



# Civil Resolution Tribunal

Date Issued: September 10, 2018

File: SC-2017-006522

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Collins v. Micon Industries*, 2018 BCCRT 505

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

Christopher Collins

**APPLICANT**

**A N D :**

Micon Industries

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## INTRODUCTION

1. The applicant, Christopher Collins, says the respondent Micon Industries<sup>1</sup> (Micon) failed to properly complete contracted house construction work, despite being paid in full.
2. The applicant seeks an order that the respondent reimburse him \$1,475.25 for work he says he paid other contractors to do in order to pass municipal inspection, plus \$200 for his time spent dealing with these additional contractors.
3. The respondent says it completed the contracted work to the satisfaction of the city inspector and structural engineer. The respondent says any deficiencies are due to subcontractors, and are not its responsibility. The respondent also says the amount claimed by the applicant for work by other contractors is inflated.
4. Both parties are self-represented.

## JURISDICTION AND PROCEDURE

5. 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.
6. 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

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<sup>1</sup> The original Dispute Notice named 2 separate contractors as respondents. However, the 2<sup>nd</sup> respondent was later removed as a party. I have updated the style of cause accordingly.

issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.

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: 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**

9. The issue in this dispute is whether the respondent breached the parties' contract, and if so, what remedy is appropriate.

## **EVIDENCE AND ANALYSIS**

10. 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.
11. There is no single written contract between the parties for all work the respondent was engaged to perform on the applicant's house. Rather, there is a written quotation dated October 25, 2016, plus some invoices.
12. The October 25, 2016 quotation says the quote was "to rebuild and extend deck as per plan", and extend the roof to cover the main north area of the deck. The quotation document also discusses foundation and slab work, as well as structural beams.

13. Subsequent invoices show that the respondent was paid a \$9,500 installment for the deck work in November 2016, and \$24,880 for the balance of the deck work in March 2017.
14. The applicant says that after the respondent was paid in full, the work did not pass the city's final inspection. This is consistent with a July 19, 2017 city building inspection report, which says the project was rejected and required re-inspection because a vinyl deck certificate was required, because the deck vinyl had to run 6 inches above the deck up the wall of the house.
15. The applicant says the respondent was aware of this deficiency because it was the sole contact with the city building inspector on the project, it received a copy of a deficiency sheet showing the problem, and it had the only set of stamped plans showing the specific requirements for site preparation of vinyl decking application.
16. The applicant says the building inspector told the respondent about the deficiencies, gave him a slip showing the deficiencies, and wrote on the plans in red ink to show the specific changes required. The applicant says the respondent failed to tell the applicant, and the applicant only learned about the deficiencies at the time of the final inspection in July 2017. The respondent denies this assertion, and says that the city building inspector approved his work during inspections on March 10 and 14, 2017.
17. The March 14, 2017 inspection slip says the work was approved subject to acceptance by a structural engineer. The slip says that vinyl deck certification was required, and "P.Eng deficiencies to clear". I find that this document, combined with the copy of the plans marked "builder's copy" showing the need to add deck membrane and flashing at the bottom of the exterior wall, establishes that the building inspector told the respondent about the deficiencies in March 2017.
18. The respondent's October 25, 2016 quotation says the respondent would rebuild and extend the deck "as per plan". The plan shows the requirement for deck membrane along the bottom of the wall. The plan also says it is "subject to building

inspectors approval on site”. Based on this evidence, and my finding that the building inspector told the respondent about the deficiency in March 2017, I find the respondent is responsible to pay for the remedial work.

19. In making this finding, I note that the applicant asked the respondent to do the remedial work in July 2017, but the respondent said he was unavailable for 5 weeks. I find that having failed final inspection, it was reasonable in the circumstances for the applicant to hire another contractor to complete the work.
20. The applicant provided an invoice for \$1,405 for the remedial work. The respondent disputes that amount, but provided no contrary evidence such as invoices for similar work performed elsewhere. I find that \$1,405 is a reasonable amount in the circumstances, and I order the respondent to pay it.
21. The applicant is also entitled to interest under the *Court Order Interest Act* (COIA), as set out below in my order.
22. The applicant claims \$200 for time spent dealing with other contractors to complete the remedial work. The tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal’s practice of not generally awarding legal fees. I therefore do not order the claimed \$200.
23. The tribunal’s rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was successful, so I order that the respondent reimburse \$125 paid in tribunal fees.

## **ORDERS**

24. I order that within 30 days of this decision, the respondent pay the applicant a total of \$1,544.16, broken down as follows:
  - a. \$1,405 for remedial work,

- b. \$14.16 as prejudgment interest under the COIA, and
  - c. \$125 for tribunal fees.
25. The applicant is also entitled to post-judgment interest under the COIA.
26. 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.
27. 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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Kate Campbell, Tribunal Member