



Civil Resolution Tribunal

Date Issued: December 17, 2018

File: SC-2018-000763

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Davinder (Dave) Gaday (Doing Business As D & G Hazmat Services Ltd) v. Sanghera et al*, 2018 BCCRT 864

B E T W E E N :

Davinder (Dave) Gaday (Doing Business As D & G Hazmat Services Ltd)

APPLICANT

A N D :

Paramjit Sanghera and Nirmal Sanghera

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondents, Paramjit Sanghera and Nirmal Sanghera, hired the applicant, Davinder (Dave) Gaday (Doing Business As D & G Hazmat Services Ltd), to perform a hazardous material inspection on a duplex in White Rock. The applicant

claims \$1,717.50 for the cost of the inspection and other costs. The respondents refuse to pay because they believe the applicant has overcharged them.

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 issue in this dispute is how much, if anything, the respondents owe the applicant for the hazardous materials inspection.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove their case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
9. The respondents are the owners of 2 properties in White Rock that form a duplex. The respondents planned to demolish the duplex. As part of that process, the respondents had to have a qualified person inspect the building for hazardous materials.
10. The respondents hired the applicant to inspect the building and provide a report. The applicant attended on October 20, 2017 and provided their report on October 28, 2017.
11. The applicant invoiced the respondents \$1,350, plus GST, for a total of \$1,417.50, on October 19, 2017.
12. The respondents say that the applicant gave them an initial quote of \$600. The applicant says that this was based on 30 samples, but they ended up having to do 60. The applicant says that they told the respondent that there would be additional charges if they needed more than 30 samples. There is no written quote in evidence.
13. The report says that before demolishing a building, the owner must get a Hazardous Material Survey and Asbestos Risk Assessment to comply with Occupational Health and Safety Regulations (OHS Regulations) section 20.112.
14. Section 20.112(3) of the OHS Regulations places obligations on a qualified person to make sure that they collect representative samples and determine whether the

samples are hazardous. There is no guideline about the number of samples that a qualified person needs to take. On balance, I find that it was within the professional discretion of the applicant to determine how many samples were necessary to fulfill their obligations under the OHS Regulations.

15. Given the obligations the OHS Regulations place on the applicant, I accept that it was not possible for the applicant to provide a firm quote prior to performing the inspection. The applicant's obligation is to fulfill their regulatory obligations, which exist to protect the health and safety of the workers who will demolish the building. I accept that after commencing work, the applicant determined that they needed more samples than they initially thought in order to fulfill their obligations under the OHS Regulations.
16. In support of their position, the respondents provided a quote from another contractor. The quote was for \$750. However, this quote also says that there may be additional charges. It is not clear from the evidence whether this contractor attended the building to assess the number of samples that they would need to take. I therefore place little weight on this evidence.
17. The respondents did not provide any evidence from a qualified person that the applicant's sampling was excessive. In their submissions, the respondents say that one of their other contractors told them the applicant overcharged them, but do not provide any evidence to support this statement. I place no weight on this hearsay evidence.
18. The respondent submits that the applicant used the fact that the building is divided into 2 separate legal titles to double the number of samples from 30 to 60. In the report, 39 of the samples are from one of the addresses and 21 are from the other. This breakdown does not support the respondent's submission that the increase was due solely to the fact that there were 2 legal titles.

19. I find that the weight of the evidence does not lead to a conclusion that the respondents were overcharged. I find that the applicant's invoice was reasonable. It follows that they must pay the applicant's invoice.
20. The applicant filed a lien for \$1,600 against title to one of the respondents' properties. The applicant does not explain why they filed a lien for \$1,600 when their invoice was only for \$1,417.50. The applicant also does not fully explain why they claim \$1,717.50 in this dispute. The applicant only says that their notary public charged them for filing the lien. There is no evidence before me of the amount the notary public charged.
21. I find that the applicant has not established that the respondents owe them any more than the amount of their invoice.
22. 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. The applicant was substantially successful and so I find that the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim any dispute-related expenses.

ORDERS

23. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,562.14, broken down as follows:
 - a. \$1,417.50 as payment for the invoice
 - b. \$19.64 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
24. The applicant is entitled to post-judgment interest, as applicable.
25. The applicant's remaining claims are dismissed.

26. 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.
27. 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