Civil Resolution Tribunal

Date Issued: February 21, 2019

File: SC-2018-005003

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gretchen Boulanger (dba Imagine That! Interior Decorating) v. McIlwraith*, 2019 BCCRT 210

B E T W E E N :

Gretchen Boulanger (Doing Business As Imagine That! Interior Decorating)

**APPLICANT**

A N D :

Shirley McIlwraith

**RESPONDENT**

---

**REASONS FOR DECISION**

---

Tribunal Member: Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about payment for a) invoiced design consultation work ($225), b) invoiced painting/odd job work done by the applicant's contractor at the respondent's home ($1,653.25), and c) additional unpaid work that was requested by the respondent ($213.29). The applicant, Gretchen Boulanger (Doing Business As Imagine That! Interior Decorating), claims a total of $2,103.29.

2. The respondent, Shirley McIlwraith, denies responsibility for the applicant's claims. The parties are each self-represented.

3. For the reasons that follow, I allow the applicant's claims.

## JURISDICTION AND PROCEDURE

4. 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.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

6. 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.

7. 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.

## ISSUE

8. The issue in this dispute is to what extent, if any, the respondent owes the applicant for consultation and labour services rendered.

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

10. The work was done at the end of March 2018. As noted above, in this dispute, the applicant wants $236.25 for her design consultation service. She also wants $1,653.75, which is what she paid to her painting sub-contractor D for the work done at the respondent's home. Additionally, the applicant wants a further $213.29 for additional work D did at the respondent's home.

11. I turn to the relevant chronology.

12. On March 17, 2018, the applicant contacted the respondent for design assistance with her rental home, saying it was urgent as she had tenants moving in on April 1, 2018.

13. On March 23, 2018 the applicant emailed the respondent a quote for $1,653.75 ($1,575 plus GST), which reflected the $750 deposit and a $903.75 balance. This quote was for interior painting work only, including priming, sanding, related repairs, and the purchase of paint, primer, stain, and shower rods. Later in the morning on March 23, the respondent emailed back to say she felt "rushed to decide" but that she would go to the house where the parties could meet and the respondent could give the applicant a cheque. The respondent gave the applicant a $750 deposit cheque.

14. On March 24, 2018, the applicant converted her quote into an invoice, setting out the $903.75 balance owing. The applicant says the respondent agreed to her estimate and gave a cheque for $750 as a 50% deposit, which the applicant says shows agreement with the applicant's terms.

15. On balance, contrary to the respondent's submission, I agree with the applicant that when the respondent gave the applicant a cheque for the $750 deposit, this shows the respondent agreed to the applicant's fixed-rate quote for the 'main' painting job.

16. The respondent's evidence and submissions about what the main agreement was has varied and is to some extent unclear. For this reason, I find the respondent's evidence is less reliable and on balance I prefer the applicant's where their evidence conflicts.

17. In particular, I reject the respondent's suggestion that she was going to pay D directly, based on his hours. This is not consistent with the respondent's payment to the applicant after receiving the quote and is not consistent with D's statement in evidence. For the same reasons, I reject the respondent's submission that the agreement was based on $32.50 per hour for the entire job, not just the "extras". Given the main job, defined in the quote, was a fixed price agreement with the

applicant, I find it is irrelevant the number of hours D spent doing the work. I accept the applicant's submission that she agreed to ask D to provide an itemized invoice in order to appease the respondent.

18. The respondent appears to acknowledge the $32.50 hourly rate only applied to the extras, as set out in her handwritten annotation to the March 23 quote (quote reproduced as written):

> 1st quote and I gave deposit and was told if job took longer I would have to pay $32.50 an hr every hr more AND if they ran out of time I would pay less & price was going to be lowered.

19. There is no evidence that the applicant and D ran out of time in terms of the painting job that they were hired to do. The fact that additional flooring work did not get done is irrelevant, because the applicant was not paid to do the flooring work as part of the main job. It is undisputed that flooring work was discussed and consultations were done, but the respondent ultimately did not proceed, and I accept that this was likely because she was running out of time before her tenant moved in on April 1.

20. On March 29, 2018, the applicant emailed the respondent to ask how things went the day before, and the respondent replied "great … everything is moving along" although later she expressed concern that D was not there. The respondent was not living at the empty rental house and I accept that D was there early in the morning that day.

