



Civil Resolution Tribunal

Date Issued: December 31, 2018

File: SC-2018-002626

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Timberwest Custom Homes Inc. v. Davidson*, 2018 BCCRT 928

B E T W E E N :

Timberwest Custom Homes Inc.

APPLICANT

A N D :

Meredith Davidson

RESPONDENT

A N D :

Timberwest Custom Homes Inc.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, Meredith Davidson, owns a cabin on Idabel Lake near Kelowna. She hired the applicant and respondent by counterclaim, Timberwest Custom Homes Inc., to renovate the cabin. The cost of renovations was higher than Ms. Davidson expected and she refused to pay Timberwest's final invoice. Timberwest claims \$1,925.16.
2. Ms. Davidson says that Timberwest breached their contract by failing to tell her that the final cost was higher than the initial estimate. She also says that Timberwest breached their contract by completing the renovations to a poor standard.
3. After Ms. Davidson disputed an invoice, the parties had a meeting to try to settle their differences. Ms. Davidson says that at that meeting Timberwest agreed not to charge her for any more work. Timberwest denies that it came to such an agreement. Ms. Davidson counterclaims for \$5,000 as partial repayment of the cost of the renovations and lost cabin rental income.
4. Timberwest is represented by the employee who oversaw the renovations, Paul Zydowicz. Ms. Davidson is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

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.
8. 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

9. The issues in this dispute are:
 - a. Did the parties settle their dispute at the meeting of March 6, 2018?
 - b. Did Timberwest breach the contract?
 - c. Does either of the parties owe the other any money for renovation costs?
 - d. Is Ms. Davidson entitled to reimbursement for lost rental income?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Timberwest must prove its claims on a balance of probabilities. Along the same lines, Ms. Davidson must prove her counterclaims 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.

11. Ms. Davidson contacted Timberwest in November 2017 about renovating parts of her cabin. The parties met and signed a contract on December 8, 2017.
12. Ms. Davidson agreed to pay Timberwest \$55 per hour, plus the cost of materials. Timberwest says that it would only do this renovation on an hourly basis because the age and condition of the cabin made it impossible to agree to a fixed price.
13. The contract said that Timberwest would be completed in a professional manner according to industry standards. The scope of the renovation included a new kitchen area and dining area, and the relocation of a set of stairs.
14. It is undisputed that in their initial discussions, Timberwest estimated that the cost of the renovations would be around \$12,000, including the cost of materials. On January 8, 2018, Ms. Davidson emailed Timberwest with an expanded scope of the project and acknowledged that she expected the cost to go up. She asked for a further estimate but Timberwest did not answer that part of her email. Timberwest did not provide an updated or revised estimate.
15. Ms. Davidson paid Timberwest a \$2,000 deposit and a further \$3,000 while work was ongoing. The exact dates of these payments are not in evidence.
16. Timberwest began working on January 17, 2018. Timberwest sent Ms. Davidson numerous updates during the renovations. Ms. Davidson was on vacation for much of this time. Only one of Timberwest's updates mentioned cost. On January 30, 2018, Timberwest told Ms. Davidson that it had spent 94 hours and spent roughly \$3,000 on materials. This works out to just over \$8,000.
17. On February 18, 2018, Timberwest sent Ms. Davidson an invoice for \$11,012.35. In the email, Timberwest told Ms. Davidson that the invoice did not include 23.5 of its carpenter's hours due to an oversight. Timberwest said that there would be a final invoice later that would include the carpenter's hours and some outstanding material costs.

