



Civil Resolution Tribunal

Date Issued: November 28, 2018

File: SC-2018-000717

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aujla v. Jackson*, 2018 BCCRT 774

B E T W E E N :

Jaswant Aujla

APPLICANT

A N D :

Tyler Jackson

RESPONDENT

A N D :

Jaswant Aujla

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant and respondent by counterclaim, Jaswant Aujla, claims \$4,500 as a refund of a deposit for interior glass railings. Mr. Aujla says he paid a \$9,000 deposit, and the respondent, and applicant by counterclaim, Tyler Jackson, only returned \$4,500. Mr. Aujla says Mr. Jackson promised to refund the full deposit but did not.
2. Mr. Jackson denies the claim, and says the deposit was non-refundable after Mr. Aujla cancelled the contract. In his counterclaim, Mr. Jackson seeks \$4,500 as repayment of the portion of the deposit already refunded to Mr. Aujla.
3. Both 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 issues in this dispute are:
 - a. Is Mr. Aujla entitled to a refund of the remaining \$4,500 of the deposit?
 - b. Is Mr. Jackson entitled to repayment of the \$4,500 of the deposit already refunded to Mr. Aujla?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means that to succeed, Mr. Aujla must prove he is entitled to a full refund of the deposit. For Mr. Jackson to succeed, he must prove he is entitled to repayment of the portion of the deposit he already refunded. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. On November 6, 2017, the parties entered into a contract. The terms of that contract are set out in a November 6, 2017 document prepared by Mr. Jackson. While Mr. Aujla did not sign the document, he does not dispute its terms. The document is entitled “invoice”, and says that Mr. Jackson would install interior glass railings in the house owned by Mr. Aujla. The scope of work is set out in the invoice, and says the railings would be made of 12 millimeter tempered clear glass bolted on with 2 inch diameter stainless steel standoffs, with a 1.5 inch stainless steel handrail

welded onsite. The invoice said the total cost for the job was \$18,000 including GST and the cost of engineering documents.

11. The contract says that a 50% deposit of \$9,000 was due on November 6, 2017, and that the remaining \$9,000 would be due at completion.
12. The documents in evidence show that Mr. Jackson emailed Mr. Aujla a copy of the contract on November 6, 2017, and said he was able to start work the following morning.
13. Mr. Aujla replied 2 days later, on November 8, 2017. Mr. Aujla said he had run into a problem about how to finish the round part of the stairs (stair nosing), as his finishing carpenter was not willing to do it because curved parts were not readily available. Mr. Aujla wrote that he was talking to someone who might be able to do it, and he would know the next day if would work out. Mr. Aujla asked Mr. Jackson to hold off on the job “for the time being”, and also asked if he knew anyone who could provide stair shoes and nosing.
14. In a November 15, 2017 email, Mr. Aujla said the “wood place in Abbotsford” was not able to finish the work within his timeline, so he had decided to use a wood and metal railing instead. He thanked Mr. Jackson, and asked him to return the deposit.
15. Subsequent emails and text messages indicate that Mr. Jackson said he would send Mr. Aujla a cheque for the deposit refund. In a December 8, 2017 text message, Mr. Jackson said he was not required by law to return the deposit, but was doing so because he was trying to be fair. Mr. Jackson eventually refunded \$4,500 of the \$9,000 deposit.
16. The issue in this dispute is whether the \$9,000 deposit was refundable. The written contract does not say the deposit is non-refundable, but simply describes it as a “50% deposit”. There is no indication that the parties discussed whether the deposit was refundable until after Mr. Aujla cancelled the contract on November 15, 2017. Thus, I find there was no meeting of the minds on this issue.

