



Civil Resolution Tribunal

Date Issued: February 19, 2019

File: SC-2018-005851

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Proline Glass Ltd. v. Robinson*, 2019 BCCRT 196

B E T W E E N :

Proline Glass Ltd.

APPLICANT

A N D :

Daniel Robinson

RESPONDENT

A N D :

Proline Glass Ltd.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for window and blind installation.
2. Daniel Robinson, the respondent, hired the applicant, Proline Windows Ltd. (Proline) to install windows in an apartment building Mr. Robinson owned. Proline says Mr. Robinson failed to pay the full amount owed for this work, and seeks an order for payment of \$700. Proline also seeks payment of \$800 for removal and installation of window blinds.
3. Mr. Robinson denies liability for Proline's claims. He says he was entitled to withhold \$700 from payment for the window installation work because some of the supplied windows were damaged and not replaced, and because he had to pay another contractor to install a patio door that Proline was supposed to install.
4. In his counterclaim, Mr. Robinson says Proline failed to re-glue vinyl deck material it removed to install the windows. Mr. Robinson seeks an order that Proline pay him \$1,350 in compensation for re-gluing and re-caulking the deck material, caulking a window, travelling from another city to facilitate the window installation, window damage, and a replacement window screen. Mr. Robinson also seeks \$1,000 in compensation for Proline's use of H Painting's genie lift, which Mr. Robinson says he paid for as part of H painting's bill. Proline denies these claims.
5. Proline is represented by Bill Scott, whom I infer is its principal. Mr. Robinson is self-represented.

JURISDICTION AND PROCEDURE

6. 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.

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
8. 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.
9. 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, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Is Proline entitled to payment of \$700 for the outstanding balance on its invoice for window installation work?
 - b. Is Proline entitled to \$800 for removing and installing window blinds?
 - c. Is Mr. Robinson entitled to \$1,000 for Proline's use of H's Painting's genie lift?

- d. Is Mr. Robinson entitled to \$1,350 in compensation for window damage, re-gluing the deck material, caulking a window, travelling from another city to facilitate the window installation, and a replacement window screen?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means Proline must prove its claims, and Mr. Robinson must prove his counterclaims. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. Mr. Robinson contacted Proline about replacing the windows in an apartment building he had purchased. In January 2018, Proline provided 3 separate written estimates for various parts of the building. Mr. Robinson signed each of these estimates, and I find these make up the contract between the parties:
 - a. Supply and install 11 white renovation-style Retroteck windows for \$5,436.48.
 - b. Supply and install 8 white renovation-style Retroteck windows and 1 patio door for \$6,548.43.
 - c. Supply and install 21 white renovation-style Retroteck windows and 4 patio doors for \$17,799.78.
13. As discussed further below, the contract does not address removal and re-installation of window blinds.
14. The estimates state that the quoted prices include all materials, window screens, and taxes. The total price for all the work was \$29,784.69. Mr. Robinson paid a deposit of \$16,300, leaving a balance of \$13,484.69 to be paid upon completion.
15. Proline ordered the windows, and the evidence indicates that the installation work began around late April 2018, after H painting had completed much of the exterior painting on the building.

16. In June 2018, Proline gave Mr. Robinson an invoice for the balance of the work. This totalled \$13,484.69, as set out in the original estimates. On July 20, Mr. Robinson paid \$12,784.69 towards the invoice. He says he was entitled to deduct \$400 from his payment because he paid H Painting that amount to install the patio door in the penthouse. Mr. Robinson says he was entitled to deduct an additional \$300 because he was promised compensation for some windows that were damaged.

\$400 Deduction for Patio Door Installation

17. The evidence confirms that H Painting installed 1 of the patio doors supplied by Proline. In a November 1, 2018 letter, ED, H Painting's operations manager, wrote that at a worksite meeting in March 2018, Mr. Robinson asked H Painting to install the door because they needed to fix some rotten wood in the frame before the door was installed. ED said he and Mr. Robinson negotiated a price of \$400 to repair the wood and install the door.

