Civil Resolution Tribunal

Date Issued: January 3, 2019

File: SC-2018-002040

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kiss v. Alleykey Interior Systems Inc.*, 2019 BCCRT 14

B E T W E E N :

Peter Kiss

APPLICANT

A N D :

Alleykey Interior Systems Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Maureen Abraham

INTRODUCTION

1. This is a claim by a tradesperson for payment for work done on the respondent's commercial renovation project. The applicant is self-represented. The respondent is represented by its principal Erik Danielson.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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.

3. 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.

4. 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.

5. 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

6. The issues in this dispute are:

    a. Is the applicant entitled to payment for services they provided to the respondent?

b. If so, what is the appropriate payment amount?

EVIDENCE AND ANALYSIS

7. The applicant Peter Kiss is a drywall finisher. The respondent Alleykey Interior Systems Inc. is a company involved in the construction industry.

8. The applicant says that they did work for the respondent on its project and sent an invoice, but the respondent has not paid it. The applicant asks for $3,359.00 as payment on the invoice, as well as reimbursement of a $24.01 courier expense for attempted service of the Dispute Notice and $200 in tribunal fees.

9. The parties did not have a written contract. Other than the applicant's assertion that the respondent had agreed in advance to their rate, neither party provided submissions or evidence on the terms of any agreement reached before the applicant began work. Other than an expectation that the applicant would be paid, essential terms needed to make an enforceable contract were missing.

10. Even though the parties did not have enforceable contract, the applicant may still be entitled to payment for work done on an equitable basis. This is because someone who provides services requested and accepted by another person who benefits, is entitled to payment for the reasonable value of those services.

11. The applicant says their time spent and hourly rate of $45.00 is reasonable and that the respondent had agreed to it. They say they did good work and that 72 hours was required to do the work because they were delayed by fixing poor work done by the respondent's framing and drywall installers.

12. The applicant provided photographs showing that some of the drywall installation done by the respondent's tradespeople was not done properly. Various corner beading is cut too short or missing, and there are large gaps between sections of drywall and at the ceiling. The applicant also provided text messages they sent to Mr. Danielson on March 30, 2017, advising that work was being delayed by the incomplete installation.

13. The applicant relies on text messages exchanged with Mr. Danielson indicating the respondent would pay the applicant's invoice. The applicant also submitted their invoice dated April 8, 2017. It sets out that the applicant attended at the project site for a total of 72 hours from March 24, 2017 to April 2, 2017, at a rate of $45.00 per hour. The invoice includes a $119.00 charge for parking.

14. On May 30, 2017, the applicant text messaged Mr. Danielson following up on the invoice. Mr. Danielson responded indicating payment would be made "tomorrow." On June 3, 2017, Mr. Danielson wrote that payment was mailed. However, the payment was not actually made.

15. When it filed its Dispute Response on June 20, 2018, the respondent said that the applicant had already been paid in cash and that it incurred costs to repair the applicant's work on Mr. Danielson's personal residence which should be set off.

16. However, the respondent did not file any counterclaim for work done on Mr. Danielson's residence. It also did not say what amount it already paid in cash and appears to abandon that claim in its submissions.

17. Instead, the respondent argues that the applicant's $45.00 hourly rate is too high and a lower rate was in the applicant's invoice. It says the applicant took too long and their work needed extensive repair at the respondent's expense which should set-off any entitlement to payment.

18. The respondent says the applicant worked on a total of 1,260 square feet, and that market rates are 35 cents per foot for similar work. It says that the applicant's work should have been done in 2 – 3 days at a total cost of $1,200 even if billed hourly.

19. In support of its argument, the respondent provided a project plan, bills from another drywaller, a different version of the applicant's invoice and copies of text messages.

20. The respondent's evidence confirms that the applicant was doing the work at the respondent's request.

21. A project plan was marked by the respondent indicating the areas it says were worked on by the applicant. The applicant says the marks on the plan do not include all their work, and describe the various cut-outs and other finishing work required which is not reflected in the plan. The square footage is not set out in the plan.

22. The respondent provided text messages exchanged between Mr. Danielson and the applicant sent after April 8, 2017, where Mr. Danielson states that some work is unfinished. As the applicant was not immediately available, the respondent hired another contractor.

23. The respondent provided two bills of April 2017 and May 2017 from the drywall contractor who worked on the project after the applicant. It says this is evidence of the applicant's poor work quality and cost to fix the applicant's work.

24. The April bill describes all the work done as "drywall finishing repairs of former taper" and "drywall finishing repairs". Of note, it sets out an hourly rate of $55.00 dollars per worker. Although the parties' text messages indicate that non-repair work was also done, it is not clear from the bills what time was spent by the new contractor on non-repair work.

25. The bills are inconsistent with the respondent's assertion that the applicant's rate is higher than market value. They are also inconsistent with its argument that the applicant should be paid based on square footage. For that reason, I find that the applicant's work should be valued at an hourly rate.

26. No problems with the applicant's work were mentioned in Mr. Danielson's messages to the applicant asking them to complete drywall work later in April 2017, or when discussing payment in May and June of 2017.

27. Without details and evidence explaining how the applicant's work product was not acceptable, I find that the respondent has not proven its assertions about work quality and is not entitled to any set-off for repair costs.

28. The evidence the respondent submitted to support its assertion that the applicant did not actually spend 72 hours working and should be paid less than $45.00 per hour is a different version of the applicant's invoice which shows some work charged at $35.00 per hour. The applicant explains that they had offered to compromise when trying to resolve this dispute, but that their offer was not accepted.

29. The applicant says their $45.00 rate is reasonable as a skilled trade, and points out that the other contractor's bills show that the applicant's rate is already lower than comparable contractors. I find that the applicant's offer to compromise is not evidence that the market value of their work is less than $45.00. The best available evidence of market rates for the applicant's trade are the bills the respondent submitted. They show an hourly rate of $55.00. I therefore find that the applicant's rate of $45.00 is reasonable. I also find that the applicant is entitled to payment based on 72 hours of work as that number of hours appear reasonable based upon the project plan, photographs of site conditions, the applicant's description of the finishing work, time required and delays caused by other trades.

30. The applicant did not provide any evidence to show that parking fees are ordinarily charged in addition to hourly work rates, or that parking fees were paid. The other contractor's bills do not include parking charges. I find that the applicant has not proven their claim for parking charges.

31. I find that the applicant is entitled to payment of $3,402.00, being 72 hours at $45.00 plus $162.00 in GST. The applicant is also entitled to interest under the *Court Order Interest Act* [COIA] from their invoice due date of May 8, 2017.

32. 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 says that they spent $24.01 attempting to serve the Notice of Dispute on the respondent by courier, which was unsuccessful. The applicant has provided a courier envelope indicating that Mr. Danielson refused to accept the

Notice of Dispute from the courier and so it was returned to the applicant, who then personally served Mr. Danielson. The tribunal rules allow for service by courier, and so I find that the courier expense is directly related to this dispute, and was reasonably incurred. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of $200 in tribunal fees and $24.01 in dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order the respondent Alleykey Interior Systems Inc. to pay the applicant Peter Kiss a total of $3,682.49, broken down as follows:

    a. $3,402.00 as compensation for services provided by the applicant;

    b. $56.48 in pre-judgment interest under the COIA, and

    c. Reimbursement for $200.00 in tribunal fees and $24.01 for dispute-related expenses.

34. The applicant is entitled to post-judgment interest, as applicable.

35. 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.

36. 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.

Maureen Abraham, Tribunal Member