



Civil Resolution Tribunal

Date Issued: March 28, 2019

File: SC-2018-005807

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Horton v. Holmes et al*, 2019 BCCRT 383

B E T W E E N :

Judy Patricia Horton

APPLICANT

A N D :

Anthony Holmes, 1114561 B.C. LTD. and Done-Rite Custom Concrete

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about a concrete sidewalk. The applicant, Judy Patricia Horton, claims \$4,700 from the respondents, Anthony Holmes, 1114561 B.C. LTD. and Done-Rite Custom Concrete, for the cost to replace part of her concrete sidewalk.

The applicant alleges that the respondents did not install the concrete sidewalk properly.

2. The applicant is self-represented. The respondents are each represented by Mr. Holmes.

JURISDICTION AND PROCEDURE

3. 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.
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.

ISSUES

7. The issue in this dispute is whether the respondents failed to install the concrete sidewalk to a reasonable standard.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove her 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 a preliminary matter, the applicant claims against 3 respondents. The corporate respondent, 1114561 B.C. LTD., was incorporated on April 10, 2017, which is after the applicant paid a deposit to "Done Rite Custom". The corporation's only director is Mr. Holmes. There is no evidence that Done-Rite Custom Concrete is a separate corporation.
10. For the reasons that follow, I have dismissed the applicant's claim. I therefore find that it is unnecessary for me to determine who are the appropriate respondents. Mr. Holmes provided submissions on behalf of all 3 respondents and the submissions are essentially the same.
11. On April 7, 2017, the applicant paid a deposit to the respondents. There is no evidence of a written contract between the parties.
12. On April 14, 2017, respondents rendered an invoice for \$13,003.20. Of this total amount, \$2,016 was for the removal and replacement of the applicant's sidewalk. The respondents also built the applicant a patio and breezeway.
13. The applicant says that in September 2017, she noticed that a section of the concrete sidewalk was flaking, crumbling and becoming discoloured. None of the other concrete that the respondents installed had the same issues.

14. The applicant says that the defective concrete section was the last section that the respondent completed. The applicant says that it rained on the day the respondents installed the concrete section.
15. It is not disputed that after the applicant complained, Mr. Holmes attended the applicant's house. The applicant showed him the cracks in the sidewalk. Mr. Holmes said that there was nothing he could do about the cracks because he did not know what had caused them.
16. The applicant provided photographs of the affected area of the sidewalk, which support her allegation that the defective portion of the concrete was discoloured and flaking.
17. The applicant provided a quote from another concrete contractor for \$4,700 to remove and replace the concrete sidewalk. The quote did not comment on the respondents' work.
18. Even though there was no written contract between the parties, I find that the parties' contract included a term that the respondents would perform the work in a good and workmanlike manner. In other words, I find that it was a term of their contract that the respondents would install the concrete sidewalk consistent with industry standards.
19. The applicant makes 2 allegations about how the respondents failed to perform the work to a reasonable standard.
20. First, the applicant says that the respondents failed to cover or protect the concrete section from the rain. The applicant says that when the rain started, the defective concrete section was freshly poured.
21. The respondents say that the concrete they used included an ingredient that made it impossible for rain to affect the concrete. The respondents say that the ingredient is effective as soon as it is applied, so it does not matter that the concrete was

freshly poured. The applicant disagrees with this statement, relying on her belief that “simple internet searches” say that rain negatively affects how concrete sets.

22. Second, the applicant alleges that the respondents’ employees who installed the concrete sidewalk were poorly trained and provided a photograph of the employees standing on “fresh cement”. The respondents say that they used the same methods and materials for the entire concrete project. The respondents say that all of their employees are adequately trained.
23. In effect, the applicant asks me to assume that because the respondents installed the concrete and only part of it has flaked and crumbled, it must have been the respondents’ poor workmanship. I do not agree that it is necessarily the case, especially since several months passed between the concrete’s installation and the first signs of problems.
24. There is no evidence that the applicant has expertise in concrete construction. I find that I would require an opinion from an expert, such as another concrete contractor, to conclude that the respondents failed to install the concrete sidewalk in accordance with industry standards. For example, a person with expertise in concrete installation could have provided an opinion that based on the type of concrete that the respondents used, failing to cover the fresh concrete from rain likely caused the eventual problems. I note that the applicant provided the \$4,700 quote but no statement or opinion from the new concrete contractor about the quality of the respondents’ work.
25. In the absence of expert evidence, I find that the applicant has failed to prove that the issues with the concrete sidewalk were caused by the respondents failure to comply with industry standards. I dismiss her claims.
26. 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 dismiss the applicant’s claim for tribunal fees and dispute-related expenses.

27. The respondents did not claim any tribunal fees or dispute-related expenses.

ORDER

28. I dismiss the applicant's claims, and this dispute.

Eric Regehr, Tribunal Member