



# Civil Resolution Tribunal

Date Issued: February 19, 2019

File: SC-2018-005701

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fire Busters Incorporated v. S. Dhillon Investments Inc.*, 2019 BCCRT 195

B E T W E E N :

Fire Busters Incorporated

**APPLICANT**

A N D :

S. Dhillon Investments Inc.

**RESPONDENT**

A N D :

Fire Busters Incorporated

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Volk

## **INTRODUCTION**

1. The applicant, Fire Busters Incorporated, asks for the release of \$5,000 held in trust related to a contract the parties agreed to that settled a commercial lease dispute. In its counterclaim, the respondent, S. Dhillon Investments Inc., asks for the release of the same funds to it to pay for agreed repair work.
2. The parties are each represented by a principal or employee.

## **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*. 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 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may order a party to do or stop doing something or to pay money and may order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

7. The issues in this dispute are to what extent, if any:
  - a. The applicant is entitled to a refund of the \$5,000 deposit, which is held in trust, and
  - b. The respondent is entitled to be paid \$5,000 from the funds held in trust.

## **EVIDENCE AND ANALYSIS**

8. The applicant bears the burden of proof on a balance of probabilities. I have reviewed all submissions and evidence provided. I refer only to the relevant evidence and submissions necessary to give context to my decision.
9. In June 2017 the applicant and respondent entered into a 3-year lease for a commercial space owned by the respondent. The applicant was the tenant and the respondent the landlord. The parties disagree about how and why the lease was cancelled but agree that it was cancelled. I do not need to decide how or why the lease was cancelled to resolve this dispute.
10. Upon cancelling the lease, the parties entered into a settlement agreement. That agreement is a contract between the parties. Under that contract the respondent paid \$5,000, the amount of the commercial lease deposit, in trust to a law office to cover the cost of potential agreed repairs to the commercial space. The lawyer and the law office are not parties to this dispute.
11. To facilitate the repairs and payment, the contract required the parties and their lawyers to do a walk-thru of the commercial space and make a list of damages. It is undisputed that the parties did that walk-thru on March 16, 2018 and agreed that the damage in the space was “paint needs refreshing upstairs” and “touch ups to cabinets.”
12. Once the parties completed the walk-thru, the respondent owed the applicant 3 estimates to repair the agreed damage. The applicant says the respondent did not

obtain 3 estimates following the terms of the contract. And, the applicant asks the tribunal to find the respondent breached the contract and asks for the full \$5,000.

13. The respondent filed a counterclaim for payment from the money held in trust. According to the respondent, the estimates show that the cost to repair the agreed damage is between \$3,917.50 and \$5,118.75.
14. Although the respondent obtained 4 estimates, and all included estimates to touch up the cabinets, only 2 of the estimates included painting. Given that, I agree with the applicant that the respondent did not provide 3 estimates as required.
15. Additionally, the applicant says the estimates incorrectly include work beyond the agreed damage. I agree. The respondent says that the estimates are for damage caused by the applicant, including repairs to drywall, wall paint, and cabinet paint as well as replacing a countertop. It is irrelevant whether the applicant caused that damage as alleged. The parties confined the applicant's damage in the contract to upstairs paint and touch ups to cabinets. And, I find that the repairs to drywall and the countertop were not included in the agreed damage.
16. The applicant also says the estimates do not follow the terms of the contract because they are inflated. No details were provided about the alleged inflation and no evidence was provided by the applicant for comparison. Although the estimates range in price they include unidentified materials for a counter, which I find could vary significantly in price depending on the material quoted. On the evidence, I do not find the estimates inflated.
17. However, given the estimates provided, I find that on a judgment basis the cost to repair upstairs paint and touch ups to cabinets is \$912.50 plus GST. In reaching this conclusion I award \$562.50 for repairing the upstairs paint and \$350 for touch up paint on cabinets. I place significant weight on the undated handwritten quote which dealt only with finishing repairs. Given the scope of work in that estimate I find the painting comprised a quarter of the estimate. For the cabinets, I rely on the April 18, 2018 quote which specifically lists touch up paint on all cabinets as \$350. This is

consistent with the October 4, 2018 quote for cabinet touch ups and a replacement counter totaling \$980 together.

18. I find the applicant is entitled to prejudgment interest under the *Court Order Interest Act*, as of April 16, 2018, which is 30 days after the walk-through.
19. 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 here not to follow that general rule. I allow the applicant \$175 for tribunal fees. No dispute-related expenses were claimed, so I award none.

## **ORDERS**

20. I order the parties to authorize the release of the \$5,000 funds held in trust as follows:
  - a. Within 14 days of the date of this order, \$4,266.59 of the funds held in trust be paid to the applicant broken down as follows:
    - i. \$4,041.87 (\$5,000 minus \$912.50 and \$45.63 in GST) as a refund of the remaining deposit,
    - ii. \$49.72 in pre-judgment interest under the *Court Order Interest Act* from April 16, 2018, and
    - iii. \$175 for tribunal fees, and
  - b. Within 15 days of the date of this order the balance of the \$5,000 held in trust be paid to the respondent.
21. The applicant is entitled to post-judgment interest, as applicable.
22. The remaining claims are dismissed.
23. 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.

24. 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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Megan Volk, Tribunal Member