



Civil Resolution Tribunal

Date Issued: August 17, 2018

File: SC-2017-007623

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kay v. Phillips*, 2018 BCCRT 460

BETWEEN:

Jeremy Kay

APPLICANT

AND:

Cam Phillips

RESPONDENT

AND:

Jeremy Kay

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a bathroom renovation job, which the applicant, Jeremy Kay, hired the respondent, Cam Phillips, to do. In his dispute, Mr. Kay says Mr. Phillips did not finish the job within the agreed time limit. He also says the work was not done properly or up to code. Mr. Kay claims a total of \$4,980 in damages, most of which relates to the cost of replacing the materials and hiring another contractor to re-do the job, and \$1,250 of which is for repairing damage done to Mr. Kay's home.
2. In his counterclaim, Mr. Phillips claims a total of \$3,562.51. This sum includes \$560 for electrical bills Mr. Phillips paid on Mr. Kay's behalf, \$1,802.61 for "unpaid completed work", and \$200 in materials for added changes. Mr. Phillips says the contracted job was 85 to 90% complete, and that Mr. Kay owes for the unpaid and completed work. As part of his dispute, Mr. Phillips also claims compensation or the return of his tools that were left behind, which he values at \$1,000.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. 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 I can fairly resolve the dispute before me for decision based on the documentary evidence before me. This conclusion is consistent with the court's observations of the tribunal's processes in the BC Supreme Court's decision in *Yas v. Pope*, 2018 BCSC 282.

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 the Act and 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

8. The issues in this dispute are a) to what extent, if any, does Mr. Phillips owe Mr. Kay for the cost of having to re-do his bathroom job and pay for damaged property, and b) to what extent, if any, does Mr. Kay have to pay Mr. Phillips for completed work, an electrical bill, and for his tools.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants bear 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. At the outset, I note that Mr. Phillips' renovation work was through a business called 'Northern Built Contracting', but it is undisputed that this was a sole proprietorship and that Mr. Phillips is the properly named respondent.
11. Mr. Phillips started the job on November 20, 2017. Mr. Kay fired Mr. Phillips on December 24, 2017, which Mr. Kay says was "weeks" past the agreed deadline, due to the delays and concerns about the quality of Mr. Phillips' work. Mr. Kay

says he made it clear to Mr. Phillips that it was important that the renovation job be completed quickly, and that Mr. Phillips initially promised it would be done in 2-3 weeks. The alleged delay is the primary reason Mr. Kay says he was entitled to terminate the contract.

12. Mr. Phillips' quote, detailed below, did not set out a start date and it did not mention any timeline for completion. Mr. Kay submitted a lengthy series of text messages he exchanged with Mr. Phillips, dating back to at least October 16, 2017. None of these text messages support a conclusion that Mr. Phillips guaranteed or promised a specific completion date, although I accept the job took longer than expected.
13. By the time Mr. Kay terminated Mr. Phillips, it is undisputed that he had paid him \$2,500 towards the renovation project, along with paying for all of the materials Mr. Phillips used. Mr. Kay claims the following remedies:
 - a. \$2,500 – refund of what he had paid to Mr. Phillips, bearing in mind Mr. Kay has since paid another contractor \$4,500 to re-do Mr. Phillip's work, as discussed below,
 - b. \$1,080 – the cost of materials that he purchased for Mr. Phillips' installation, which had to be ripped out and were not re-usable when the renovation was re-done,
 - c. \$50 in dumping fees for the materials ripped out after Mr. Phillips' work,
 - d. \$1,000, Mr. Kay's cost to hire a plumber to fix his sink after Mr. Phillips' workers flushed drywall and concrete down it,
 - e. \$250 to fix the scratch on Mr. Kay's marble vanity top, which he says Mr. Phillips' workers damaged with a bucket, and
 - f. \$100 for a dishwasher Mr. Phillips took but failed to pay for.

14. Significantly, Mr. Phillips does not address the specific deficiencies alleged by Mr. Kay, and instead submits he would have re-done anything Mr. Kay was not happy with, but instead Mr. Kay “straight out fired me”. Mr. Phillips added,

I wanted this to work out just as much as they did. But, with him constantly down my neck, the stress and panic built up and i admit that there were some mistakes made. But only because of the applicant.