18. Ms. Davidson was surprised by the invoice. Even though the scope of the project had changed, she was under the impression that the total cost would be close to the initial estimate of \$12,000. Timberwest told her that it was higher than the initial estimate because the scope of work had grown, and because there was work from a previous contractor that Timberwest had had to fix. Ms. Davidson acknowledged that she had expected that the final invoice might be more than the initial quote. Ms. Davidson asked Timberwest to stop working.
19. Ms. Davidson asked a friend who works in commercial building contracting, M.N., to assist her with assessing the invoice.
20. On February 26, 2018, M.N. asked Timberwest to explain the project so that she could assess whether the invoice was fair. Timberwest stated that they had billed 204 hours plus the 23.5 hours that they forgot to include in the previous invoice. Timberwest said that it had spent a further 11 hours since issuing the invoice.
21. M.N. stated that 238.5 hours was a fair number of hours to complete the project. In this dispute, M.N. provided a statement that her opinion was based on Timberwest completing the work to a high standard.
22. Ms. Davidson also hired a consultant to help her resolve her issues with Timberwest. Ms. Davidson, the consultant and Timberwest had a meeting on March 6, 2018. Ms. Davidson says that she agreed to pay Timberwest \$11,000 of the invoice if it would finish the renovations. Ms. Davidson says that Timberwest agreed that there would be no further payments. Timberwest says that it agreed to do the last of the work for free, but never agreed to waive the unbilled 23.5 hours or unbilled materials.
23. I find that the parties each left the meeting believing that they had settled their differences. Ms. Davidson thought that there would be no further invoices. Timberwest thought that in exchange for doing some finishing work for free, Ms. Davidson would pay the current invoice and a final invoice. I do not accept that either party is being untruthful about their recollections of the meeting. I find that

neither party would have agreed to the other party's proposal. I find that the most likely explanation is that both parties failed to precisely articulate their understanding of the agreement. I accept that both parties were surprised at the position taken by the other. Accordingly, I find that the parties did not reach an agreement at the meeting.

24. At the meeting, Ms. Davidson paid Timberwest \$5,000. She paid a further \$6,000 shortly thereafter. Timberwest attended the cabin to complete the renovations. Again, the precise dates are not in evidence.
25. On March 29, 2018, Timberwest provided a final invoice for \$1,912.81, which included the remainder of the carpenter's time and the last of the materials. Ms. Davidson refused to pay this invoice.
26. Ms. Davidson says that Timberwest breached the contract by failing to keep her informed of what she calls cost overruns. She also says that Timberwest's failure to get approval of an increased budget was a deceptive practice within the meaning of the *Business Practices and Consumer Protection Act* because the final cost was far greater than the initial estimate.
27. Timberwest says that it regularly updated Ms. Davidson on its progress and received authorization for all of the work it did. I find that Timberwest did not have an obligation under the contract to provide status reports that included a running tally of the hours spent and the materials costs. I agree with Timberwest that the estimate that it gave in December was just an estimate, and that Ms. Davidson knew that the final cost would be higher. In addition, I agree with Timberwest that Ms. Davidson changed the scope of the project after the estimate. I do not agree that Timberwest engaged in a deceptive practice because the scope of work changed between the initial estimate and the final project.
28. Ms. Davidson also says that Timberwest breached the contract by failing to complete the renovations in a professional manner and to industry standards. Ms. Davidson provided photographs and videos that support her allegation. For

example, a cupboard door scraped a roof beam when opening, the showerhead leaked, and the bathroom faucet was broken. Ms. Davidson also provided photographs that she says show that the bathroom vanity, the bathtub tap and faucet, and insulation were improperly installed.

29. Timberwest believes that Ms. Davidson took the photographs of the leaky faucet and showerhead long after Timberwest left. Timberwest points out that Ms. Davidson says that she had another contractor in to fix Timberwest's errors, and says that the leaky and broken faucets must be the other contractor's fault. Timberwest provided videos of the showerhead and bathroom faucet working properly. Because Timberwest could only have taken its videos when the renovations were completed, I accept them as the best evidence of whether the faucet and showerhead were properly installed.
30. Timberwest admits that the cupboard scraped the roof but says that it is simple thing to fix.
31. Ms. Davidson also says that Timberwest left the cabin a mess. She provided a photograph of construction garbage left on the patio. Timberwest says that garbage removal was not part of the contract. The contract does not mention garbage removal or cleanup. The contract says that the price includes "site labour". The only service listed under the heading "Your price does not include" is asbestos or hazardous material removal or testing. If the contract excluded the removal of all garbage, it would not specifically exclude removal of hazardous materials. I find that the contract included removal of construction debris and garbage as part of "site labour".
32. Timberwest says that the bathroom vanity was complete, that a previous contractor had roughed in the locations of the bathtub faucet and that Ms. Davidson requested him to fill in and insulate the bathroom window. Ms. Davidson does not explain what she says Timberwest did wrong with respect to these aspects of the project. I find that Timberwest completed these items to a professional standard.

