



Civil Resolution Tribunal

Date Issued: May 27, 2019

File: SC-2018-000807

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brian McDougall, dba Pacific Pure Comfort v. Von Berg et al*, 2019 BCCRT
640

B E T W E E N :

Brian McDougall, doing business as Pacific Pure Comfort

APPLICANT

A N D :

Hubertus Von Berg and Huimin Zhang

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about an invoice. The applicant, Brian McDougall, doing business as Pacific Pure Comfort, says that he performed work for the respondents, Hubertus Von Berg and Huimin Zhang, but only received \$2,050.00 of the \$4,985.00 invoice amount. He seeks an order for payment of the remaining \$2,935.00. The

respondents say that the applicant's invoice was incorrect, and that they paid the bill in full.

2. The applicant is self-represented. The respondents are represented by Mr. Von Berg.

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 (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 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

7. The issue in this dispute is whether the respondents must pay the applicant the \$2,935.00 he claims.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, an applicant bears the burden of proof on a balance of probabilities. The parties provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. The respondents hired the applicant to install a wall-hung combi boiler in their home. The applicant was not the original contractor on the job, and there was some difficulty in arranging a time for the applicant to perform the work. Text messages between the parties indicate that the respondents were keen to have the job completed quickly. By the time the applicant started the job, the applicant's furnace and hot water heater had been removed by someone else. The applicant says that this removal caused damage to the existing piping that had to be repaired before the new boiler could be installed. The applicant says he obtained a gas permit, purchased materials and provided labour to install the boiler.
10. Once the applicant finished the job, he sent the respondents an October 19, 2017 invoice in the amount of \$4,985.00, as referenced above. The invoice shows that the applicant charged for installing and plumbing the boiler, re-plumbing the supply header, replacing the gas and zone valves, installing the acid neutralizer, and plumbing and venting. The labour cost \$3,000 and the materials cost \$1,640, plus taxes and a \$113.00 charge for the gas permit. The invoice stated that the total amount was due upon receipt.
11. There was a disagreement as to the amount owing, and the respondents transferred the applicant \$2,050.00. The applicant says he did not agree to this amount, and seeks payment of the outstanding balance.

12. The applicant states that the amount he charged on the invoice reflected the hours spent on the project. He says that he spent a reasonable amount of time on the job, and that he stands by his work. According to the applicant, he had to work around other jobs, he worked late hours, and went back to fix a leaky valve after the job was completed. He says that the amount he charged was very close to the quote given to the respondents by another party.
13. The respondents say the applicant did not start the job right away, was very messy, overcharged for both labour and parts, used too many materials, did not work full days on the project, and left the site numerous times to get parts he should have had. The respondents' position is that the applicant misrepresented and lied about many issues, including a promise that he would give them a "good deal". The respondents say they telephoned the original contractor to ask him to "talk some sense" into the applicant about the amount of the invoice, but he declined to do so.
14. The respondents provided their own listing of the parts that they say should have been used on the job, plus an allowance for waste, and the estimated costs of \$390.52. They also listed the dates and hours that they say the applicant worked, which they say amounts to a total of 17 hours to be charged at \$100 per hour. The respondents say the \$2,050.00 they paid to the applicant represents full payment for the work completed.
15. The text messages between the parties confirm that the respondents asked the applicant to install the boiler. The evidence shows that the applicant is not related to the previous contractor and that he did not agree to take on the job according to the terms agreed to by the previous contractor and the respondents. The previous contractor's quote may have contemplated labour at \$100 per hour. However, there is no indication that the applicant agreed to this rate, or that there was an agreement as to the number of hours the applicant would spend on the job or how those hours would be scheduled. I find that the respondents did not have a specific agreement with the applicant about the cost of the project.

16. The respondents submitted that the applicant overcharged them for materials and labour. However, they have not provided evidence from another contractor or supplier as to the extent of materials, number of hours, or overall cost that would be expected for the type of project completed by the applicant. I am satisfied that these are appropriate circumstances to apply the principle of quantum meruit to determine an amount fairly owing to the applicant based on the work he did, even though this amount was not set out in a contract between the parties.
17. The quote given to the respondents by another party provides guidance as to the value of the applicant's work. That quote was for \$7,764.75, inclusive of taxes and the cost of the boiler. This quote also included the removal of the old boiler and hot water tank. According to a receipt provided by the respondents, they purchased the boiler themselves for \$3,745.19. The respondents say this was a "hell of a deal" and that the applicant was "amazed at the price" they got. The model purchased by the respondents was one of the options contemplated by the other party's quote.
18. Subtracting the price of the boiler from the other party's quote leaves a balance of \$4,019.56. This is not significantly different from the applicant's charge of \$4,985.00. I acknowledge the respondents' submission that the applicant had less work to do as the old boiler and hot water tank had been removed. However, I accept the applicant's uncontroverted evidence that he had to repair damage caused by the removal of this equipment.
19. I am not satisfied that the evidence supports the assertion that the applicant overcharged the respondents or charged them in a manner that violated an agreement. I find that the respondents are responsible for the full amount invoiced by the applicant, and must pay the outstanding amount of \$2,935.00.
20. I also find that the applicant is entitled to pre-judgment interest in the amount of \$65.66, calculated under the *Court Order Interest Act*.
21. 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 \$125.00 in tribunal fees. The applicant did not make a claim for dispute-related expenses.

ORDERS

22. Within 30 days of the date of this decision, I order the respondents to pay the applicant a total of \$3,125.66, broken down as follows:
 - a. \$2,935.00 for the outstanding invoice amount,
 - b. \$65.66 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125.00 for tribunal fees.
23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.
25. 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