[reproduced as written]

15. In his counterclaim, Mr. Phillips claims:
- a. \$560 – for an electrical bill he says he paid on Mr. Kay’s behalf.
 - b. \$1,802.61 for “unpaid completed work”.
 - c. \$200 for materials that were added after the quote, for changes Mr. Kay and his spouse wanted.
 - d. \$1,000 for Mr. Phillips’ tools, or an order for the return of his tools.
16. I turn then to the relevant chronology and supporting documentation.
17. Mr. Phillips’ October 10, 2017 quote was for \$4,992.34, and this quote became the parties’ contract. With the quote, Mr. Phillips sent a text saying “Please don’t think that the job will be as tardy as this estimate”, which I find does not support a conclusion that Mr. Phillips guaranteed or promise a particular completion date. Based on the parties’ contract, their text messages and the surreptitious voice recordings submitted by Mr. Kay, I find Mr. Phillips gave a 2 or 3 week timeline estimate, but did not guarantee it.
18. As for the quote, the dollar values below reflect materials and labour, with a total for each item. The quote described: demo and cleanup ($\$55 + \$210 = \$265$), re-frame ($\$299.68 + \$360 = \649.68), drywall and mud ($\$281.12 + \$840 = \$1,121.12$), tiling ($\$279.71 + \$1,680 = \$1,959.71$), finishing ($\$112.62 + \$210 =$

\$322.62), and “window cover-up” to “fix outside siding nice, seal & vapor barrier” (\$156.48 + \$280 = \$436.48).

19. The quote expressly did not include the vanity, toilet, faucets, tile, mirror and other bathroom hardware. Handwritten notations to the quote add \$300 for a “heated mat” and \$1,000, for a total of \$6,292.34. It is unclear what the added \$1,000 was for.
20. Mr. Phillips submits that with the drying time required for mudding and taping, his workers were coming and going as they could. This may be so, but it does not explain the fact that Mr. Phillips gave a 2-3 week estimate and was a few weeks past that timeframe at the time Mr. Kay terminated the contract.
21. In the recorded phone calls, Mr. Phillips acknowledges that while he had other helpers try and pitch in at Mr. Kay’s job, his November 27, 2017 hand injury delayed progress somewhat. I find the evidence makes it clear Mr. Phillips himself was not on site as often as anticipated before he injured his hand, and that he left his workers to do the job on their own much of the time.
22. Between December 7 and 22, 2017, the parties continued to exchange text messages about the job, with Mr. Kay over time increasingly becoming more frustrated at the overall delay, Mr. Phillips being late, and the “coming and going” rather than steady work during the day, which Mr. Kay felt unreasonably prolonged the project. During roughly this same timeframe, Mr. Kay exchanged texts with Mr. Phillips’ worker, also expressing increasing frustration with the job’s progress.
23. On December 12, 2017, the parties exchanged texts about window trim Mr. Phillips proposed, with Mr. Phillips stating “the options are endless :)” and Mr. Kay responding “Lol. OK ...” As one of the claims relates to the window trim, I find this text supports the conclusion that there was an understanding between the parties about the window trim job, and yet the photos and contractor’s evidence from Mr. Kay show Mr. Phillips failed to properly complete the window job.

