



# Civil Resolution Tribunal

Date Issued: May 24, 2019

File: SC-2019-000249

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chris Ovington (dba O & H Services) v. Garbutt*, 2019 BCCRT 625

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

CHRIS OVINGTON (Doing Business As O & H Services)

**APPLICANT**

**A N D :**

JAMES GARBUTT

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. The applicant, Chris Ovington (Doing Business As O & H Services), provided electrical services for the respondent, James Garbutt. This dispute is about the applicant's outstanding balance for work he performed for the respondent.

2. The respondent paid the applicant \$20,000 out of the total invoiced amount of \$26,686.64. The applicant claims \$5,000 of that balance.
3. The respondent agrees that the applicant performed the electrical work in his home. However, he says he already paid for the work in full. He also disagrees with the amount he was invoiced. He says the applicant should reimburse him \$2,500. However, the respondent did not file a counterclaim.
4. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination. In the circumstances of this case, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 recent decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized the oral hearings are not necessarily required where credibility is in issue.
7. 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.

8. 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**

9. The issue in this dispute is to what extent, if any, does the respondent owe the applicant \$5,000 of the claimed invoice balance?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. The parties have provided submissions and evidence in support of their positions. Although I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
11. In September 2017, the respondent's contractor hired the applicant to perform a small rewiring job on the respondent's home. Shortly thereafter, the job grew into a much larger project. In January 2018, the respondent told the applicant to stop work, ending the job before it was complete. These facts are undisputed.
12. For whatever reason, the parties had not put any aspect of their agreement in writing. While a contract does not need to be written, when it is written it creates certainty about its terms and the parties' intentions. I find that the parties had entered into a verbal contract for the applicant to perform the work. Apart from one small item, there is no dispute that the electrical work was performed by the applicant at the respondent's request. The dispute is about the value of the contract.

13. The applicant provided no quote or estimate of expected costs at any time before or during the job. This is uncontested. The respondent says he had no discussion related to the costs of the job at any time before receiving the invoice in February 2018. On balance, I accept that the job was based on time and materials rather than on a fixed price, as clearly there had to be some measure for the services and the dispute here is not about the cost of the materials, just the labour. The issue here is that there is no evidence the parties discussed hourly rates and the applicant provided no evidence to show that they had. Accordingly, I find there was no agreement on cost.
14. Generally speaking, price is a fundamental term in a contract. Here, given the absence of an agreement about cost, there was no 'meeting of the minds' and so no enforceable contract on costs. However, in circumstances where there is no agreement at all on cost but the parties have entered into an agreement for the provision of goods and services, the applicant is entitled to the reasonable value of the goods and services he provided. This legal concept, which I find applies here, is known as "contractual *quantum meruit*", (See, for example, *Gill Tech Framing Ltd. v. Gill*, 2012 BCSC 1913 at paragraph 41).
15. The issue I must therefore decide, is the reasonable value for the goods and services provided to the respondent by the applicant.
16. Normally, the invoice is a good starting point. However, in this case, the applicant issued multiple invoices for the same work.
17. On February 6, 2018, the applicant invoiced the respondent a total of \$20,471.47 for the materials and work performed by his company between September 5, 2017 and January 18, 2018. The invoice shows 210 hours at an average hourly rate of \$65.35. It does not specify how many workers were on the site each day or their individual hourly rates. The invoice also appears to contain mistakes. For example, it has two entries for October 13 totaling 16 hours, with 8.5 hours of that time described as installing a kitchen light fixture.

18. Around February 21, 2018, the applicant adjusted his invoice to account for three workers' time he said he missed in the first invoice. He also discounted his workers' hours. I was not provided a copy of this invoice. The email evidence shows that the reason he discounted his workers' hours was because the applicant recognized his workers caused inefficiencies. In his submissions the applicant also admits he was unhappy with the job's progress.
19. On March 7, 2018, the applicant sent the respondent another invoice for \$26,684.84, which was in many respects a duplicate of the first invoice, except he adjusted the descriptions of work, added additional labour costs, and no longer applied the discount. I infer from the email evidence that the applicant decided not to discount his workers' time because the respondent had not immediately paid the original invoice, which I note was not yet due and contained mistakes.
20. The March invoice shows 374 hours broken down into 112 hours at \$35 per hour and 262 hours at \$60 per hour. It provides no further break down of the workers' daily hours by their rate. It also fails to account, with any reasonable explanation, for the inefficiencies the applicant had identified with the job in February.
21. Due to the errors and unexplained inconsistencies in the two invoices, I cannot rely on either invoice to determine the accurate value for services. The applicant has not provided any time sheets or other independent evidence to otherwise allow me to establish the value of his services with any reasonable precision.
22. The applicant is entitled to payment from the respondent for the electrical work and materials. The respondent paid the applicant \$20,000, which I find included consideration of the identified inefficiencies in the job. The applicant has failed to demonstrate, on a balance of probabilities, that the reasonable value for his work and materials should be more. Accordingly, I dismiss the applicant's claim.
23. In the absence of a counterclaim, and given that I have dismissed the applicant's claim, there is nothing for me to consider in this dispute with respect to the respondent's assertion he is owed a \$2,500 refund.

24. 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 decline to order the respondent to reimburse the applicant for his tribunal fees or dispute-related expenses. The respondent did not claim any dispute-related expenses.

## **ORDER**

25. The applicant's claims, and this dispute, are dismissed.

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Trisha Apland, Tribunal Member