



# Civil Resolution Tribunal

Date Issued: June 25, 2019

File: SC-2019-001571

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *GREAT LAWNS & BEYOND LTD. v. DIXON*, 2019 BCCRT 766

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

GREAT LAWNS & BEYOND LTD.

**APPLICANT**

**A N D :**

BRENDA DIXON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

### INTRODUCTION

1. The respondent, Brenda Dixon, hired the applicant, Great Lawns & Beyond Ltd., to do landscaping at her house, including the installation of a new lawn in the backyard. The respondent was unhappy with the new lawn and refused to pay the applicant for installing it.

2. The applicant says that it installed the new lawn properly and any issues were because the respondent failed to do the necessary upkeep. The applicant also says that the respondent unreasonably refused to let it return to her property to try to repair the lawn. The applicant claims \$1,774.50 for installing the new lawn.
3. The applicant is represented by its owner. The respondent is 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. 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.
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 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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did the applicant install the new lawn properly?
  - b. How much, if anything, does the respondent owe the applicant?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The respondent first contacted the applicant on September 25, 2018. The respondent wanted landscaping work done on a rush basis because she was about to sell her house. The parties agreed to a total cost of \$3,265.60, broken down as \$1,491.00 for the front yard and \$1,774.50 for the backyard. The respondent was happy with the front yard and promptly paid the \$1,491.00 for that work. The applicant has refused to pay the remaining \$1,774.50.
11. In early October, the respondent contacted the applicant because animals were rolling up the edges of the sod. The applicant said that raccoons were likely eating grubs underneath the sod and provided her with some wire mesh to help cover it. The respondent used the mesh in the front yard and says there was not enough to cover the backyard. The respondent does not explain why she did not ask for more mesh or acquire more herself. The raccoons continued to roll up the sod in the backyard.
12. Over the course of the autumn, the respondent continued to express her frustration at the look of the lawn. The respondent provided photographs of the lawn during this time and I agree that it was patchy and muddy. The lawn also had rolled up edges.

13. On January 6, 2019, the applicant emailed the respondent to find a solution. The applicant admitted that the lawn did not look good but did not mention any suspected causes. The applicant offered 2 options.
14. First, the applicant offered to rip out the lawn and put new sod in as soon as possible, at no cost, as long as he received payment of the outstanding \$1,774.50 on the day of the installation. Second, the applicant offered to write a letter to the new homeowners advising that he would put in a new lawn in the spring, when there would be more sun to help the grass take root. The respondent never responded to the applicant's offer.
15. The applicant provided a photograph from the spring of 2019, which shows that the grass had recovered significantly without any further work. The applicant says that when lawns are installed in the fall or winter they often look poor until the spring because they struggle to take root.
16. It is undisputed that the parties had a contract for the applicant to install a new lawn in the respondent's backyard. In contracts for professional services such as landscaping, it is an implied term of the contract that the professional will perform the work to a reasonable standard.
17. The respondent's reason for refusing to pay for the installation of the backyard lawn is effectively that the applicant breached the contract by failing to perform the work to a reasonable standard. She makes a number of arguments.
18. First, the respondent says that the applicant installed the lawn so that it crept several inches over the edges of her concrete patio. The applicant provided a photograph of the lawn shortly after it was installed, which it says shows that the lawn looked "perfect". In the photograph, there is no obvious indication that the lawn was not installed properly. I accept that the photograph proves that, at least initially, the lawn did not creep over the edges of the patio.
19. Second, the respondent argues that all landscaping companies provide mesh to prevent against raccoons. She says that the applicant should have done more to

protect against raccoons, including providing her with mesh. The applicant disagrees, saying that raccoons are a rare problem. The applicant also points out that it provided some mesh but the respondent chose not to use it on the backyard lawn. Again, there is no evidence that she requested more.

20. To support her argument, the respondent says that she spoke to other landscaping companies who said that they always provide mesh to cover new lawns. However, she does not provide any direct evidence, such as a statement or expert report. The tribunal has flexibility to accept evidence that would not be admissible in court, such as hearsay. However, I find that the other landscapers' alleged evidence would be expert opinion evidence that would go to a key issue in this dispute. In that context, the respondent's summary of what other landscapers said is of little use and I place no weight on it. I find that the respondent has not proven that the parties' contract required the applicant to provide mesh or other protection from raccoons.
21. Third, the respondent says that all professional landscaping companies fully guarantee sod. However, she provided no objective evidence to support this assertion other than saying that she spoke to other landscapers. In contrast, the applicant provided the warranty policies of 2 other landscaping companies which explicitly do not cover sod. The applicant says this is the industry standard because homeowners have to properly maintain new lawns, which is outside of the installer's control. I accept the applicant's evidence on this point because it is supported by objective evidence and makes common sense.
22. Finally, the respondent argues that the applicant admitted to doing a poor job on the lawn installation in his January 6, 2019 email. The applicant says that his offer to fix or redo the lawn was not an admission but an attempt to resolve the parties' issues and get paid. I agree with the applicant that the email does not contain any admissions that the initial installation was poorly done. I find that the email represents a good faith effort by the applicant to help the respondent deal with the deterioration of the lawn while collecting on the outstanding invoice.

23. As for the reason that the lawn deteriorated after installation, the applicant argues that it had no control over whether the respondent appropriately cared for the lawn after it was installed. The applicant says that the respondent failed to protect against raccoons and to keep leaves off the lawn. The respondent's photographs, which are undated, confirm that there were leaves on the lawn. In addition, implicit in the applicant's submissions is that the respondent had unreasonable expectations about what the lawn would look like over the winter and that the passage of time has borne out that the lawn was properly installed.
24. I find that the respondent has not proven that the applicant did not perform the work to a reasonable standard. Again, the respondent failed to provide any objective evidence to support her assertions about the quality of the initial installation, such as an expert opinion from another landscaper.
25. Therefore, while I accept the respondent's evidence that the back yard was unsightly until she sold the property in January 2019, I find that the most likely explanation is that a combination of the time of year that the lawn was installed and the respondent's failure to properly maintain the lawn caused its deterioration. I agree with the applicant that its photograph from April 2019 supports its position that there was nothing wrong with the initial installation.
26. For these reasons, I find that the applicant is entitled to full payment of its invoice. Because of my finding, I do not need to consider the applicant's other arguments.
27. 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. The applicant has been successful so I find the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim any dispute-related expenses.

## ORDERS

28. Within 28 days of the date of this order, I order the respondent to pay the applicant a total of \$1,921.64, broken down as follows:
- a. \$1,774.50 in debt
  - b. \$22.14 in pre-judgment interest under the Court Order Interest Act, and
  - c. \$125.00 in tribunal fees.
29. The applicant is entitled to post-judgment interest, as applicable.
30. 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.
31. 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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Eric Regehr, Tribunal Member