24. On Sunday December 24, 2017, Mr. Kay texted Mr. Phillips terminating the contract, noting the original time estimate of 2-3 weeks had not been met. Mr. Kay also noted Mr. Phillips had still not completed the job and that he had another contractor inspect who said the entire shower needed to be ripped out and re-done. Mr. Kay said Mr. Phillips was no longer welcome on his property.
25. I turn then to the claimed deficiencies. Mr. Kay provided photos of his partially renovated bathroom, with notes annotating deficiencies: adding heat sensor to heated tile floor, “had to re-tile shower floor to install shower drain”, “contractor had to chip out individual tiles to try to make tiled floor even”, and quality of tile work was “terrible” and had to be corrected. Based on the photos in evidence before me, which include “before renovation” photos, I find Mr. Phillips completed a significant amount of work on the renovation project, including reframing, drywall, mudding and taping, and re-tiling.
26. However, I accept that there were significant deficiencies with respect to the tile, and in particular the shower and floor needed to be re-tiled, because they were uneven. I accept there were also some gaps in the drywall. Based on the photos, Mr. Kay’s contractor’s evidence, and the parties’ respective submissions, I find that these deficiencies meant all of Mr. Phillips’ work had to be re-done.
27. Based on this same evidence, the fact that Mr. Kay paid \$4,750 to have the bathroom re-done, and given Mr. Phillips admits mistakes, I accept most aspects of Mr. Phillips’ work was substandard. I note for the \$4,750 the contractor had to do the following: tear out shower and disposal, supply and install framing, tile backer, reframe the window, re-tile, repair drywall and paint, install the floor sensor, repair the scratched countertop, and re-plumb the shower and the laundry tub damaged by the concrete. I accept that this work was necessary because the work done by Mr. Phillips was inadequate.
28. A more difficult issue is whether Mr. Kay unreasonably failed to give Mr. Phillips an opportunity to correct the deficiencies, as alleged by Mr. Phillips. Given the tenor of the parties’ text messages, I find there is little indication that Mr. Kay expressed

concern about deficiencies to Mr. Phillips before his December 24, 2017 text terminating the contract and telling Mr. Phillips he was not welcome on site. This conclusion is supported by the fact that Mr. Kay's understanding of the deficiencies came from his neighbour and contractor, D, who first inspected Mr. Phillips' work on December 23, 2017. Given that a specific date was not guaranteed in the contract, I would not find Mr. Kay was entitled to simply cancel the contract based on delay alone, since it was about 5 weeks instead of the estimated 3 weeks. However, given that Mr. Kay's other contractor told him the bathroom would need to essentially be completely re-done, in part because it was not to code, I find Mr. Kay was not unreasonable in refusing Mr. Phillips the opportunity to correct the deficiencies, bearing in mind Mr. Phillips was already well past his expected completion date.

29. In summary, on balance, I find Mr. Kay is entitled to a refund of the \$2,500 he paid to Mr. Phillips, because all of the associated work done by Mr. Phillips for that sum had to be re-done.
30. Mr. Kay also produced a photo to support his submission that Mr. Phillips' workers damaged his laundry sink by letting concrete debris run down it. Mr. Phillips did not directly respond to this submission, though there is reference in Mr. Kay's evidence that the explanation was that he allowed Mr. Phillips to use the sink. I accept Mr. Phillips' explanation that this was for washing hands, rather than to drain construction material. I find Mr. Phillips is responsible for the cost of Mr. Kay's sink repair, which is \$1,000, as set out in Mr. Kay's other contractor's repair invoice.
31. While Mr. Kay did not produce an invoice or receipt for the \$50 dumping fee claim, I find that amount is reasonable in the circumstances and I allow it on a judgment basis.
32. Next, what about the scratch on the marble vanity? Mr. Phillips did not deny he was responsible and based on the evidence before me I accept that Mr. Phillips or

his worker damaged the vanity with their bucket. I find Mr. Phillips is responsible for the \$250 repair, as set out in Mr. Kay's contractor's invoice.

33. Next, what about Mr. Kay's \$1,080 claim for the cost of materials that he purchased for Mr. Phillips' installation, which he said had to be removed and disposed of when the other contractor re-did the bathroom? Mr. Kay did not provide any invoices for these materials. However, this amount roughly approximates the materials cost set out in Mr. Phillips' quote that also said Mr. Phillips was not responsible for the materials cost. Again, Mr. Phillips did not dispute the amount of this claim. I find the amount is reasonable and that Mr. Phillips must reimburse Mr. Kay the claimed \$1,080.
34. What about Mr. Kay's \$100 claim for the dishwasher? Mr. Phillips says the dishwasher never worked, which Mr. Kay disputes and says the only issue was about its handle. I find I have insufficient evidence to support Mr. Kay's position that Mr. Phillips agreed to pay for this dishwasher, \$100 or otherwise. I dismiss Mr. Kay's claim on this issue.
35. I acknowledge Mr. Phillips' submission that Mr. Kay was causing him stress about the project. However, while Mr. Kay may have been demanding about timelines, there is insufficient evidence before me to support a conclusion that his conduct amounted to a breach of contract. In particular, I find that Mr. Kay's admitted episode of frustration, where he threw a chair into his driveway, does not amount to a breach of the contract that would impact Mr. Phillips' obligation to complete the renovation project properly. Mr. Phillips agreed to renovate the bathroom and I find gave a 2-3 week estimate, which is not disputed. Mr. Phillips failed to meet that timeline and Mr. Kay addressed it. It is not Mr. Kay's responsibility that Mr. Phillips did work that was substandard nor are the delays Mr. Kay's fault. While Mr. Phillips' hand injury was certainly unfortunate and unforeseen at the time he entered into the contract, Mr. Phillips was still responsible for fulfilling the contract. I have found that Mr. Phillips did not reasonably do so.

