



Civil Resolution Tribunal

Date Issued: November 7, 2018

File: SC-2018-001178

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hampton v. Tekeng*, 2018 BCCRT 693

B E T W E E N :

Daniel Hugh Hampton

APPLICANT

A N D :

Verginie Tekeng

RESPONDENT

A N D :

Daniel Hugh Hampton

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Mary Childs

INTRODUCTION

1. Daniel Hampton sold his house to Verginie Tekeng. As part of the sale agreement, Mr. Hampton agreed to replace the roof of the house and Ms. Tekeng agreed to pay for that work. Mr. Hampton says Ms. Tekeng still owes him money for part of that cost, and claims \$712.47 plus interest. Ms. Tekeng counterclaims for \$2,300, being the cost of replacing a garage door opener and for damage she says was caused by Mr. Hampton's failure to insulate a water pipe in the garage. The parties are self represented.

JURISDICTION AND PROCEDURE

2. 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.
3. 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 reasons that might require an oral hearing.
4. 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.
5. 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

6. The issues in this dispute are:
 - a. Should Ms. Tekeng pay Mr. Hampton for the remaining costs of the roof replacement?
 - b. Should Mr. Hampton pay Ms. Tekeng for the cost of a garage door opener?
 - c. Should Mr. Hampton compensate Ms. Tekeng for the damage caused by a burst water pipe, and the cost of repairing that pipe?

EVIDENCE AND ANALYSIS

7. On November 22, 2017 the parties entered into a contract of purchase and sale of Mr. Hampton's house.
8. On November 24, 2017, a home inspector examined the house for Ms. Tekeng. The inspection report identified a leak in the roof. Water had been leaking through the asphalt shingles. Plywood in the attic had sustained water damage and was mildewed.
9. The inspector also noted that the garage was heated by a forced air register from the home. The inspection report said this was standard practice when the house was built but is no longer considered best practice due to the risk that carbon monoxide from the garage may be pulled into the home through the ducting. The

inspector recommended Ms. Tekeng consider blocking the duct and providing alternative heat instead. This is relevant to Ms. Tekeng's claim for a burst pipe in the garage, as discussed below.

10. The parties amended the contract by signing an addendum dated November 28, 2017. It added two obligations for Mr. Hampton. First, he was to have the vents between the house and garage sealed to prevent exhaust gases from the garage leaking into the house. Second, he was to have the roof shingles and any plywood with mildew on the underside removed and replaced.
11. The addendum specified that if the repairs had not been done by the completion date, Ms. Tekeng's lawyer was to hold back \$6,500 from the sale proceeds to pay for the work. The addendum also said that if the totals of the invoices exceeded the holdback amount then it would be Ms. Tekeng's responsibility to pay the difference to Mr. Hampton. If the amount was less than the holdback then the difference would be paid to Ms. Tekeng.
12. The sale completed in early December 2017. The roof repairs had been completed but the invoices from the roofing company were not received until after the completion, so Ms. Tekeng's lawyer held back the \$6,500.00.
13. The holdback amount was paid by Ms. Tekeng's lawyer to Mr. Hampton's notary in December 2017.
14. Mr. Hampton submitted receipts for the roof repairs totalling \$7,702.17 for both materials and labour. He says a \$489.70 return credit was applied for unused materials so the final cost was \$7,212.47. After subtracting the \$6,500.00 holdback already paid to Mr. Hampton, this leaves \$712.47 to be paid by Ms. Tekeng.
15. Ms. Tekeng says that the work was not done properly. She has not, however, provided any evidence in support of this allegation. She also objects to the cost of the roofing work, saying the original quote was \$5,100.00. The evidence provided by both parties confirms that the final price was higher than anticipated. Nonetheless, the addendum states that Ms. Tekeng would pay any amounts over

\$6,500.00, so I find that the parties did not consider the \$5,100 estimate to be a firm quote. The terms of the addendum are clear. Ms. Tekeng agreed to pay the costs of the roof repair, even if they were more than the amount of the \$6,500.00 holdback. I order Ms. Tekeng to pay Mr. Hampton the remaining \$712.47.

16. Mr. Hampton has also claimed interest in the amount of \$42.72. He has not submitted evidence to show that Ms. Tekeng agreed to pay interest on the amount owing. For that reason, I dismiss his claim for that amount of interest. He is entitled to pre-judgment interest under the Court Order Interest Act. I have calculated that interest from December 8, 2017, the date on which Ms. Tekeng was advised of the amount owing.
17. Ms. Tekeng says that when she first visited the house it had two automatic garage openers, one for each door of the garage. When she took possession of the house it had only one garage door opener. Ms. Tekeng says that Mr. Hampton must have taken one of the garage door openers. She counterclaims for \$350.00, as the cost of a second garage door opener. She has not provided any evidence of the cost of such a door opener.
18. Mr. Hampton says the house has always had only one garage door opener. The inspection report contains photographs of the garage which show only one door opener. The report also says that a garage door opener is installed on one of the two doors. I find that the garage had only one door opener when Ms. Tekeng agreed to buy it. I dismiss this aspect of the counterclaim.
19. Mr. Hampton blocked up the hot air vent between the house and the garage, as required by the addendum. That removed the only source of heat to the garage. A water pipe in the garage ceiling froze and burst, causing damage to items in the garage. Mr. Hampton counterclaims for \$850.00 to fix the pipe temporarily, \$1,500.00 to fix it permanently, and \$1,100.00 for the cost of replacing items damaged by the flood. She says the pipe burst because Mr. Hampton cut heating tape which otherwise would have prevented the pipe freezing. Mr. Hampton says he never used heating tape in the garage while he owned the house because the

hot air heating from the house prevented freezing in the garage. Mr. Hampton has provided a letter from his realtor stating that Ms. Tekeng's realtor was made aware of the risk that the water pipes in the garage might freeze if the hot air vent was blocked off as requested. I accept Mr. Hampton's submissions on this matter. I dismiss Ms. Tekeng's counterclaim.

20. 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 Mr. Hampton is entitled to reimbursement of \$125.00 in tribunal fees and \$10.71 in dispute-related expenses for serving the Dispute Notice on Ms. Tekeng.

ORDERS

21. Within 60 days of the date of this order, I order Ms. Tekeng to pay Mr. Hampton a total of \$856.43, broken down as follows:
 - a. \$712.47 as payment for the unpaid amount of the roof repair costs,
 - b. \$8.25 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$135.71 for \$125.00 in tribunal fees and \$10.71 for dispute-related expenses.
22. Mr. Hampton 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.

Mary Childs, Tribunal Member