



# Civil Resolution Tribunal

Date Issued: December 28, 2018

File: SC-2018-002324

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Plourde v. Bedard*, 2018 BCCRT 910

BETWEEN:

Jacques Plourde

**APPLICANT**

AND:

Francois Bedard

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Michael J. Kleisinger

## INTRODUCTION

1. The applicant, Jacques Plourde, seeks \$1,408.80 in payment from the respondent, Francois Bedard, for tools he says the parties agreed to share and for labour that the applicant says he performed for the respondent.
2. The parties represent themselves.
3. For the reasons that follow, I find the respondent must pay the applicant \$454.

## 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. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized the tribunal's process, and found that oral hearings are not necessarily required when credibility is in issue. Some of the evidence in this dispute gives rise to a "he said, he said" scenario. Credibility of interested witness, particularly where there is a conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence.
6. In this dispute, I was properly able to assess and weigh the documentary evidence and submissions provided. Bearing in mind that the tribunal's mandate includes proportionality and the speedy resolution of disputes, I found that an oral hearing was not necessary.

7. 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. Given the state of the evidence in this dispute, I requested that the parties clarify their positions and specify the amounts to which each said they were entitled. The respondent responded to my questions and clarified his position. The applicant did not, despite being given the opportunity to do so.
8. 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 and order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issue in this dispute is how much the respondent owes to the applicant for tools and labour.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant has the burden of proving that his position is more likely than not the correct position. If he fails to do so, his claim must fail.
11. While I have reviewed all of the evidence and submissions that the parties provided to the tribunal, I will only refer to the evidence and submissions that is necessary to give context to this decision.
12. Beginning August 10, 2017, the parties worked together as subcontractors for a drywall contractor. They agreed to split the costs of the tools used for the project as well as the profits. The parties did not put their agreement in writing.
13. On August 13, 2017, the applicant purchased tools for \$720.76 with his wife's credit card. The respondent says he paid the applicant \$300 in cash on that day and that the parties agreed the respondent would be credited another \$50 for another tool

that he purchased. The applicant did not dispute the respondent's claims on these points. The applicant acknowledges that he kept some of the tools after the project, including a ladder worth \$149.00.

14. The applicant says he worked with the respondent for about 20 days. The respondent says that the applicant left the project early on August 23, 2017. The respondent relies on a text from the applicant on August 23, 2017 where the applicant said he would not be working that day. The respondent says he finished the project on his own.
15. The applicant says that he is owed \$996.30 for labour and \$412.50 for tools. After reviewing the evidence and submissions provided, I was not able to determine how the applicant came to these figures. The invoices that the parties relied on did not assist me with deciding this dispute because the invoices covered both work performed together and independently from each other. For clarification, I requested that the parties better describe their positions and specify how the invoices supported their respective claims. The applicant, who has the burden of proof in this matter, did not respond to my request and did not clarify his claims.
16. In response to my inquiry, the respondent says that the parties jointly performed \$4,180 worth of services for the drywall contractor, or \$2,090 each. The respondent says (and the documentary evidence supports) that the applicant invoiced the drywall contractor \$1,906 directly. The respondent acknowledges that he owes the applicant the difference; namely, \$184 for labour. I find that the applicant has failed to prove on a balance of probabilities that he is entitled to anything more than what the respondent has offered. I order the respondent to pay the applicant \$184.00 for labour.
17. The applicant says that he is entitled to \$412.50 for tools that he purchased for the project. Like his submissions about labour, I am unable to find support for the applicant's claim for tools. I find that the applicant has not proven he is entitled to anything more than what the respondent acknowledges that the applicant is owed

for tools. Specifically, the respondent agrees that he owes the applicant an additional \$270 for his portion of the tools. The applicant will recover this amount.

18. I order the respondent to pay the applicant a total of \$454 for tools and labour.
19. The applicant also seeks to recover \$42.00 he says he paid in postal fees to bring this dispute as well as \$125 in tribunal costs. Under section 49 of the Act and the tribunal rules, an unsuccessful party will generally be required to reimburse a successful party for tribunal fees and reasonable dispute-related expenses, unless the tribunal orders otherwise. On several occasions before the applicant brought this dispute, the respondent offered to pay the applicant the \$454 the applicant ultimately recovered in this dispute. I find that the dispute could have been avoided had the applicant accepted the respondent's earlier offers. Given these particular circumstances, I decline to award the applicant the tribunal fees or the dispute-related expenses that he claims. That said, I award the applicant the prejudgment interest under the *Court Order Interest Act* (COIA) from August 24, 2017 to the date of this decision, which I have calculated to be \$7.09.

## **ORDER**

20. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$461.09, comprised as follows:
  - a. \$454.00 as payment for labour and tools; and
  - b. \$7.09 in prejudgment interest under the *COIA*.
21. The applicant is entitled to post-judgment interest, as applicable.
22. 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.

23. 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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Michael J. Kleisinger, Tribunal Member