36. In total, I find Mr. Phillips must pay Mr. Kay \$4,880. I will address Mr. Phillips' counterclaim below, and to the extent there is any set-off.

Counterclaim

37. Given my conclusions above, I find Mr. Phillips is not entitled to an order for \$1,802.61 for unpaid completed work. I find the work Mr. Phillips completed was substandard and did not meet the terms of the parties' contract. Mr. Kay had to have that work re-done, and so Mr. Phillips is not entitled to payment for it. I note Mr. Kay above did not claim the cost of his re-doing the renovation job.

38. What about the electrical services and Mr. Phillips' associated \$560 invoice? While Mr. Kay submits that he understood Mr. Phillips "would be looking after the electrical", there is nothing in Mr. Phillips' quote, which became the parties' contract, to support Mr. Kay's position. I prefer Mr. Phillips' evidence that while he may have arranged the electrical for Mr. Kay, Mr. Kay was to pay for it. I find this conclusion is supported by Mr. Kay's voice recording of Mr. Phillips' advice about who he was hiring, in that Mr. Phillips never agreed to be financially responsible for the electrical services. It is also supported by the electrician's statement in evidence that Mr. Kay asked for a "quick and dirty quote so I know what to pay you". On balance, I find Mr. Phillips' work did not include electrical and that Mr. Kay is responsible for the \$560 electrical bill. I note the evidence before me does not support a conclusion that the electrical work had to be re-done by Mr. Kay's other contractor.

39. Next, Mr. Phillips claims \$200 for "window revisions". I dismiss this claim, given I have found above that Mr. Phillips' work on the window was inadequate and did not meet the terms of the parties' contract.

40. Finally, I turn to Mr. Phillips' tools, which according to Mr. Phillips' Dispute Notice includes: a Kubota vacuum, a Bostitch 18g & 23g nailer, and a Bostitch compressor. Mr. Kay agrees to return Mr. Phillips' tools at the conclusion of this

dispute, and in the circumstances I find this is the most appropriate remedy rather than ordering Mr. Kay to pay Mr. Phillips for the tools.

41. I find the \$560 for the electrical invoice should be set-off from the \$4,880 ordered above, leaving \$4,320 payable by Mr. Phillips to Mr. Kay. I find Mr. Kay is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$4,320, from February 17, 2018, which I find is most appropriate as it is the date Mr. Kay completed payment to the other contractor to re-do the bathroom.
42. As Mr. Kay was the most successful party, under the Act and the tribunal's rules, I find Mr. Phillips must pay the \$175 Mr. Kay paid in tribunal fees. As Mr. Phillips was unsuccessful, I dismiss his claim for the \$125 he paid in tribunal fees. There were no dispute-related expenses claimed.

ORDERS

43. Within 30 days, I order:
 - a. Mr. Phillips to pay Mr. Kay a total of \$4,522.27, broken down as follows:
 - i. \$4,320 in damages, taking into account the set-off amount from Mr. Phillips' claim,
 - ii. \$27.27 in pre-judgment interest under the COIA, and
 - iii. \$175 in tribunal fees.
 - b. Mr. Kay to make Mr. Phillips' tools available for pick-up at a date and reasonable time to be arranged in writing between the parties at least 24 hours in advance, unless otherwise agreed.
44. I dismiss the parties' remaining claims.
45. Mr. Kay is entitled to post-judgment interest under the COIA, as applicable.

46. 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.
47. 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 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.

Shelley Lopez, Vice Chair