Civil Resolution Tribunal

Date Issued: May 14, 2019

File: SC-2018-009576

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *RUDDELL v. MCKAY*, 2019 BCCRT 579

B E T W E E N :

GREG RUDDELL

APPLICANT

A N D :

ROB MCKAY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Julie K. Gibson

INTRODUCTION

1. The applicant Greg Ruddell says he provided and installed audio-visual (AV) equipment for the respondent Rob McKay at a renovation project in 2013 and then at the respondent's home in 2017. Both times, the applicant says the respondent agreed to compensate him in renovation services at the applicant's home, equal in value to the goods and services provided.

2. Although the parties had several discussions about the respondent repaying this debt, he never completed any work for the applicant. The applicant claims $1,487.78 in goods and services, which he says is the value of the 2017 job only.

3. In his Dispute Response, the respondent agrees that the applicant did some AV work for him. The respondent says the applicant has inflated the value of the work. He says the speakers and wall mounts were only worth $300.

4. The respondent says the applicant borrowed his $1,500 pressure washer and returned it in need for repairs worth between $200-300. As a result, in his opinion, the parties "are even." The respondent asks that the dispute be dismissed.

5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.

7. 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.

8. 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.

9. 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.

10. Under tribunal rule 9.3(2), 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

11. The issue in this dispute is whether the respondent owes the applicant the claimed $1,487.78 for the installation of AV equipment.

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities.

13. The respondent filed no evidence and became non-compliant when he failed to respond to the tribunal case manager, despite three requests for information, in March 2019. While I note the respondent's non-compliance, because the respondent filed a Dispute Response and provided submissions, I have considered

all of the evidence and submissions from both parties. I refer to them below only as necessary to explain and give context to my decision.

14. An agreement to exchange goods and services is sometimes called a barter, or an arrangement for payment "in kind."

15. The applicant says that he and the respondent reached a verbal agreement where he would install AV equipment at a condominium in Yaletown and later at the respondent's home, in exchange for the respondent providing renovation services at the applicant's home, of equal value.

16. The respondent does not dispute that the applicant installed AV equipment for him. He contests the value of the work for the 2017 job, saying the speakers were cheaper than what the applicant tried to charge him.

17. Based on the text messages, and since it is uncontested, I find that the applicant completed some AV equipment installation for the respondent in June 2017.

18. The respondent says that the applicant borrowed his pressure washer and returned it with $200-300 in damage. The applicant agrees that he borrowed the pressure washer, but says he returned it undamaged.

19. Although the respondent says he "talked to an expert" who said he could have the pressure washer fixed for $200-300, he filed no statement from this expert, or anyone else, about the alleged damage. Because he provided no evidence, aside from his assertion, about the pressure washer, I find that he has not proven that the applicant damaged the pressure washer. Even if I had found the pressure washer was returned damaged, the $200-300 does not cover the $1,487.78 claimed by the applicant.

20. The respondent does not suggest that he provided renovation services to the applicant. I find that the respondent ultimately failed to provide renovation services for the applicant as agreed.

21. After finding that the respondent was unwilling to pay by providing service, the applicant issued a November 19, 2018 invoice to the applicant for the June 2017 work. The invoice totals the claimed $1,487.78 for speaker and television mounts and installation.

22. The applicant never received payment from the respondent, either in the form of money or the agreed services.

23. The respondent says the $1,487.78 invoice is inflated relative to the value of the AV installation services he received. The applicant provided a breakdown of equipment costs with retail and wholesale values, supporting the amounts charged in the invoice. For this reason and given that the respondent filed no evidence proposing an alternate value of the work, I find that the invoice represents a reasonable value of the work provided by the applicant to the respondent in June 2017.

24. The question then becomes whether, where the parties' verbal agreement was that the applicant would be paid with services in kind, the respondent owes the $1,487.78 charged in the invoice.

25. I find that the respondent breached an implied term of the verbal agreement by failing to pay for the services he owed to the respondent within a reasonable period of time, "in kind" or otherwise.

26. I find that the applicant made demands for in kind services, including assistance in installing some flooring, but the respondent declined. As well, over a year elapsed without the respondent fulfilling his commitment to provide renovation services to the applicant.

27. Assessing payment for the value of the work done, or what the law refers to as *quantum meruit*, I find that the respondent owes the $1,487.78 claimed by the applicant.

28. I calculate prejudgment interest under the *Court Order Interest Act*, from August 1, 2017, which is about 60 days after the June 2017 work was completed, to the date of this decision. I find that, in the circumstances, 60 days was a reasonable amount of time for the respondent to provide in kind services, after which the applicant was entitled to financial compensation.

29. 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 and $10.60 in dispute-related expenses for registered mail delivery of the Dispute Notice, which I find reasonable.

ORDERS

30. Within 10 days of the date of this order, I order the respondent to pay the applicant a total of $1,657.94, broken down as follows:

    a. $1,487.78 as payment for services rendered,

    b. $34.56 in pre-judgment interest under the *Court Order Interest Act* from August 1, 2017 to the date of this decision, and

    c. $135.60, for $125 in tribunal fees and $10.60 for dispute-related expenses.

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

32. 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.

33. 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.

Julie K. Gibson, Tribunal Member