



# Civil Resolution Tribunal

Date Issued: May 3, 2019

File: SC-2018-008356

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hanson v. Mills*, 2019 BCCRT 529

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

Marcell Hanson

**APPLICANT**

**A N D :**

Ken Mills

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

### **INTRODUCTION**

1. The applicant, Marcell Hanson, completed some work on the respondent Ken Mills' basement washroom. The applicant says when she was nearly finished the work the respondent told her he was not happy with it and asked her not to complete it. The applicant says she has not been paid for the work she completed, and she wants the respondent to pay her \$1,355 for the outstanding invoice for the work.

2. The respondent says the applicant's work was defective and she did not complete it by the specified deadline.
3. Both parties are 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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
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 9.3 (2), 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 whether the respondent is required to pay the applicant's \$1,335 invoice.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
11. It is undisputed that on August 4, 2018 the respondent approved the applicant's written estimate to frame his basement washroom and install a pocket door for \$1,365. Although it is not exactly clear from the parties' submissions, it seems they agreed the applicant would complete the work before Monday, August 13, 2018.
12. The applicant says she started the work on Monday, August 6, 2018 and worked from 1:00 to 7:00 p.m. that day. She says the next day there was a problem getting the pocket door, so she returned on Wednesday, August 8, 2018 but the respondent's door was locked so she was unable to work. The applicant says she told the respondent that day that she was leaving town on the morning of Friday, August 10, 2018, so the schedule would be tight. The respondent does not dispute this.

13. It is uncontested that on Thursday, August 9, 2018 the applicant framed almost the entire 3 remaining walls of the washroom and installed the pocket door. She says when she left for the day she had yet to complete the backing for the drywall installation which she estimated would take her an additional 2 to 4 hours.
14. The applicant returned to the respondent's home on Friday, August 10, 2018 at 7:00 a.m. to try to finish the work. However, she realized she required an additional piece of lumber which she did not have time to buy that day before she left town, so she had to leave the work unfinished.
15. The applicant says the respondent told her that his drywall crew was not coming until August 19, 2018, so she thought she had time to complete the work the following week. The respondent says he told the applicant the drywall crew was coming on Monday, August 13, 2018. There is no documentary evidence indicating the day the drywall crew was scheduled to arrive.
16. When the applicant left the respondent's house on Friday, August 10, 2018, she texted him saying she would return on Monday, August 13, 2018 at 8:30 a.m. to complete the work. The respondent replied, "Sounds good and no worries."
17. On Sunday, August 12, 2018 the applicant texted the respondent to confirm her arrival the next morning and the respondent told her he was unhappy with her work and that she should not return to complete it. When the applicant offered to fix the issues, the respondent told her he had hired a crew over the weekend who had already finished it. The respondent told the applicant to send him her invoice.
18. There is an invoice in evidence, but the quality is so poor, I can make out only the total amount, which is \$1,260. The applicant says this amount discounted the last few hours of work that she did not complete.
19. The respondent says the applicant's work was defective. Specifically, he says the framing was "flimsy," the joins were "awkward," and the pocket door was too short and only came up to eye level, so it was unusable. He submitted no photographs or other evidence of the allegedly flimsy framing or awkward joins. He submitted a

photograph of the doorframe on which he drew a line and wrote “67.5” to show the doorway was too low, however I cannot determine from this photograph if that measurement is accurate. There is no other evidence to indicate the height of the pocket door.

20. In a text to the applicant about the pocket door the respondent said, “...you should have mentioned that to me before installing it. I know I probably should have realized it because of the air vent but I missed that. I would have expected you, as my builder, to have at least warned me of the severe height restriction on the door before installing it.” The respondent says he would expect a professional to notify him if the doorway height was too low, and that it is unreasonable that he should have to duck down to enter his washroom.
21. The respondent says he had to hire a different contractor to complete his washroom and he was unable to reuse most of the applicant’s materials. I note the respondent has not claimed any amount for damages, and there is no counterclaim before me.
22. The applicant says pocket doors come at a standard size of 80 inches, but she had to trim off approximately 6 inches to fit the door in the location the respondent had specified and where he had drawn an outline. The applicant says she followed the respondent’s design, but that the respondent changed his mind about it after the applicant had completed most of the work.
23. When a party such as the applicant holds themselves out as qualified to perform a specific trade, the law implies a warranty into the contract that the tradesperson will perform the job in a professional manner consistent with the standards of the trade, and that they will perform the task using the necessary skill and care required. I find that such terms were implied into the agreement between the parties. There is no dispute that the applicant completed the work as she claims. The question is whether she breached one of these implied terms. On the evidence before me, I find she did not.

24. The evidence establishes that the applicant installed the pocket door to the respondent's specifications, but that the respondent subsequently realized the doorway was too low. He claims the applicant had a duty to warn him about the flaw in his design, but I do not find the applicant had such an obligation. The evidence shows the respondent drew out the design for the washroom on the floor, and that raising the height of the pocket door would have required moving at least one of the walls and significantly altering the initial design. There is no evidence the respondent hired the applicant for her design services.
25. Apart from the respondent's submission, there is no evidence the applicant's workmanship on the pocket door was defective, or that she installed awkward joins or flimsy framing.
26. I also find the respondent's evidence about the timing of the work to be internally inconsistent. On Friday, August 10, 2018 he told the applicant it would be no problem for her to return the next Monday to finish the work, but in his submissions, he indicates it was unacceptable that the applicant did not complete the work that week, and that his drywall crew was scheduled to arrive on Monday, August 13, 2018. However, if that was in fact the case, I find he would not have immediately accommodated the applicant's plans to return on Monday to finish the work.
27. I find the applicant has established she completed the work as claimed and there is insufficient evidence to establish that any of her work fell below the required standard. Therefore, I find she is entitled to \$1,260, which is the amount of her invoice. The applicant suggests she should be paid the full amount of her estimate, however it is undisputed that she did not complete the work. While the respondent prevented her from completing the work, I find there is insufficient evidence of the parties' negotiations or of what was included in the estimate to establish that it was a fixed price contract. In the circumstances I find the applicant is only entitled to be paid for the work she completed. I find the respondent must pay the applicant \$1,260 for her outstanding invoice.

28. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* calculated from August 10, 2018, which is the day she completed the work.
29. The applicant mentions punitive damages in her submissions but does not specifically claim them in the dispute. I note that punitive damages are an extraordinary remedy to condemn malicious, reprehensible or high-handed conduct. While it is evident the parties' relationship has broken down, I find there is no evidence that any of the respondent's conduct warrants the awarding of punitive damages. I dismiss this claim.
30. Under section 49 of the Act, and tribunal rules, since the applicant is successful I find she is entitled to reimbursement of \$125 in tribunal fees. The applicant claims \$325 in legal fees, however the tribunal's rules state a party is generally not entitled to legal fees except in extraordinary circumstances. I find there is nothing extraordinary about this case and I dismiss this claim. The applicant has not claimed any other dispute-related expenses.

## **ORDERS**

31. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,400.49, broken down as follows:
  - a. \$1,260 as payment of the applicant's invoice,
  - b. \$15.49 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in tribunal fees.
32. The applicant is entitled to post-judgment interest, as applicable.
33. 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.

34. 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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Sarah Orr, Tribunal Member