft or other legal tender made out to the applicant. In all of the circumstances, I find it unlikely that the funds were withdrawn for the purpose of paying for the gutters.
17. Ultimately, as referenced above, the respondent says he paid the applicant's employee \$1,000 in cash on October 18, 2015. In all the circumstances of the

evidence provided, I find this submission is not credible. The respondent has not provided any evidence of an alleged agreement with the applicant for a lesser amount than the invoice or quote, nor has he provided any evidence that he paid this amount to the applicant's employee. I would expect some sort of receipt, or written acknowledgement for a significant cash payment, especially if that payment was made to an employee rather than the proprietor of the company who provided the work. On the whole, I find there is insufficient evidence that the respondent paid any amount for the applicant's work.

18. I acknowledge that it is difficult for the applicant to provide evidence that it has not been paid. Showing a negative, when the respondent says it paid cash, is virtually impossible. However, I find that on a balance of probabilities, the most likely scenario is that the total invoice for the gutter work was not paid, and remains unpaid.
19. I therefore find that the respondent is obliged to pay the outstanding invoice for the gutter work in the total amount of \$1,207.50. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from October 23, 2015 the day after the original invoice for the gutter repairs came due to the date of this decision.
20. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the applicant has been successful, I find it is entitled to reimbursement of \$125 in tribunal fees that were paid. The applicant did not claim dispute-related expenses.

## **ORDERS**

21. Within 7 days of the date of this order, I order the respondent to pay the applicant a total of \$1368.11, broken down as follows:

- a. \$1,207.50 for the outstanding gutter repair invoice;
  - b. \$35.61 in pre-judgment interest under the COIA, and
  - c. \$125.00 in tribunal fees.
22. The applicant is entitled to post-judgment interest, as applicable
23. 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.
24. 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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Samuel A. Hyman, Tribunal Member