



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McNamara v. Jon Ronan dba Ronan Reno's*, 2019 BCCRT 757

B E T W E E N :

Candace Marie McNamara

APPLICANT

A N D :

Jon Ronan (Doing Business As Ronan Reno's)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for home renovation work.
2. The applicant, Candace Marie McNamara, hired the respondent, Jon Ronan (Doing Business As Ronan Reno's), to perform renovation work on her home. She says the

respondent's work was unsatisfactory, caused damage, and much of it must be re-done. She also says he left mess and debris behind, and overbilled her, in part by buying unneeded supplies. The applicant seeks a refund of \$4,800 she paid the respondent, plus copies of receipts for all supplies purchased by the respondent.

3. The respondent denies the applicant's claims. He says the work was performed with the applicant's knowledge and understanding, and that any damage was caused by others. He says his invoice is consistent with his labour and expense logs. He also says the applicant was responsible for debris removal.
4. The parties are each self-represented. For the reasons that follow, I allow the applicant's claims in part.

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* (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 of these. In the circumstances here, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that 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: 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.

Preliminary Matters

9. The applicant asks that the tribunal order the Better Business Bureau or WorkSafe BC investigate the respondent's ethics, safety practices, and professional conduct during the job. The tribunal has no power to order these organizations to act. The applicant may pursue these complaints directly with them.
10. In his Dispute Response Form, the respondent says the applicant still owes \$6,162 for his work. Since the respondent did not file a counterclaim, did not provide a copy of his invoice, and did not provide evidence establishing his hourly rate, I make no findings about this alleged debt, and make no order for payment of it. Nothing in this decision prevents the respondent from starting his own claim for payment, subject to my conclusions in this decision and any applicable limitation period.

ISSUES

11. The issues in this dispute are:
 - a. Is the applicant entitled to a \$4,800 refund?
 - b. Should I order the respondent to give the applicant copies of all receipts for supplies?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. The applicant says that she and the respondent were friends before she hired him to work on her newly-purchased house in August 2017. She says they walked through the home together, and discussed various jobs to be done, such as installing a range hood, fixing loose kitchen taps and worn pipe under the sink, replacing the main bathroom fan, replacing some windows, adding backsplashes in the kitchen and 2 bathrooms, and replacing missing baseboards and door trim.
14. There was no written contract between the parties, and no written list of work to be performed. The parties disagree about who suggested doing some of these jobs, but I find that is not determinative of the issues in this dispute. Since the applicant was present when the respondent bought the initial supplies, and knew he had started the work, I find she agreed to pay the respondent for these tasks. I find that there was a verbal contract between the parties. Verbal contracts are binding, but their terms are harder to prove than those of a written contract.
15. The respondent says the applicant agreed to pay his usual hourly rate, plus 15% of all supplies. There is no evidence before me about what the respondent's hourly rate was. However, the applicant does not dispute that she agreed to pay it, or that she would pay for supplies. The applicant provided a money order showing that she paid the respondent \$5,000 on September 13, 2017.
16. The applicant says the respondent billed her for supplies he did not use. She also says he billed her for work she never agreed to, and that his work was unprofessional and negligent. The respondent denies these assertions, and says the applicant simply has buyer's remorse.
17. Given that neither party provided copies of the respondent's invoices, I make no findings about whether the respondent overbilled the applicant for labour or

supplies. I note that the applicant bears the burden of proving her claims, and during the tribunal facilitation process, parties are reminded to provide all relevant evidence.

18. The applicant says the respondent acted unprofessionally, such as by working unsafely or while intoxicated. The respondent denies these allegations, and I find the applicant has provided no proof. I therefore make no findings about the respondent's conduct apart from the quality of his finished work.
19. The applicant says the respondent ruined another contractor's work by dumping old tiles on the floor. Having examined the photo she provided, I agree that the respondent left a mess, and I do not accept his explanation that it was reasonable to dump out these waste tiles because they had been placed in his buckets by the other contractor. Given the nature of the work, the cost of buckets, and fact that he was billing the applicant for supplies, I find it would have been reasonable in the circumstances to simply bill the applicant for new buckets, or come back to collect them later. However, I find the photo does not show permanent damage to the other contractor's work, and there is no evidence before me from that contractor confirming such damage. The applicant provided no evidence as to the cost of any alleged damage or clean-up. I therefore make no order for compensation in relation to this incident.
20. However, I find the applicant has proven that some of the respondent's work did not meet the quality standard implicit in the parties' verbal contract. Courts have found that construction contracts contain implied terms about the quality of the work to be performed. This is explained in *Morgan and Gaiga v. Pacific Coast Floor Covering Inc.*, 2018 BCPC 236, citing *Pavestone v. Kuentzel*, 2013 NSSC 199 at paragraph 45 (my bold emphasis added):

It is well established that "[c]ertain terms are implied in every building contract: materials must be of proper quality, **the work must be performed in a good and workmanlike manner**, the materials and work, when completed, must be fit for their intended purposes, and the work

must be completed without undue delay” ... courts will imply a term in a construction contract that the work contracted for will be completed in accordance with a certain standard. What the comparative standard is will depend on the nature of the work and the parties' expectations and may include the industry standard, a regulatory body's standards, or other acceptable standards.