33. In her statement, M.N. says that Timberwest's work was "subpar", but provides no details or explanation. Accordingly, I place no weight on M.N.'s evidence about the quality of Timberwest's work.
34. Therefore, I find that that Timberwest breached the contract by improperly finishing the installation of the cupboard doors and failing to remove the garbage and construction debris. I find that Ms. Davidson failed to prove that any of Timberwest's other work was below industry standards.
35. In the context of the entire renovation, the breaches described above are minor. Ms. Davidson received significant benefit from Timberwest's work as the vast majority of the work was done to a high standard. I consider this an appropriate case in which to use the principle of "*quantum meruit*". This allows me to decide a reasonable sum for Ms. Davidson to pay based on Timberwest's work.
36. Ms. Davidson says that she had to hire a new contractor to complete and repair the renovations. However, Ms. Davidson did not provide any evidence about what the new contractor did or how much it cost.
37. Therefore, the best evidence of the value of Timberwest's work is M.N.'s opinion that the number of hours that Timberwest billed was reasonable as long as the work was completed to a high standard. I accept M.N.'s opinion as expert evidence under tribunal rule 113. M.N. has 18 years of experience as a commercial contractor and I find that she is qualified to give an opinion on a reasonable amount of time to complete the renovations. I find her opinion is a reliable starting point to assess a reasonable cost of Timberwest's work because she initially gave the opinion prior to this dispute and because she inspected the site. Her opinion supports Timberwest's position that its invoices were reasonable if it had completed the renovations to a professional standard. Timberwest invoiced a total of \$17,925.16. Ms. Davidson has paid \$16,000.
38. On a judgment basis, I find that it is reasonable to deduct 5%, or \$896.26, of the total cost of the work to account for finishing the cupboards and removing the

garbage. After deducting this amount from Timberwest's claim of \$1,925.16, Ms. Davidson owes Timberwest \$1,028.90.

39. With respect to Ms. Davidson's claim for lost rental income, she says that she could have rented the cabin out every weekend at a rate of \$200 per night. She claims 6 months of lost income. She provides an Airbnb listing for another cabin that she says is similar to hers to prove the market rental rate.
40. Timberwest completed its work several weeks later than expected, and Ms. Davidson does not explain why she claims 6 months of lost rentals. Ms. Davidson does not provide any evidence that she has rented the cabin since the renovations completed. Ms. Davidson does not provide any evidence that she had to cancel any scheduled bookings as a result of any delays in completion. I find that Ms. Davidson has failed to prove any loss of rental income.
41. For these reasons, I dismiss Ms. Davidson's counterclaim.
42. Under section 49 of the Act, and the 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 that Timberwest was partially successful in its claim and that Ms. Davidson was not successful in her counterclaim. Accordingly, I order Ms. Davidson to reimburse Timberwest half of its tribunal fees of \$67.50. I decline to order Timberwest to reimburse Ms. Davidson for her tribunal fees, as Ms. Davidson's counterclaim was not successful. Neither party claimed any other dispute-related expenses.

ORDERS

43. Within 14 days of the date of this order, I order Ms. Davidson to pay Timberwest a total of \$1,107.03, broken down as follows:
 - a. \$1,028.90 as payment for the renovations,

- b. \$10.63 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$67.50 in tribunal fees.

44. Timberwest's remaining claims are dismissed.

45. Ms. Davidson's counterclaims are dismissed.

46. Timberwest is entitled to post-judgment interest, as applicable.

47. 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.

48. 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