



Civil Resolution Tribunal

Date Issued: November 13, 2018

File: SC-2018-0004747

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wiebe Painting v. Shergill et al*, 2018 BCCRT 719

B E T W E E N :

Wiebe Painting

APPLICANT

A N D :

Gurnek Shergill and Jorawar Gill

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Wiebe Painting, says the respondents, Gurnek Shergill and Jorawar Gill, failed to pay the final invoice for contracted painting services. The applicant seeks payment of \$4,200.

2. The respondents say they are not liable to pay because the applicant did not complete the painting, and there were defects in some of the paint work.
3. The applicant is represented by its principal, Rocky Wiebe. The respondents are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
6. 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.

7. 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

8. The issue in this dispute is whether the applicant is entitled to payment of \$4,200 for painting services.

EVIDENCE AND ANALYSIS

9. 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.
10. In April 2017, the respondents hired the applicant to paint a house in the latter stages of construction. The applicant prepared a written scope of work and price quotation, which the respondents both signed. That document said that the price would be \$14,000 including paint and painting materials, plus GST. The scope of work was as follows:
 - Prime and paint main floor and second floor walls and ceiling, as well as the back stairwell walls and ceiling.
 - Prime and paint garage wall and ceiling.
 - Paint all pre-primed trim and doors supplied by owner.
 - Install owner-supplied doors, door frames, window frames, and baseboards.
 - Paint interior side of all pre-installed exterior doors.

11. I find that the scope of work document sets out the terms of the contract between the parties. It says that the respondents would pay the applicant \$10,000 upon completion of painting of the walls, ceiling, and pre-installed trim, with the balance due upon completion.
12. The parties agree that the respondents paid the first installment payment, and that they did not pay the final invoice for \$4,000 plus \$200 GST. The respondents say they are not obligated to pay the \$4,200 because the applicant did not complete the work.
13. The applicant says he completed the contracted work, plus some additional tasks that he performed without charge, and that any damage or required touch-ups were the result of damage by other contractors, or were wear and tear due to the fact that the house had been occupied since September 2017.
14. Based on the evidence before me, I find that the applicant completed the work, as set out in the scope of work document. The respondents provided 7 photos, which they say show work that was incomplete or insufficient. I find that 5 of those photos do not show any defects in the paintwork. While the respondents say they show incorrect brushstrokes or paint thickness, I find that is not visible in the photos. There is 1 photo that shows an unpainted patch less than 1 square foot in size. There is also another photo that shows some minor areas of chipped or missing paint around an electrical outlet. I find that both of these items are minor, and are not defects that would justify withholding payment in the context of a such a large job. In making this finding, I particularly note that the applicant offered on January 10, 2018 to spend a full day doing touch ups if the applicants agreed to meet him at the jobsite with a bank draft for full payment of the outstanding invoice. Also, I agree with the applicant's submission that the marks around the electrical outlet were likely caused by the electrical contractor, as they appear to be the result of post-painting damage.
15. The respondents say that they paid another contractor, Eberle Construction, \$1,500 to re-stain all the railings. However, they did not provide proof such as an invoice or

receipt. Also, the scope of work did not include staining railings, and instead specifically said that the proposal did not include staining or finishing of any natural wood surfaces. Therefore, I find that this does not justify withholding payment from the applicant.

16. For all of these reasons, I find the applicant is entitled to payment of \$4,200 for the December 22, 2017 invoice. The applicant is also entitled to pre-judgment interest on this amount, from December 23, 2017, under the *Court Order Interest Act* (COIA).
17. 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 therefore I find that the applicant is entitled to \$175 for tribunal fees.

ORDERS

18. I order that within 30 days of the date of this order, the respondents pay the applicant a total of \$4,481.26, broken down as follows:
 - a. \$4,200 for painting services and GST,
 - b. \$106.26 in pre-judgment interest under the COIA, and
 - c. \$175 for tribunal fees.
19. The applicant is entitled to post-judgment interest, as applicable.
20. 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.

21. 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.

Kate Campbell, Tribunal Member