21. What about the applicant's invoice for consultation services? On April 5, 2018, the applicant issued a $236.25 invoice for 3 consultations at $75 each, plus GST. The invoice described meetings at the job site and at a flooring shop, doing flooring research and organizing trades.

22. I find the parties did not ultimately come to an agreement about the applicant's hourly rate for her consultation services.

23. However, I reject the respondent's submission that the parties had a verbal agreement that the applicant would be paid by receiving the difference between the wholesale and retail pricing of materials. The weight of the evidence, including the parties' quote, simply does not support this conclusion. To accept the respondent's suggestion would mean the applicant would have agreed to potentially work for free, if there was little to no materials purchased by her. Further, before the applicant was aware the respondent's $750 deposit cheque bounced, on March 27 she told the respondent she had never worked on a commission basis before, in response to the respondent's inquiry about having the applicant help her with her own home's design.

24. Based on the parties' email, I find they agreed the applicant's services would be based on an hourly rate, but the applicant has not proved the rate itself was discussed or agreed upon.

25. On balance, I find that on a *quantum meruit* basis (value for the work done), $75 per hour for design services is reasonable. The respondent does not dispute the amount of time the applicant herself spent, as the respondent's issue was the amount of time D and his crew spent. I find the applicant is entitled to payment of her $236.25 consultation services invoice, which is 3 hours or $225 plus GST.

26. By the time the applicant was notified around April 9 that the respondent's $750 cheque had bounced, the work had been done: flooring selections, paint colours chosen, and various work and odd jobs completed.

27. On April 9, 2018, the respondent apologized for her $750 cheque bouncing. She asked for a detailed final invoice. The respondent did not express any concern with the quality of the work done.

28. On April 10, 2018, the applicant issued a new invoice: the $1,575 for the same painting work, plus $203.13 for the "extras". The extras were described as "paint suite bathroom, kitchen/dining, stain flooring transition, fix 3 doors, install blind

covers, install switch plates in bedrooms and living room”. This equals $1,778.13 plus $88.91 GST, for a total of $1,867.04.

29. In support of her claim, the applicant provided an unsigned and undated typed statement from D. D states that the respondent agreed to the price for painting plus “some small repairs and hanging some towel rods”. D says the photos provided by the respondent largely show areas that were not worked on by D as they were not part of the agreed job. D says his work was done to a high standard. D says when his crew did the work, the house was empty and since then people have moved in, which can cause wear and tear, especially by renters.

30. I have reviewed the respondent’s “list of what was NOT done”. I find that most of it clearly fell outside the scope of the parties’ agreement. Many of the photos are of tile or exterior shots of the yard and wood deck. It is unclear to me why the respondent has included these and she has not explained it in her response submission. Elsewhere the respondent provided a response to D’s specific list of work he did, suggesting that some of it was not done. However, the photos the respondent provided do not support that position. Further, as D noted many of the photos were taken in early December, 8 months after the work was done and after a tenant had moved in. For these reasons, I place little weight on the respondent’s photos.

31. On balance, as referenced above, I prefer the applicant’s and D’s evidence. I specifically find that the work was completed properly. This conclusion is supported by the respondent’s March 29, 2018 email that things were “great” and moving along nicely and the respondent’s April 9 email that did not object to the quality of the work done. If D had not done the work properly as the respondent now alleges, I would have expected her to say so on March 29 and April 9.

32. I find the respondent must pay $1,867.04 for the applicant’s April 10, 2018 invoice. Together with my award of $236.25 for the applicant’s consultation work, this brings the total award to $2,103.29, the amount claimed in this dispute.

33. The applicant is entitled to pre-judgment interest on the $2,103.29 under the *Court Order Interest Act* (COIA), from May 10, 2018 which is the due date on the applicant's April 10, 2018 invoice. I find this date to be reasonable in the circumstances.

34. In accordance with the Act and the tribunal's rules, as the applicant was successful I find she is entitled to reimbursement of $125 in tribunal fees.

## ORDERS

35. Within 14 days of this decision, I order the respondent to pay the applicant a total of $2,253.10, broken down as follows:

    a. $2,103.29 in debt,

    b. $24.81 in pre-judgment interest under the COIA, and

    c. $125 in tribunal fees.

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

37. 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.

38. 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.

Shelley Lopez, Vice Chair