21. Based on the evidence before me, I find the respondent's work was not performed in the required "good and workmanlike manner". Rather, I find that the evidence provided by the applicant shows deficiencies in the respondent's work. In particular, the photos show hardened backsplash grout left on the kitchen counter, the bathroom drywall, a bathroom cabinet, and a bathroom tap. The applicant says she cannot remove some of this, which I accept, based on the photos in evidence. I also find that the applicant's photos show that the backsplash grout in each room had areas that appear unfinished, including corners and edges.
22. The applicant says the kitchen range hood drips water when it rains, and this is unsafe as the water is close to electrical wiring. The respondent admits there is water, but says it is merely due to condensation. I accept the applicant's evidence that there is a problem with the range hood, as I find it obvious that a professionally installed kitchen range hood should not drip water. However, I find the photos are not sufficient to prove the applicant's assertion that the respondent dented the range hood, which the respondent denies.
23. The applicant also says the respondent performed faulty electrical wiring, including on the range hood, the kitchen outlets, and in the basement. The applicant provided an electrician's invoice in the amount of \$1,100.69. While the applicant says the electrician told her the respondent's work was faulty, there is no statement from the electrician in evidence. However, the invoice says the electrician powered the range hood, and corrected the polarity on receptacles. Given this, and given that the respondent admits his kitchen wiring work was not "up to code", I find the respondent's electrical work did not meet the required standard.

24. While the applicant says the respondent installed locks that are “loose”, I cannot make a finding on this based on the photos in evidence, and there is no other evidence about the function of the locks before me. She also says the respondent overcharged for his time installing the locks, but as previously stated I cannot tell how many hours the respondent charged for this as the invoices are not in evidence. I therefore find the applicant is not entitled to any refund for the lock installation.
25. The evidence also shows that the respondent did other work, such as basement demolition, which the applicant benefitted from. While she may have disliked his approach to the work, which she describes as messy and disorganized, she did not provide evidence that she will have to pay to have it all re-done. Also, while I accept that there are problems with the tiling work and kitchen range hood, the applicant did not provide evidence, other than from the electrician, about how much repairs will cost.
26. In summary, some of the respondent’s work was not performed to a professional standard. However, the applicant provided no evidence about how much she paid for the contested work, and little evidence about how much repairs will cost. Also, apart from the grout work, the range hood, and the electrical work, I find the applicant has not provided sufficient evidence to establish the other deficiencies she alleges, such as improperly cut beams. For example, without expert evidence such as a letter from a contractor, I cannot confirm any construction problems from the photos the applicant provided of the basement bedroom.
27. For these reasons, I conclude, on a judgment basis, that the applicant is entitled to a refund of \$2,000. She is also entitled to pre-judgment interest on this amount, under the *Court Order Interest Act* (COIA), from September 13, 2017. This equals \$48.76.

Supply Receipts

28. The applicant seeks an order that the respondent provide her with copies of receipts for all supplies he purchased. I decline to issue this order. First, the respondent provided a number of receipts as evidence in this proceeding, and the applicant has not established that the respondent has any more receipts. Second, the applicant did not provide a rationale for this claim, such as warranty concerns, and I find the issue is moot given my order for a \$2,000 refund.
29. As the applicant was only partially successful in this dispute, in accordance with the Act and the tribunal's rules I find she is entitled to reimbursement of half her tribunal fees, which equals \$87.50. The applicant claims \$11.34 for mailing the Dispute Notice, which I find reasonable in the circumstances, so I order reimbursement of that amount as a dispute-related expense.

ORDERS

30. I order that within 30 days of this decision, the respondent pay the applicant a total of \$2,147.60, broken down as follows:
- a. \$2,000 as a refund for work performed,
 - b. \$48.76 in pre-judgment interest under the COIA, and
 - c. \$98.84 as reimbursement of tribunal fees and dispute-related expenses.
31. The applicant is entitled to post-judgment interest under the COIA, 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.

Kate Campbell, Tribunal Member