



# Civil Resolution Tribunal

Date Issued: November 16, 2018

File: SC-2018-002396

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Schultz v. Runka*, 2018 BCCRT 738

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

Norbert Schultz

**APPLICANT**

**A N D :**

Arlene Runka

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

### **INTRODUCTION**

1. This dispute is about payment for construction work. The applicant, Norbert Schultz, says he built a garage for the respondent, Arlene Runka, and she failed to pay the outstanding balance owed for that work. The applicant seeks payment of \$3,866.

2. The respondent says she owes nothing. She says the applicant billed for extra work, but this work was actually part of the originally contracted price. The respondent also says the applicant took too long to do the job, did not provide the expected standard of work, failed to complete the work, and left the jobsite in a dangerous state.
3. The parties 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. 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 \$3,866 for garage construction.

## **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. The respondent hired the applicant to build a garage attached to her house. A May 29, 2017 contract states that the respondent would pay a total of \$17,200 in installments, with the final payment of \$3,000 due upon completion. The contract said the applicant would supply all materials, including concrete, framing, roofing, vinyl siding, drywall, and a garage door with remote opener. The contract said the building permit, surveying, and engineering fees were not included in the price.
11. The written copy of the contract provided by the applicant indicates that the applicant signed the contract on May 29, 2017, and the respondent signed it on June 12, 2017.
12. The documents in evidence show that on May 12, 2017, the respondent submitted building plans to the City, in order to get a building permit. The applicant says the plans were approved by the City on June 2, 2017, with some required changes. The applicant says that when the respondent signed the contract on June 12, 2017, she knew that the city had made changes to the building plans. The applicant says he informed the respondent at that time that there would be extra charges due to the City's revisions.

13. Part of the applicant's claim is \$2,175 for "extras", which he says were added after the contract was signed. He listed the extras in a February 16, 2018 email to the respondent, as follows:

- Exterior drywall and installation
- Window installation on east wall (changed from a door)
- Upgrade interior drywall to 5/8" as requested by City
- Widen footings from 16 inches to 18 inches, as requested by City
- Brace wall panels, as requested by City

14. The respondent says these "extras" claimed by the applicant were part of the originally contracted price of \$17,200.

15. I find the applicant has not proven his claim for \$2,175 for extras. The written contract sets out specific exceptions, such as building permits and engineering fees. It does not set out exceptions for drywall, windows, bracing, or widened footings. While I accept that the City required some changes, there is no indication that the parties agreed to a price for such changes, or that the respondent agreed to pay. The only agreement is the May 29, 2017 contract. While the applicant says he discussed some extra charges with the respondent at the time the contract was signed, he did not specify what the charges were for, or how much they would be. The applicant did not create an updated contract, change orders, invoice, or even emails to confirm any agreement about the changes and their cost.

16. The first documentation of any charge for extras is set out in the February 16, 2018 email. This email was sent several months after the applicant had ceased working on the garage. While he cites a price of \$2,175, there is no breakdown of that price, such as charges for labour or materials. The applicant also provided no accounting of the extra time or materials spent on these "extras". He provided 2 receipts for materials, totalling \$877.01, but it is unclear how this corresponds with the claimed

\$2,175. Also, there is no indication that the applicant discussed these materials charges with the respondent, or that she agreed to pay.

17. The applicant says the respondent changed her mind and wanted the east wall window to become a door, requiring reframing. The respondent denies this, and says it was always meant to be a door and the applicant mistakenly framed it as a window. In any event, as with the City-required changes the applicant provided no evidence about when the change occurred, or what the parties agreed to regarding the price for that change (if any). He also provided no evidence about how much time that change took, or what materials were required.
18. For all of these reasons, I find the applicant is not entitled to payment of \$2,175 for extras.

***\$1,691 Holdback***

19. The respondent admits she did not pay the final \$1,691 of the contracted price of \$17,200. In a January 16, 2018 email to the applicant, the respondent wrote that she would pay the remaining \$1,691 upon completion and final inspection. The respondent says she does not owe the \$1,691 because the applicant failed to complete the work, and did not provide reasonable workmanship.
20. The respondent provided a list of tasks she says were poorly done or left unfinished, with corresponding photos. These tasks include an unfinished fascia board, which the photo shows does not reach the corner of the roof. Other photos show a cracked fascia board, an unfinished soffit, unfinished door trim, an outdoor electrical plug that does not fit properly in its housing, a missing and damaged section of drywall under an indoor plug, and a large cement block left behind on the lawn.
21. The emails provided in evidence show that the respondent emailed the applicant on December 14, 2017 and asked him to complete the work. The applicant did not do so, although he offered to paint the fascia boards on March 11, 2018.

22. Based on the photos provided by the respondent, I find that the applicant did not complete the work to a reasonable standard. While the applicant says there are no deficiencies, I find this is inconsistent with the flaws documented in the respondent's photos. I therefore find the applicant is not entitled to payment of the remaining \$1,691. I dismiss the applicant's claims.

23. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

## **ORDER**

24. I dismiss the applicant's claims and this dispute.

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Kate Campbell, Tribunal Member