



# Civil Resolution Tribunal

Date Issued: December 21, 2018

File: SC-2018-004487

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhang v. LI*, 2018 BCCRT 893

BETWEEN:

WeiJia Zhang

**APPLICANT**

AND:

YAN YAO LI

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. The applicant, WeiJia Zhang, wants the return of a \$2,300 deposit he says he paid to the respondent, YAN YAO LI, to renovate his home. The applicant says the respondent made a hole in his wall, then left the property without performing any more work. The respondent denies receiving the \$2,300 deposit.

2. The applicant is self-represented. The respondent is represented by William Fung.

## **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. 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, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
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 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**

7. The issues in this dispute are
  - a. Did the applicant pay the respondent a \$2,300 deposit?
  - b. If so, is the applicant entitled to a return of the deposit?

## **EVIDENCE AND ANALYSIS**

8. In a civil claim like this one the applicant has the burden of proving their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct.
9. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the reasons that follow, I find the applicant paid the \$2,300 deposit, and that he is entitled to a return of the deposit.
10. At some point before July 17, 2017 the parties agreed the respondent would perform renovations on the applicant's home. The respondent quoted \$7,000 for the work. On July 17, 2017, the respondent obtained a revised permit from the City of Burnaby for the renovations at the applicant's home. The revised permit named the respondent as the contractor.
11. On July 19, 2018 the respondent went to the applicant's home with a written contract. The parties dispute whether the respondent gave the applicant a copy of the contract, but they agree the applicant photographed it.
12. The applicant submitted a copy of the contract, but it is not in English. I gave the applicant an opportunity to translate the contract into English, which he did. The

respondent made no objection to the accuracy of the translated contract, and he says the contract states all the terms of their agreement.

13. The contract says the respondent would renovate the applicant's laundry room in accordance with the City of Burnaby's requirements, and remove an old door and install a new one. The contract says the cost of the renovation would be \$7,000, but that the respondent would not charge anything if the City of Burnaby did not approve the renovations. The contract indicates the respondent would start work on July 29, 2017.

***Did the applicant pay the respondent a \$2,300 deposit?***

14. The applicant says he paid the respondent \$2,300 in cash on July 19, 2017, but the respondent denies receiving any payment from the applicant. The contract clearly states, "Received deposit for \$2,300 on July 19, 2017" and indicates that the respondent signed his name next to the date. The respondent made no objection to the accuracy of the translated contract, nor did he deny signing it. The applicant says he wanted to write the respondent a cheque instead of paying cash so that he would have a record of the transaction, but says the respondent required the deposit to be in cash. The respondent does not deny that he required a cash payment.
15. The respondent says he normally requires a security deposit right away, but he made an exception for the applicant because of his personal circumstances. The respondent says he agreed that the applicant could pay the security deposit within a few days, and that it is common in the industry not to receive a deposit until a few days after starting work on a project. The respondent says the contract is the entire agreement between the parties, but I find the contract says nothing about the respondent allowing the applicant to pay the deposit on a later date.
16. The respondent says the applicant is lying about paying the \$2,300 deposit because any logical person making such a payment would ask for a receipt, however I find

the contract also acted as a receipt in these circumstances. On balance, I find the applicant paid the respondent the \$2,300 deposit.

***Is the applicant entitled to a return of the deposit?***

17. On July 29, 2017 the respondent went to the applicant's home to start the renovations. The applicant says the respondent made a hole in one of his walls but provided no photographs or other evidence of the alleged damage. The applicant says the respondent left after 30 minutes and that he never heard from him again, despite numerous attempts to contact him by phone.
18. The respondent says when he arrived at the applicant's home on July 29, 2017, the project site was no longer in the condition it was in on July 19, 2017, and he learned that the applicant had hired other contractors to work on the renovations. He provided no evidence in support of these assertions. He provided no details as to the change in the condition of the project site, how he learned about the other contractors, or what work those contractors had performed or were performing at the applicant's home. The respondent says the contract states that his company would be the only one performing the renovations, but I find that is not stated anywhere in the contract.
19. The respondent says the applicant breached the contract, it was therefore null and void, and both parties agreed to destroy it. I find there is no evidence the applicant breached the contract. The applicant's only obligation under the contract was to pay the respondent \$7,000 on completion of the renovation and approval from the City of Burnaby, which never occurred.
20. There is no suggestion or evidence that the respondent performed any work of value at the applicant's home. He certainly did not perform or complete the renovations in accordance with the contract. The contract says the respondent would not charge the applicant anything if the City of Burnaby did not approve the renovations, which it clearly did not do as the respondent never completed them. Nowhere in the contract does it say the \$2,300 deposit is non-refundable. Based on

the wording of the contract, I find the applicant is entitled to the return of the \$2,300 deposit. For the purposes of calculating interest under the *Court Order Interest Act*, I find the applicant was entitled to a return of the deposit on July 29, 2017.

21. I note the applicant claims he had to hire another contractor to fix the hole in his wall and complete the renovations, but he is not claiming those costs in this dispute.
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. Since the applicant was successful I find he 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 \$2,461.47, broken down as follows:
  - a. \$2,300 for the return of the deposit,
  - b. \$36.47 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. 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.

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Sarah Orr, Tribunal Member