18. Mr. Robinson says he is entitled to deduct that \$400 from Proline's bill. However, ED's letter says the \$400 charge was not just to install the door, but was also for fixing rotten wood in the doorframe. There is no indication before me about how long the doorframe repair took, or what materials were required. The doorframe repair was not part of the work that Proline was contracted to perform, which was to supply and install the windows and doors. It is therefore unfair to deduct the entire \$400 from Proline's bill.

19. Proline's estimate for the patio door in question set out a fixed price of \$6,548.43 to supply and install 8 windows and 1 patio door. Neither the estimate nor Proline's invoice sets out a specific price for labour, such as an hourly rate or time spent. Rather, their price was for the whole job. Also, there is no evidence before me about the length of time required to install a patio door.

20. Based on the wording of Proline's estimate ("supply and install") and ED's letter, as well as the statement of employee PK provided by Proline, I reject Mr. Scott's

submission that the parties always understood that H Painting would install the patio door. Rather, I find that this plan was announced to Proline in March 2018. Proline's original price included installing the patio door, and it ultimately did not do that work. For that reason, and on a judgment basis, I find that \$100 should be subtracted from Proline's final invoice.

\$300 Deduction for Damaged Windows

21. Proline admits that before installation, 2 windows had cracks in the "renovation flange". Mr. Scott says that Mr. Robinson was shown these cracks, and agreed with the suggestion from window manufacturer Retroteck to apply a special repair glue and proceed with the installation. Mr. Robinson does not dispute this, but says he was promised \$300 in compensation for the damaged windows.
22. I find that Proline never promised to compensate Mr. Robinson for the damaged windows. The correspondence between the parties says Retroteck would send Mr. Robinson \$300, not that Proline would provide the \$300. In a written statement, Retroteck district manager CM wrote that Retroteck had offered to "do something for him" as compensation Mr. Robinson's time spent on the damaged windows, but that offer was "now off the table". Based on this evidence, I find that any liability for compensation related to these damaged windows lies with Retroteck rather than Proline. I find that Mr. Robinson was not entitled to deduct any amount from Proline's bill on this basis.
23. Taking into account the \$100 deduction for the patio door, I therefore conclude that Mr. Robinson must pay Proline \$600 towards its window installation invoice. Proline is also entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA), from June 21, 2018.

\$800 for Blind Removal and Installation

24. Proline claims \$800 for removing and installing blinds, before and after its window installation work. Mr. Scott says that the blinds were still in place when it started

installing the windows, and Mr. Robinson had no one on site to remove the blinds, so Proline did the work just to get the job moving. Mr. Scott admits that this \$800 was not part of its estimates and was not included on the final invoice, but was claimed after the disagreement arose about the bill in July 2018.

25. I find that Proline is not entitled to payment for removing or installing blinds. It did not negotiate this cost with Mr. Robinson, and he did not agree to pay it. Therefore, it was not part of the contract between the parties. Also, the \$800 amount appears to have been selected arbitrarily. There is no evidence about hourly rate, time spent, or number of blinds removed or installed. For these reasons, I deny Proline's claim for blind removal and installation.

Mr. Robinson's Counterclaim

\$1,000 for Genie Lift

26. The parties agree that Proline used H Painting's genie lift to lift windows and patio doors up to the upper floors of the building. Mr. Robinson says he paid for this use of the genie lift as part of H Painting's bill. However, in a September 12, 2018 letter, ED, operations manager of H Painting, wrote that H Painting let Proline use the genie lift at no cost. Consistent with ED's letter, H Painting's Invoice does not show any specific genie lift charges.

27. There was no agreement between the parties that Proline would pay for the genie lift. For that reason, and based on ED's evidence that Proline used the genie lift for free, I find that Mr. Robinson is not entitled to any reimbursement for genie lift use.

\$1,350 for Assorted Costs

28. Mr. Robinson claims \$1,350 for 4 costs: window damage, re-gluing vinyl decking, caulking a window, a window screen, and travel costs. I will deal with each of these costs in turn.

