



Civil Resolution Tribunal

Date Issued: April 8, 2019

File: SC-2018-005264

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Knight et al v. Couzens et al*, 2019 BCCRT 431

B E T W E E N :

Aaron Knight and Carolyn Gibson

APPLICANTS

A N D :

Ben Couzens and Katherine Bramall

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about a deposit paid for a construction project. The applicants, Aaron Knight and Carolyn Gibson, say that they entered into an agreement with the respondent, Ben Couzens, to build a pergola. They say they transferred a \$3,500

deposit to an account held by the respondent, Katherine Bramall, but the pergola was never built. They seek an order for the return of their \$3,500 deposit.

2. Although Mr. Couzens was served with the applicants' Dispute Notice, he did not provide a response and is in default. Ms. Bramall says that it is Mr. Couzens rather than she who is responsible for this matter.
3. The applicants are represented by Mr. Knight. Ms. Bramall 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 (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. 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.
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 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

- 8. The issue in this dispute is whether the respondents must repay the \$3,500 deposit to the applicants.

EVIDENCE AND ANALYSIS

- 9. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The applicants and Ms. Bramall have provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer only to that which is necessary to provide context to my decision.
- 10. The applicants say that they entered into an agreement with Mr. Couzens to build a pergola on their pool deck. Mr. Couzens issued an invoice dated April 5, 2018 for project-related materials. The invoice showed an outstanding balance of \$2,831.50, after taking into account a \$3,500 deposit, which is described as a “draw” on the invoice.
- 11. Mr. Couzens requested that the applicants send the \$3,000 by e-transfer to Ms. Bramall’s account. In an April 6, 2018 text message exchange, Mr. Couzens confirmed that the e-transfer “came and I deposited it”. The applicants later sent Mr. Couzens an additional \$500 to Ms. Bramall’s account. Ms. Bramall and Mr. Couzens were in a relationship at the time.
- 12. Shortly after the transfer of funds was made, the applicants had difficulty contacting Mr. Couzens. According to the applicants, Mr. Couzens later told them he would be unable to complete the project, and would pay back the deposit by June 7, 2018. The applicants say they have not received any money back from Mr. Couzens, and

confirm that he did not build the pergola. They seek an order that the respondents return their \$3,500 deposit.

13. Ms. Bramall says that she was not involved with Mr. Couzens' agreement with the applicants. She says that Mr. Couzens told her that there was a problem with his own bank account that was related to a former spouse. She says that he asked to deposit funds into her bank account for what he said was a completed job, and she agreed. When the funds arrived, Ms. Bramall says that she went to the bank to withdraw the money for Mr. Couzens, minus \$100 he owed her. Ms. Bramall says that when she became aware of the applicants' situation, she tried to convince Mr. Couzens to return the money, but he did not do so and blocked her phone number.
14. Ms. Bramall provided banking information that shows a \$3,000 etransfer into her account on April 6, 2018. On the same date \$2,900 was withdrawn, which is consistent with Mr. Bramall's submission that Mr. Couzens owed her \$100. A second transfer of \$500 arrived on April 10, 2018, and there is a corresponding withdrawal on the same date. Ms. Bramall says she gave this entire amount to Mr. Couzens.
15. Ms. Bramall is not referenced on the invoice provided by Mr. Couzens to the applicants or in any of the project-related text messages between Mr. Couzens and the applicants. The funds for the deposit were transferred to Ms. Bramall's account at Mr. Couzens' specific direction. Based on the evidence before me, I am satisfied that Mr. Couzens took possession of these funds for his own purposes.
16. I find that the applicants have not established that Ms. Bramall was a party to their agreement with Mr. Couzens. As such, Ms. Bramall is not responsible for Mr. Couzens' actions or for the applicants' funds. I dismiss the applicants' claims against Ms. Bramall.
17. I am satisfied that Mr. Couzens took the deposit from the applicants and did not provide the services contemplated by their agreement. As he breached the

agreement with the applicants, I find that Mr. Couzens must return the \$3,500 deposit to them.

18. I also find that the applicants are entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from June 7, 2018, this amounts to \$46.67.
19. 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. I see no reason in this case not to follow that general rule. I find the applicants are entitled to reimbursement of \$175.00 in tribunal fees from Mr. Couzens.

ORDERS

20. Within 30 days of the date of this decision, I order the respondent, Ben Couzens, to pay the applicants a total of \$3,721.67, broken down as follows:
 - a. \$3,500 for the return of the deposit;
 - b. \$46.67 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175.00 for tribunal fees.
21. The applicants are entitled to post-judgment interest, as applicable.
22. The applicants' claims against Ms. Bramall are dismissed.
23. 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.
24. 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.

Lynn Scrivener, Tribunal Member