



# Civil Resolution Tribunal

Date Issued: March 15, 2019

File: SC-2018-006609

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stalwart Homes Ltd. v. Turley*, 2019 BCCRT 328

**B E T W E E N :**

Stalwart Homes Ltd.

**APPLICANT**

**A N D :**

Kyle Turley

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

### **INTRODUCTION**

1. The applicant Stalwart Homes Ltd. says the respondent, electrician Kyle Turley, failed to provide satisfactory work when contracted for a residential project. The applicant says the respondent's work created hazards that needed to be corrected. The applicant claims \$580.46 in reimbursement for the cost of bringing the electrical

work up to code, and \$400 in loss of income for a conference call with the tribunal that the respondent did not attend.

2. The respondent says he could not complete the electrical work as required because, after he issued an invoice for his work to that point, Cary White, the applicant's principal, threatened to hurt him if he returned to the work site. He asks that this dispute be dismissed.
3. The applicant is represented by principal Mr. White. The respondent is self-represented.

## **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*. 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 some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
6. 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the

court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

7. 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.
8. 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**

9. The issue in this dispute is whether the respondent owes the applicant a refund for the \$580.46 in electrical work that it says the respondent did not perform satisfactorily and, if so, whether there is any additional appropriate remedy.

## **EVIDENCE AND ANALYSIS**

10. The applicant bears the burden of proving this civil claim on a balance of probabilities.
11. A series of invoices issued by Turley Electrical Contracting in August, September and October 2017 that were filed in evidence are marked as paid. Based on these invoices, I find that the applicant was paying for the respondent's work on the subject property as invoices were issued.
12. On July 19, 2018, the applicant wrote to the respondent indicating that \$580.46 of work it did on the property "failed electrical inspection".

13. An undated letter from Technical Safety BC identifies some electrical non-compliance, though the letter does not identify the property that was inspected. As there is no evidence contesting it, I find that this letter identifies deficiencies in the electrical work completed by the respondent.
14. In August 2017 Herl Electric completed some electrical work at the home. I accept that the \$580.46 Herl invoiced the applicant for this work was spent because the respondent's electrical work was "not installed properly", as the note on the Herl invoice states. This is also consistent with the respondent's own evidence that he did not complete the work sufficiently for inspection prior to this dispute arising.
15. I do not accept that the respondent was barred from the property due to a physical threat issued to him by Mr. White. The respondent made no arguments at the submission stage and filed no evidence to support this allegation. I find the threat is not proved and the allegation appears to have been abandoned.
16. Based on the evidence, I find that some of the electrical work completed by the respondent for the applicant was substandard. As a result, I find the respondent must reimburse the applicant the claimed \$580.46, which I find is the portion of the work that needed to be re-done by Herl Electric.
17. Given the tribunal's general rule that legal fees are not awarded unless it is an extraordinary case (which this case is not), I dismiss the applicant's \$400 claim for time spent on this proceeding.
18. 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 \$125 in tribunal fees.

## **ORDERS**

19. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$719.50, broken down as follows:

- a. \$580.46 as reimbursement for the part of the respondent's electrical work that was not satisfactory;
  - b. \$14.04 in pre-judgment interest under the *Court Order Interest Act*, from August 1, 2017 to the date of this decision and
  - c. \$125 in tribunal fees.
20. The applicant is entitled to post-judgment interest, as applicable.
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.

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Julie K. Gibson, Tribunal Member