29. *Window damage*: In the Dispute Notice for his counterclaim, Mr. Robinson wrote, “I want compensation for the damaged windows”. This claimed compensation for damaged windows is addressed above, and I have found the Proline is not liable. I therefore dismiss this claim.
30. *Re-gluing vinyl decking*: Mr. Robinson provided photos showing that in some areas of decking under patio doors installed by Proline, the vinyl material covering the deck is pulled away from the deck and the bottom of the wall. He says this material needs to be re-glued, which should have been done by Proline. Mr. Robinson says he re-glued the vinyl, and claims \$200 for this work.
31. Mr. Scott says that after installing the doors Proline glued the vinyl back into place with contact cement. He says Mr. Robinson never contacted Proline about any problem with the vinyl, and that Proline would have fixed it if they knew about it.
32. Based on the evidence before me, I find Mr. Robinson is not entitled to \$200 for re-gluing the vinyl. First, he has provided no accounting of his time or materials to establish the cost of the work. Second, he provided no evidence that he asked Proline to repair this deficiency.
33. *Caulking a window*: Mr. Robinson claims \$50 for caulking a window he says Proline missed. For the same reasons as gluing the vinyl deck material, I find Mr. Robinson is not entitled to \$50 for caulking. He has not provided any accounting of time or materials to justify the \$50, and he provided no evidence that he asked Proline to repair this deficiency.
34. *Window screen*: Mr. Robinson claims a non-specific amount of compensation for a bathroom window screen in apartment 4. A photo provided by the apartment 4 tenant shows that the screen provided by Proline is too small to cover the entire window. Proline does not dispute this, and Mr. Scott says Proline would have fixed it under warranty if Mr. Robinson had called and reported it. Mr. Scott also says the new screen is at Proline’s shop.

35. Based on the photo, I find it ought to have been evident to Proline that the window screen did not fit. For that reason, I order that Proline must deliver the new screen to the front door of Mr. Robinson's rental building at 9:00 am on Monday March 4, 2019. If Mr. Robinson does not have someone there to accept the delivery, Proline may leave it at the front door.
36. *Travel costs*: Mr. Robinson claims \$400 for 2 unscheduled trips he took from his home in the lower mainland to the rental building on Vancouver Island. He says he had to take these trips because Proline's actions during the window installation made his tenants angry.
37. I find Mr. Robinson is not entitled to reimbursement for travel. The tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees. Also, Mr. Robinson did not provide receipts to support his claimed travel costs. Finally, I note that while the evidence confirms that some tenants were upset during the window installation process, some of this conflict was due to the fact that Mr. Robinson had no one on site such as a building manager to deal with accessing tenants' apartments in compliance with the *Residential Tenancy Act* (RTA), and addressing their other concerns. Rental management was not part of the contract between the parties. Also, some tenants ignored Proline's posted direction to secure pets and clear all windowsills during window installation.

Summary

38. I allow Proline's claims in part. Mr. Robinson must pay Proline \$600 for its outstanding invoice. Proline is not entitled to payment for window blind removal or installation, so I dismiss that claim.
39. I allow Mr. Robinson's counterclaim in part. Proline must deliver a new screen for the apartment 4 bathroom window to the front door of Mr. Robinson's rental building at 9:00 am on Monday March 4, 2019. If no one is there to accept the delivery, Proline may leave it at the front door. I dismiss all of Mr. Robinson's other claims.

40. 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. Proline was substantially successful in this dispute, so I find it is entitled to reimbursement of \$125 in tribunal fees. Mr. Robinson was partially successful, so I find he is entitled to reimbursement of \$62.50. With these 2 amounts set off against each other, I order Mr. Robinson to reimburse Proline \$62.50 for tribunal fees.

ORDERS

41. I order that within 30 days of the date of this decision, Mr. Robinson must pay Proline a total of \$668.58, broken down as follows:

- a. \$600 in debt,
- b. \$6.08 in pre-judgment interest under the COIA, and
- c. \$62.50 for tribunal fees.

42. Proline is entitled to post-judgment interest, as applicable.

43. I dismiss Proline's remaining claims.

44. I order that Proline must deliver a new screen for the apartment 4 bathroom window to the front door of Mr. Robinson's rental building at 9:00 am on Monday March 4, 2019. If no one is there to accept the delivery, Proline may leave it at the front door.

45. I dismiss the remainder of Mr. Robinson's counterclaim.

46. 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.

47. 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.

Kate Campbell, Tribunal Member