



Civil Resolution Tribunal

Date Issued: March 15, 2019

File: SC-2018-005285

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Coffin v. Herberger*, 2019 BCCRT 323

BETWEEN:

Lillian Coffin

APPLICANT

AND:

Renate Herberger

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for power washing services on 2 decks. The applicant Lillian Coffin says the respondent Renate Herberger has failed to pay \$450 for the work that Ms. Coffin's husband KW performed under a verbal

agreement with the respondent. Ms. Coffin says she paid KW and now claims the \$450 from the respondent.

2. The respondent says KW did not finish the job, as he did not replace all rotten boards as agreed. The respondent says KW never sent an invoice as requested and says she has had to pay for numerous counselling sessions due to the alleged trauma of KW yelling at her.
3. The parties are each self-represented. For the reasons that follow, I allow the applicant's claims in part.

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. 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.
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 \$450 for power washing services.

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. It is undisputed the applicant's husband KW had a verbal agreement with the respondent on June 28, 2018 to pressure wash (power wash) 2 decks, clean gutters and patio windows and, according to the applicant "replace broken or rotten boards are her property".
11. It is also undisputed that the respondent and KW had heated words and that the respondent asked to deal only with the applicant. I accept the applicant's undisputed evidence that she accordingly paid KW \$400 for the job. At my request, I asked the applicant to provide a written statement from KW that he had assigned his claims for the job at issue to the applicant, and the applicant did so. I therefore find that KW assigned his right to the claim against the respondent to the applicant.
12. In this dispute, the applicant claims the \$400, plus \$50 for the replacement boards and "30 sec solution". I find the applicant has not proved she is entitled to anything more than \$400, given it is undisputed the job was a "fixed price" job, rather than work based on an hourly rate. The parties' messages before this dispute began clearly show that the job was for \$400, with no extra being claimed for supplies.

13. There is no dispute that KW did work on the respondent's decks and replaced some rotten boards. The respondent's issue in this dispute is that KW did not replace all rotten boards. I find that this was the agreement: to replace all rotten boards. As the applicant notes, the job was priced by the job, not by the hour. My conclusion is supported by the evidence before me that KW replaced more boards after the respondent complained.
14. However, the applicant says all rotten boards were replaced, as requested by the respondent. However, the applicant says when it came time for the respondent to pay, the respondent had her friend JW ask for a receipt and he said that the respondent would send a cheque in the mail.
15. The respondent provided numerous photos, some in close-up. The difficulty here is that they are undated photos and based on the dirt visible on some of the boards it appears they were taken before KW's pressure washing work. I cannot clearly see any replacement boards in the photos, and it is undisputed that KW replaced some rotten boards. Thus, I place no weight on the respondent's photos as proof KW did not replace all rotten boards.
16. However, I do place weight on JW's statement and the fact that the applicant admits KW and the respondent had a heated exchange, which I find was about KW's failure to replace all rotten boards. Thus, I find it more likely than not that KW failed to replace all rotten boards which I have found was required under his fixed-price agreement with the respondent.
17. However, I find the respondent should pay for the work that was done, on what is known in law as a *quantum meruit* basis (value for the work done). It is undisputed that the respondent has paid nothing for the pressure washing services that were provided.
18. I find the evidence clearly shows KW power washed 2 decks and eaves together with spraying algae solution. I find KW also replaced many rotten boards. This is supported by JW's witness statement and the parties' respective evidence. Further,

in her Dispute Response filed at the outset of this proceeding, the respondent acknowledged that KW did power washing for “less” than 3 hours.

19. On balance, I find that KW completed most of the job and in particular replaced most rotten boards. I do not agree with the respondent’s assertion that less than 1/3 of the job was completed. If this had been the case, I find the respondent would not have been asking for an invoice and requesting a receipt, which she acknowledges was part of the exchange at the end of the job. JW’s statement says that KW asked for payment and he told the respondent this, and that the respondent said she wanted an invoice and would pay that. On a judgment basis, I find the respondent should pay for 80% of the \$400 job, or \$320.
20. I also find the respondent has not provided a sufficient explanation as to why she has paid nothing for the work done, apart from her assertion that she was upset by KW’s allegedly yelling at her for asking for a price reduction. The respondent had asked for a price reduction because when the job was starting she told KW she only wanted one deck washed and so she suggested she should pay only \$200. KW disagreed, as he had agreed to a fixed-price job and had attended with equipment to do the work. Nothing turns on the attempt at getting a price reduction, because the respondent acknowledges that she ultimately gave instructions for KW to proceed with washing both decks as originally agreed.
21. In her submissions, the respondent says KW’s behaviour caused her stress and required counselling. The respondent did not file a counterclaim. Based on JW’s statement, at most I find KW yelled at the respondent, made fun of her method of using a butter knife to check for rotten boards, and loudly demanded payment. While the respondent provided a list of dates she obtained counselling, this does not establish the counselling was reasonably caused by KW’s behaviour. Based on the evidence before me, I cannot find the respondent’s allegations of “extreme bullying and verbal abuse” by KW are established so as to entitle the respondent to a set-off against the \$320 I have found she must pay to the applicant.

22. I find the applicant is entitled to pre-judgment interest on the \$320 under the *Court Order Interest Act* (COIA), from June 28, 2018.
23. In accordance with the Act and the tribunal's rules, as the applicant was partially successful I find she is entitled to reimbursement of half her \$125 paid in tribunal fees, namely \$62.50.

ORDERS

24. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$386.14:
- a. \$320 in debt,
 - b. \$3.64 in pre-judgment interest under the COIA, and
 - c. \$62.50 in tribunal fees.
25. The applicant is entitled to post-judgment interest, as applicable.
26. 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.

27. 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