



Civil Resolution Tribunal

Date Issued: December 28, 2018

File: SC-2018-002275

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lindsay v. Joe Kuang (Doing Business As Joe's Garden Restaurant)*,
2018 BCCRT 908

B E T W E E N :

Kyle Lindsay

APPLICANT

A N D :

Joe Kuang (Doing Business As Joe's Garden Restaurant)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for plumbing and gas services. The applicant, Kyle Lindsay, says under the parties' verbal agreement he installed gas lines and 4 gas appliances for the respondent, Joe Kuang (Doing Business As Joe's Garden Restaurant). The applicant says in addition he installed a drain and dishwasher, at the respondent's request. The applicant says the respondent has failed to pay for the services provided, and claims \$1,437.15, plus 10% interest.
2. The respondent says the agreed price was \$980, for labour, materials, and the permit. The respondent says he paid \$600 in cash, and agreed to pay the balance when the applicant produced a permit. The parties are 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. 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.

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.

ISSUE

7. The issue in this dispute is to what extent, if any, the respondent owes the applicant for plumbing and gas services.

EVIDENCE AND ANALYSIS

8. 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 submissions below as necessary to explain my decision.
9. It is undisputed the parties had a verbal agreement. The applicant says he gave an estimate of about \$1,000, based on a 4-6 hour job. The applicant says the respondent was present while he worked and kept changing his mind and adding to the list of jobs he wanted done. The applicant says the respondent had improperly positioned the drain for the dishwasher he had added to the applicant's job, which required the applicant to fabricate a new drain.
10. The applicant says in the end the job took twice as long as originally agreed. The applicant however only charged the respondent for 8 hours and his invoice came to \$1,030, which is only \$30 over the \$1,000 estimate. The applicant's December 1, 2017 invoice is for a total of \$1,306.50, which is for 8 hours of work at \$102 per hour and includes \$164 in materials, a \$228 permit fee and \$51.50 in GST.

11. The respondent says “the day he came the total was \$980”, including “prime and labour and material”. The respondent says he paid \$600 cash but did not get a receipt. He also says the applicant worked only 7 hours in the restaurant. The respondent further states the job was “by job” and not by hours worked.
12. The respondent says the applicant forgot to install and on/off water switch and that the applicant stole a gas pipe, and did something to a deep fryer. However, the respondent did not provide any evidence, apart from his submissions, despite the opportunity to do so. The respondent did not deny the applicant’s evidence about the necessary added work to deal with the drain and other related issues. There is also no evidence the respondent raised any concerns about the quality of the applicant’s work and there is no counterclaim before me. In all of the circumstances, I prefer the applicant’s evidence, which I find is most consistent with what I find is the likely scenario. The applicant did the work the respondent asked him to do, which included some changes, and the applicant issued an invoice substantially consistent with the rough \$1,000 estimate the applicant have provided. I find it most likely that the parties agreed that the applicant would bill for the permit and GST in addition to the materials and labour.
13. I find on balance the applicant is entitled to payment of the \$1,306.50 invoice. I do not accept the respondent’s unsupported assertion that he paid the applicant \$600 in cash. I accept the applicant gave an estimate of approximately \$1,000, and his invoice is close to that amount, before the permit fee and tax is added.
14. As noted above, in this dispute the applicant claims \$1,437.15, which is 10% higher than the \$1,306.50. I do not allow the applicant’s claimed 10% interest charge, as this is not reflected on the applicant’s invoice. Instead, the applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$1,306.50, from December 1, 2017.
15. In accordance with the Act and the tribunal’s rules, as the applicant was successful I find he is entitled to reimbursement of \$125 in tribunal fees. There were no dispute-related expenses claimed.

ORDERS

16. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$1,449.45, broken down as follows:
 - a. \$1,306.50 in payment of the applicant's December 1, 2017 invoice,
 - b. \$17.95 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
17. The applicant's remaining claim is dismissed. The applicant is entitled to post-judgment interest as applicable.
18. 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.
19. 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.

Shelley Lopez, Vice Chair