



Civil Resolution Tribunal

Date Issued: October 5, 2018

File: SC-2017-005864

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ralh v. butcher*, 2018 BCCRT 598

B E T W E E N :

balkar ram Ralh

APPLICANT

A N D :

Reg butcher

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a dispute about a deposit paid for an incomplete kitchen renovation.
2. The applicant Balkar Ram Ralh says that in July 2017 he paid the respondent Reg Butcher an advance of \$4,500 for kitchen renovations that were never completed. He says the respondent promised the kitchen would be ready by August 2017.

The applicant seeks a \$5,000 refund. The applicant did not explain why he sought \$5,000 when the deposit paid was \$4,500.

3. The respondent says he did some work on the kitchen but that he stopped because the applicant would not pay once the work exceeded the deposit amount. He asks that I dismiss the dispute. The respondent did not file a counterclaim.
4. The parties are each 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 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 do or stop doing something;

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

ISSUES

- 9. The issue in this dispute is whether or not the applicant is entitled to a refund of the deposit paid to the respondent for the kitchen renovation.

EVIDENCE AND ANALYSIS

- 10. This is a civil claim where the applicant bears the burden of proof, on a balance of probabilities. I will only refer to the evidence and submissions to the extent necessary to explain my decision.
- 11. On July 6, 2017, the parties signed a sales agreement (contract) for the respondent to manufacture and install a plywood construction kitchen, cherry kitchen and cherry cabinet doors, with soft close hardware included. In return the applicant committed to a payment schedule for a \$4,500 deposit and \$9,000 total.
- 12. The contract reads “Seller shall commence to manufacture following receipt of the buyer’s initial deposit. Non retracting funds applied to payments toward work in progress. The seller will insure [sic] that the customer is satisfied at the end of the contract.”
- 13. The parties agree that, in July 2017, the applicant paid the respondent \$4,500 as an “advance” for him to install a new kitchen at the applicant’s home.
- 14. The respondent says he removed the old kitchen cabinets and installed new cabinets, using plywood construction, without cabinet doors. The cabinet doors were special order.

15. Text messages between the parties show that the respondent was ignoring the applicant's requests for information and was not continuing work on the kitchen over about one month in August and September 2017.
16. After that, the texts show that the respondent said he ordered the cabinet doors, but asked for money to pay the door suppliers before the doors would be shipped. The applicant texted back saying he would only pay on delivery.
17. The applicant then contacted the door supplier directly, and texted back to the respondent saying "They won't take the money till they talk to you in front of me."
18. Eventually the doors were delivered. I do not have evidence before me as to who paid for the doors.
19. The respondent then requested \$1,000 from the applicant before he would install the doors. The applicant did not pay the amount sought, and the text chain ends with the respondent writing, on March 12 "Are you gonna pay" and the applicant responding "Come start your work and take your money."
20. The respondent says his work to date exceeds the deposit of \$4,500, and that he requested a further \$4,500 to continue working, which was never paid to him. Specifically, he says he completed the following work:
 - a. Removal and disposal of old cabinets - \$1,500.00
 - b. Manufacture and installation of plywood cabinets \$5,500.00
 - c. Design and order doors \$1,200.00
21. He says this total is \$8,200.00 and that there is "mark up" on the doors and moulding bringing the total value of the work done and items installed to \$20,000.
22. No evidence was filed supporting the valuations given by the respondent. I do not accept the respondent's valuation of work and materials at \$20,000 nor his figure at \$8,200, because there is no evidence before me to support it. I do accept that

the bulk of the labour would have been in constructing and installing the plywood cabinets. Given the photographs of the cabinets and the text message evidence, I find that the respondent completed at least \$4,500 in work and then refused to do anything more until he received more money.

23. The applicant filed in evidence a copy of the front of a \$500 cheque made out from the applicant to the respondent, dated February 2, 2018. I was not given any evidence as to whether this cheque was ever given to or cashed by the respondent. I am therefore proceeding on the basis that the respondent was paid \$4,500 only.
24. The applicant filed photographs of the unfinished kitchen in evidence. These photographs show that the kitchen still needs cabinet doors and drawer and cabinet pulls.
25. I find that the respondent did not complete the kitchen installation as promised in the agreement. Having said that, I found that the respondent completed \$4,500 in work or materials provided under the agreement.
26. The applicant filed no evidence to establish an amount he paid or will pay to complete the work. He asserted that the kitchen cost “double the amount of money” because “nobody wanted to touch a half completed kitchen”, but made no claim for the difference between what he would have paid and what he did pay for the work. Therefore, I will deal only with his claim for the return of the deposit.
27. The applicant has not proved he is entitled to the return of the \$4,500 deposit, because the evidence shows the respondent provided work for that amount.

ORDER

28. The applicant's claim is dismissed.

Julie K. Gibson, Tribunal Member