17. Mr. Aujla says it is unfair for Mr. Jackson to retain the deposit because he performed no work. He also says that normally when a person is hired to install a stair railing, they supply all the necessary parts and trim, including nosings. I do not accept this argument, as Mr. Aujla has provided no evidence to support this assertion about normal industry practices. The scope of work set out in the November 6, 2017 document is very specific, and does not mention nosings or any part of the stairs except for the railings. Also, in his submission to the tribunal, Mr. Aujla said that Mr. Jackson visited the jobsite on November 7, 2017 to pick up the deposit, Mr. Jackson said he would not provide stair nosings.
18. While Mr. Aujla now says Mr. Jackson's contract did not meet his timeframe, I do not accept that argument. The email correspondence shows that Mr. Jackson was ready to begin work on November 7, 2017. For that reason, I find that Mr. Jackson was prepared to fully perform the tasks set out in the contract. I also find that Mr. Aujla's reason for breaching the contract, as set out in his November 15, 2017 email, was not due to any action by Mr. Jackson. Rather, he changed his mind about the type of railings he wanted due to other issues with the stairs (lack of nosings) that were not part of Mr. Jackson's contract.
19. I find that Mr. Aujla was entitled to a refund of the entire \$9,000 deposit, based on section 23(5) of the *Business Practices and Consumer Protection Act* (BPCPA). The BPCPA applies to the stair railing contract because the respondent meets the definition of "supplier" in that Act, as he is a person who in the course of business participated in a consumer transaction by supplying, or offering to supply, goods or services to a consumer.
20. Section 23(5) of the BPCPA states that a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date that the consumer receives a copy of the contract if the contract does not contain the information required under section 23(2) and section 19 of the BPCPA.

21. The BPCPA defines “future performance contract” as a contract for the supply of goods or services between a supplier and a consumer for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed. Because Mr. Aujla was not required to pay (and did not pay) the additional \$9,000 owed for the stair railings at the time he entered into the contract on November 6, 2017, and because the railings were not going to be supplied until sometime in the future, I find that the railing installation contract was a future performance contract, as contemplated in the BPCPA.
22. Section 23(2) of the BPCPA says that a future performance contract must contain the supply date and the date on which the supply of goods or services will be complete. The November 6, 2017 stair railing contract does not contain this information, and the emails between the parties show that no installation deadline had been agreed to. As the contract between the parties did not specify the date on which the stair railings would be supplied or installed, I find that the contract did not contain the information required under section 23(2) of the BPCPA. Again, section 23(5) of the BPCPA says a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date that the consumer receives a copy of the contract if the contract does not contain the supply date information required under section 23(2).
24. For these reasons, I find that Mr. Aujla was entitled to cancel the contract in writing on November 15, 2017, as he did. I also find he provided a reason for the cancellation, so the email was sufficient notice of cancellation as required under section 54 of the BPCPA.
25. Section 27 of the BPCPA says that if a contract is cancelled under section 23, the supplier must refund the consumer all money received in respect of the contract, without deduction.
26. While Mr. Jackson said he turned down other available work to take Mr. Aujla’s contract, this does not override the mandatory terms of the BPCPA. Accordingly, I conclude that Mr. Jackson must return the remaining \$4,500 of the deposit to Mr.

Aujla, plus interest under the *Court Order Interest Act* (COIA) from November 16, 2017.

20. For the same reasons, Mr. Jackson's counterclaim is dismissed.
21. 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. Aujla is entitled to reimbursement of \$175 in tribunal fees. Mr. Aujla also claims \$32.13 in for registered mail costs. He did not provide receipts or particulars for this expense, and did not explain why the amount is higher than a typical registered mail envelope. For this reason, I do not order reimbursement of this expense.

ORDERS

22. I order that within 30 days of the date of this order, Mr. Jackson pay Mr. Aujla a total of \$4,732.24, broken down as follows:
 - a. \$4,500 as a refund of the remaining deposit,
 - b. \$57.24 in pre-judgment interest under the COIA, and
 - c. \$175 for tribunal fees.
23. Mr. Aujla is entitled to post-judgment interest, as applicable.
24. I order that Mr. Jackson's counterclaim is dismissed.
25. 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.

26. 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