



Civil Resolution Tribunal

Date Issued: January 18, 2019

File: SC-2018-003039

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *AJ Electric Ltd v. 0754691 B.C. LTD.*, 2019 BCCRT 65

B E T W E E N :

AJ Electric Ltd

APPLICANT

A N D :

0754691 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about an unpaid invoice. The applicant, AJ Electric Ltd, says that the respondent, 0754691 B.C. LTD, has not provided full payment for work performed on a construction project. The respondent's position is that the applicant did not complete the work and damaged its property, and so no money is owing.

2. The applicant is represented by its principal, Andrew Rosenberger. The respondent is represented by Charan Rai, who I infer is either an employee or principal.

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 118 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. 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.
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 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.

ISSUE

7. The issue in this dispute is whether the respondent owes the applicant \$2,940.00 for an unpaid invoice, and \$160.00 for time spent on the dispute.

EVIDENCE AND ANALYSIS

8. The applicant was engaged as an electrical contractor on the respondent's multi-unit construction project. As described by Mr. Rosenberger, the arrangement was that the applicant was paid on a piece-meal basis, when the service and rough wiring was complete for each unit. The applicant installed and wired temporary breakers and plugs for heat and power in the units.
9. The project was not progressing quickly, and it reached a point where the electrical work could not be completed until other trades performed their work. The applicant sought out other work and was not available to resume work on the respondent's project on short notice. According to the applicant, the respondent replaced it with a new contractor within a couple of days. The applicant removed the breakers and plugs involved with the provision of temporary power, and sent a January 18, 2018 invoice for the outstanding balance. According to the applicant, a representative of the respondent promised that payment would be forthcoming, but no payment was received.
10. The respondent did not dispute the sequence of events as described by the applicant. The respondent says it is common for smaller construction projects to be delayed due to trades being asked to work at its other sites. On behalf of the respondent, Mr. Rai states that he has no issue paying the applicant for work completed, but that he wants to set off the costs involved with the removal of the temporary parts and addressing associated damage. The respondent did not bring a counterclaim against the applicant in this regard.
11. In reply, the applicant says that the costs the respondent incurred to finish the job had nothing to do with the removal of the temporary parts. The applicant says that

it is usual practice to replace these items when finishing a job as they become damaged during the construction process. The applicant's position is that the respondent has not established that any damage occurred during this process.

12. The respondent provided invoices from another contractor that detail charges for progress billing, connecting an exhaust fan, connecting heat in three units, the set-up costs for obtaining electrical permits, installing kitchen receptacles, and connecting construction heaters and furnaces. The respondent also provided another document showing various payments made to the other contractor.
13. While this evidence shows that another contractor finished the job, it does not establish that any additional work or damage was caused by the applicant's actions. Other evidence before me suggests that the issues of possible damage and the removal of temporary parts were discussed by the parties earlier in the work cycle. The applicant provided a copy of an exchange of text messages, including one from October 3, 2016 in which the parties discuss the damage to a panel and breakers that occurred while the applicant's workers were not on site. Further, a message on April 7, 2017 shows that the respondent anticipated the removal of temporary breakers as part of the work flow. I find that this evidence supports the applicant's version of events.
14. While it may have been preferable for there to be better communication between the parties before the temporary parts were removed, I am not satisfied that the respondent has established that the applicant removed parts for which he had been paid already, or that the applicant caused damage in doing so. I find that the applicant is entitled to the payment of the January 18, 2018 invoice in the amount of \$2,940.00.
15. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) in the amount of \$36.21.
16. 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. I find the applicant is entitled to reimbursement of \$175 in tribunal fees.

17. The applicant requested reimbursement of \$160 in expenses representing time spent on the claim, specifically in gathering evidence and engaged in the dispute resolution process. As the tribunal generally does not order compensation for a party's time spent on a dispute, I see no reason to deviate from that practice, which is consistent with the tribunal's rules about usually not awarding legal expenses. I decline to make an order for these expenses.

ORDERS

18. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,151.21, broken down as follows:

- a. \$2,940.00 under the January 18, 2018 invoice,
- b. \$36.21 in pre-judgment interest under the COIA, and
- c. \$175.00 for tribunal fees.

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

20. The applicant's remaining claim is dismissed.

21. 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.

22. 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.

Lynn Scrivener, Tribunal Member