



# Civil Resolution Tribunal

Date Issued: September 28, 2018

File: SC-2017-004412

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Larix Landscape Ltd v. Fellows et al*, 2018 BCCRT 569

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

Larix Landscape Ltd

**APPLICANT**

**A N D :**

Brian Fellows and Susanne Fellows

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

John Chesko

## **INTRODUCTION**

1. This dispute is about an invoice for landscaping services.

2. The applicant, Larix Landscape Ltd, claims \$499.71 is outstanding on an invoice for landscaping services. The applicant says it completed work for the respondents as agreed, but the respondents refused to pay the whole bill.
3. The respondents, Brian and Susanne Fellows, have not paid the amount claimed because they say the landscaping work was deficient. The respondents say the unpaid amount was withheld to fix the deficiencies and the applicant's claim should be dismissed.
4. The 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 on whole there are no significant issues of credibility or other reasons that might require 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 make one or more of the following orders:

- a. order a party to pay money;
- b. order a party to do or stop doing something; or,
- c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Is the applicant entitled to the \$499.71 invoice amount claimed?
  - b. Is the applicant entitled to reimbursement of tribunal filing fees (\$125.00)?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, to succeed the applicant has the burden of proof on the balance of probabilities. That means the tribunal must find it is more likely than not that the applicant's position is correct.
11. I have reviewed all of the submissions and evidence, but only address the evidence and arguments to the extent necessary to explain my decision.
12. The applicant gave the respondents a written proposal for landscaping services dated April 25, 2017. The proposal includes: 1) Garden items (\$1,018.48), 2) Power rake (\$1,071.43) and 3) Pruning (\$465.00). The total amount quoted was \$2,682.69.
13. The respondents accepted the applicant's proposal and the applicant worked at the respondents' property in May 2017.
14. The applicant invoiced the respondents \$2,526.00 on May 25, 2017 for the work.
15. The evidence is that the respondents complained the work was incomplete and the applicant came back in June to finish. The respondents' evidence was that the work was done on June 10, 2017 after repeated reminders.

16. The applicant sent a revised invoice to the respondents for \$2,421.00 dated June 20, 2017.
17. The respondents paid \$1921.29 by cheque dated July 1, 2017. They refused to pay the remaining \$499.71 balance of the revised invoice. The respondents say the remaining balance was withheld to offset the following deficiencies in the applicant's work:
  - a) The applicant damaged the respondents' sprinkler system. The respondents submitted an invoice for \$141.75 from a contractor dated May 17, 2017 for repairs to the sprinkler.
  - b) The seeding and fertilizing of the lawn was completed 5 weeks late. The respondents say they wasted water irrigating the unplanted lawn.
  - c) Even after the lawn came in there were bald patches that the respondents had to seed and fertilize themselves.
  - d) The lawn was not properly dethatched as there was a 4-6 inch gap on the edge of the lawn. The respondents said they spent 6 hours of their own time to dethatch the gap.
  - e) The respondents say they had to "manage" and repeatedly remind the applicant to do their job.
  - f) The applicant left yard debris that the respondents had to clean up.
18. The respondent submitted various invoices and photographs in support of their position. In sum, the respondents say the applicant's claim should be dismissed.
19. I also note the respondents have not filed a counter-claim against the applicant about the alleged damage to the sprinkler.
20. The applicant submits the agreed work was completed and the respondents are responsible to pay the invoice. The applicant submits the alleged deficiencies

came after the invoice was sent. Concerning the sprinkler, the applicant says the respondents have not shown the applicant should be liable for the repair. The applicant also says he was ready to repair the sprinkler and it was a small, '25 cent' repair. The applicant says the small gap in the dethatching edge is normal because of the tools used. The applicant submits the issues raised by the respondent are not valid reasons to withhold payment and asks the tribunal to order that the respondents pay \$499.71.

21. I find the applicant has proven on a balance of probabilities that it provided the agreed landscaping services to the respondents in May and June 2017. I find on the evidence the applicant had substantially completed the agreed work by June 10, 2017.
22. While I accept the job did not go as smoothly as the respondents (and applicant) would have wished, I find the complaints about having to follow up with the applicant and the delay in completing the work to June 10, 2017 is not a valid legal reason to withhold or reduce payment for the work in these circumstances. I also find there should be no reduction in the amount owing because there were bald patches in the lawn or a small gap in the dethatching. I accept the applicant's submission on the evidence that it is not liable for plant growth or the small gap in the dethatching perimeter.
23. What about the alleged damage to the sprinkler?
24. First, as set out above, the respondents did not file a counter-claim. However, I find the respondents' claim for damages for the sprinkler are so closely connected to the landscaping work at issue that it should be considered as part of this claim. This is consistent with court decisions including *Dhothar v Atwal*, 2009 BCSC 1203, *Wilson v Fotsch*, 2010 BCCA 226 (Canlii) and the mandate and role of the tribunal to provide accessible, informal, flexible and fair justice: See section 2 of the Act.

25. I find on the evidence the sprinkler was accidentally damaged by the applicant. I also find it was reasonable on the facts for the respondents to have the sprinkler company repair the sprinkler. I find the invoice should be reduced by the amount of the sprinkler repair (\$141.75). I note this is the amount set out in the invoice from the sprinkler company that was provided by the respondents.
26. Based on the evidence and submissions before me, I find the applicant completed the agreed work and the respondent owes the unpaid amount, less the amount of \$141.75 for the damaged sprinkler. I find the applicant is entitled to \$357.96 for the unpaid invoice ( $\$499.71 - \$141.75 = \$357.96$ )
27. In accordance with the *Act* and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As there was mixed success in this claim, I decline to make an order that the respondents reimburse the applicant's tribunal fees.
28. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from July 10, 2017.

## **ORDERS**

29. Within 30 days of the date of this order, I order that the respondent pay to the applicant a total of \$362.57 as follows:
  - a. \$357.96 for the applicant's outstanding invoice; and,
  - b. \$4.61 as pre-judgement interest under the COIA.
30. The applicant is entitled to post-judgement interest under the COIA, as applicable.
31. 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.

32. 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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John Chesko, Tribunal Member