



Civil Resolution Tribunal

Date Issued: November 5, 2018

File: SC-2018-001184

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kaye v. Osseworth*, 2018 BCCRT 689

BETWEEN:

Alice Kaye

APPLICANT

AND:

Raymond Osseworth

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. In this dispute, the applicant, Alice Kaye, hired the respondent, Raymond Osseworth, to drywall the applicant's bathroom. The applicant says that the respondent failed to finish the job and seeks a refund of \$516 of the \$750 the applicant paid to the respondent. The applicant also seeks an order that the

respondent dispose of the drywall and other materials that were left behind after the respondent stopped working.

2. The parties are each self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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

7. The issues in this dispute are:
 - a. To what extent is the applicant entitled to a refund because the respondent did not complete the drywalling job?
 - b. Should the respondent dispose of the materials left in the applicant's apartment?

EVIDENCE AND ANALYSIS

8. The respondent participated in the facilitation process, but chose not to provide any evidence or submissions after the facilitation process ended despite numerous reminders from the tribunal case manager.
9. The applicant contacted the respondent on January 23, 2018, to ask whether the respondent would drywall her bathroom for \$750. The respondent agreed and the parties made arrangements for the respondent to start work on January 27, 2018. The respondent was to complete the drywalling up to the point where the applicant would be able to paint it.
10. The respondent completed some work while the applicant was present, but on February 6, 2018, the applicant gave the respondent a key so that he could complete the work while she was out of town. The applicant required the respondent to complete the job no later than February 14, 2018, which was the day before she arrived home with her mother to paint. The respondent advised on February 14, 2018, that the work was still not quite complete.
11. The applicant says that she came home to find not only that the job was incomplete but that some of the work needed to be redone. I accept the applicant's evidence.
12. When the applicant arrived home, she demanded a \$500 refund based on the amount of work left to be done. The respondent offered \$200. In that conversation, the respondent claimed that he had spend \$170 on diesel, \$120 on materials and

20 hours of work at \$22 per hour. The respondent later stated that his hourly rate was \$18 per hour.

How much of a refund the applicant is entitled to because the respondent did not complete the drywalling job?

13. The applicant submits that the respondent should be paid for 13 hours at \$18 per hour to compensate him for the time he worked, which adds up to \$234. The applicant points out that of the 20 hours that the respondent claimed, 7 were almost 2 months before the parties entered into the contract. In his Dispute Response, the respondent agreed that the applicant is entitled to a partial refund, but does not specify how much. I agree with the applicant that \$234 is a reasonable amount for the respondent to be paid for the time he worked. This results in a \$516 refund out of the \$750 paid.
14. In his Dispute Response, the respondent states that he paid for materials. Based on the communications between the parties, I find that reimbursement for materials was not included in the \$750 price. I rely on a message from the applicant in which she told the respondent that she would have to go to the bank to take out cash to reimburse him for materials he purchased for the job.
15. In addition, the respondent did not provide any receipts to the applicant when she requested them. He also did not provide any receipts or other evidence in this dispute. There is insufficient evidence to order a set-off from the applicant's refund for any of the respondent's expenses.
16. The applicant is entitled to a refund of \$516 as claimed, plus pre-judgment interest under the *Court Order Enforcement Act (COIA)* from February 14, 2018.

Should the respondent dispose of the materials left in the applicant's apartment?

17. As for the materials that the applicant wants the respondent to remove from her apartment, I find that disposal of any waste materials was part of the original contract. Because the applicant is receiving a refund for the aspects of the contract

that the respondent failed to perform, she has not paid the respondent for the service of removing the waste materials. It would therefore be a windfall to the applicant to order him to dispose of the waste materials.

18. I dismiss this aspect of the applicant's dispute.
19. The applicant also claims tribunal fees of \$125. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim any other dispute-related expenses.

ORDERS

20. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$645.89, broken down as follows:
 - a. \$516 as a refund for failing to complete the drywall work
 - b. \$4.89 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
21. The applicant's remaining claims are dismissed.
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.



Eric Regehr, Tribunal Member