



Civil Resolution Tribunal

Date Issued: March 25, 2019

File: SC-2018-008048

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *R486 Enterprises Ltd. v. Glenn Rogers (dba Home Pro Painting)*, 2019
BCCRT 365

B E T W E E N :

R486 Enterprises Ltd.

APPLICANT

A N D :

Glenn Rogers (doing business as Home Pro Painting)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, R486 Enterprises Ltd., is a general contractor that hired the respondent, Glenn Rogers (doing business as Home Pro Painting), to do interior painting as part of a residential renovation. In a separate Civil Resolution Tribunal (tribunal) dispute, the applicant's clients claimed against the applicant for what they

said was substandard work, including interior painting. In that dispute, the tribunal awarded the clients \$600 for poor quality interior painting. The applicant brings this dispute against the respondent to be reimbursed \$600 because the respondent was responsible for the painting. The respondent says that \$600 is more than it would cost to fix any problems with the painting job. The respondent also says that he would have fixed any problems himself if he had been given the opportunity.

2. The applicant is represented by its principal, Gary Ward. The respondent is self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the 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, email, 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. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. 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

- 7. The issue in this dispute is whether the respondent must reimburse the applicant \$600 for the respondent's substandard painting.

EVIDENCE AND ANALYSIS

- 8. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
- 9. As mentioned above, the clients hired the applicant for a substantial residential renovation. The applicant hired the respondent for a small part of the renovation.
- 10. The respondent provided the applicant with a quote on February 3, 2017. The quote was for priming and painting the kitchen and bathroom walls at a cost of \$1,100, plus GST. While there is no direct evidence on this point, I infer that the applicant accepted this quote and hired the respondent on that basis. There is no evidence of a written contract other than the quote, which only describes the scope of work and the price.
- 11. The respondent rendered an invoice to the applicant on July 16, 2017, for \$1,471. The applicant paid the respondent's invoice the next day.
- 12. As mentioned above, the quality of the respondent's painting was the subject of a previous tribunal dispute: *R486 Enterprises Ltd. v. Cohen et al*, 2018 BCCRT 548. In that dispute, the applicant's clients made a number of claims of substandard work as part of the applicant's renovation of the clients' home. The tribunal deducted \$1,075 from the applicant's invoice, including \$600 for substandard bathroom

painting. The tribunal based this figure on the respondent's invoices to determine on a judgment basis the value of the remedial work that would be required.

13. The evidence before me is not necessarily the same evidence that was before the tribunal in the previous dispute. I am not bound by the findings of fact that the tribunal made in the previous dispute. That said, the applicant provided photographs of the bathroom and I agree that they show that the painting was below a reasonable standard as described in the tribunal's decision in the previous dispute. In addition, the respondent does not dispute that there were at least minor issues with his bathroom painting.
14. The respondent argues that he never had the opportunity to remediate, which he says would have cost him less than \$600. He says that the clients had told him that they were happy with his painting at the time it was done. By the time he was aware that the clients were unhappy with the bathroom paint, the applicant was already in a dispute with the clients over the applicant's final invoice. As a result, he was not permitted to go back and complete the painting job. He therefore feels that it is unfair for him to pay \$600 when he could have fixed the issues for much less. He says it would have cost \$75 to touch up the areas that the clients were unhappy about.
15. I find that the respondent has not proven that the applicant had an obligation to allow the respondent to fix the clients' areas of concern. As the respondent states, by the time he became aware of the clients' concerns, there was already a dispute between the applicant and the clients. In this context, it is unlikely that the applicant was able to provide the respondent with access to the clients' bathroom.
16. While there is little evidence of the terms of the contract between the parties, I find that it was an express or implied term that the respondent would perform the painting services in a good and workmanlike manner and to a reasonable aesthetic standard. As stated above, I find that the painting was not done to a reasonable aesthetic standard.

17. Therefore, I find that the respondent breached its contract with the applicant. The question is whether the respondent should pay the amount that the applicant lost because of the breach or the amount that the respondent says it would have cost to fix the painting.
18. When a party breaches a contract, they are required to pay the amount of money it will take to put the other party in the same financial position they would be in if the contract had been fulfilled. Applied to this dispute, the applicant must pay the amount of money that the applicant lost because of the respondent's breach. I find that the applicant suffered a loss of \$600. While I appreciate that the respondent thinks that he could have done remedial work for less than \$600, I agree with the applicant that \$600 is the amount of money that will make the applicant whole.
19. I find that the respondent must pay the applicant \$600.
20. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act*. The date that the clients paid the applicant the remainder of his invoice, which included the \$600 deduction, is not in evidence. The previous tribunal decision required the clients to pay the invoice within 30 days of that decision, which was made on September 24, 2018. I therefore find that a reasonable date to calculate pre-judgment interest is October 24, 2018.
21. 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. The applicant did not claim any dispute-related expenses.

ORDERS

22. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$728.57, broken down as follows:
 - a. \$600 for breach of contract

- b. \$3.57 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 for tribunal fees.

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

24. 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.

25. 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.

Eric Regehr, Tribunal Member