



Civil Resolution Tribunal

Date Issued: June 25, 2019

Files: SC-2018-008899
and SC-2019-000070

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *RLM Construction Ltd. v. Richards et al*, 2019 BCCRT 769

B E T W E E N :

RLM CONSTRUCTION LTD.

APPLICANT

A N D :

RORY RICHARDS and LEV RICHARDS

RESPONDENTS

A N D :

RLM CONSTRUCTION LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The respondents and applicants by counterclaim, Rory Richards and Lev Richards (the Richardses), live in a rented Vancouver apartment. They hired the applicant and respondent by counterclaim, RLM Construction Ltd. (RLM), to create 7 items of custom shelving and furniture for their two bathrooms. The parties agreed to a price of \$3,600 plus GST. On October 16, 2018, RLM prepared a detailed quote and the Richardses paid RLM a \$2,500 deposit. The balance was due upon completion.
2. On November 16, 2018, RLM's subcontractor, MA, delivered the items. The Richardses were not happy with some of the items, and discovered that the two over-the-toilet cabinets would need to be modified to fit in the bathrooms. The Richardses refused to accept the items and refused to pay the balance of the invoice. RLM claims \$1,280 as payment of the balance of the contract (\$1,100 plus GST). The Richardses seek a full refund of the \$2,500 deposit.
3. In Dispute SC-2018-008899, RLM named Rory Richards as the person the claim is against. Rory Richards did not file a counterclaim. In Dispute SC-2019-000070, Rory Richards and Lev Richards named RLM as the person the claim is against.
4. The evidence submitted for both disputes is identical. The substance of both disputes is the same. Accordingly, I have treated this as one dispute with a claim and counterclaim. As the Richardses are spouses and both were involved in selecting and instructing RLM in its work, I consider this to be a dispute between the Richardses and RLM. I have amended the style of cause to reflect the parties' legal names as set out in the January 4, 2019 Dispute Notice from Dispute SC-2019-000070.
5. RLM is represented by Lorne Marchildon, whom I infer is a principal. The Richardses are represented by Rory Richards.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the 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. 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.
8. 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.
9. 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

10. The issues in this dispute are:
 - a. What did the parties agree to do for each other?
 - b. Did the parties do what they were contractually required to do?

- c. If not, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means that to succeed, RLM must prove it is entitled to be paid the full price of the contract. For the Richardses to succeed, they must prove they are entitled to a refund of the deposit.

What did the parties agree to do for each other?

12. On October 16, 2018, the parties entered into a contract. The key terms of that contract were set out in the quote prepared by RLM.
13. The quote stated that RLM would build two over-the-toilet cabinets, a wall shelf, a bath caddy tray, a wall feature for towels, and two children's stools (items). All items were to be made of solid pine except the cabinet door fronts which were to be solid oak. All items were to be stained in maple. Hinges were to be metal and soft-closing. Specifications for some of the items were set out in the attached email, photos and drawings from Ms. Richards.
14. The quote confirmed the total cost of \$3,600 plus tax. It said a deposit of \$2,500 was needed up front to order materials and build items. The balance was due upon completion. The quote said that if the deposit was given by the next day, the items would be completed and installed by October 25, 2018.
15. On October 16, 2018, the Richardses paid RLM a \$2,500 deposit. There is some dispute about whether RLM took measurements in the bathrooms on that visit and another visit, but both parties agree that Mr. Marchildon attended the Richardses' home.
16. The quote included some additional commitments. I have reproduced the relevant excerpts here:

1. The contractor agrees to undertake all work diligently in a good workmanlike manner, in accordance with good quality construction standards. [...]
2. The owner may make changes by altering, adding to or deducting from the work, with the contract and contract price being adjusted accordingly. [..]
3. The contractor shall correct, at its own experience [sic – expense?], and [sic – any?] defects in the work due to faulty materials and/or workmanship [...]
4. All materials are sole property of [RLM] until such time that contract price and all additional fees are paid in full. [RLM] reserves right to remove [its] property from the site as a result of full payment not being completed.

Did the parties do what they were contractually required to do?

17. Within a few days after October 16, 2018, the parties began making small modifications to their contract. Much of Ms. Richards' correspondence was with MA, who RLM describes as its carpenter.
18. MA delivered the items to the Richardses on November 16, 2018. RLM submits that Ms. Richards changed her mind over and over about all components and accessories, which caused delays to the completion date. I find the evidence does not support this. It is clear that work did not start for the first several days. In the text messages, Ms. Richards appears to be flexible and accommodating with respect to hooks and accessories. She offered to pay more when the accessories she wanted were more expensive, or to look for less expensive versions. I also note that the owner making changes to the work was explicitly contemplated in clause 2 of the contract.
19. However, I do not find that RLM breached the contract by delivering the items late. I find that the parties mutually agreed to extend the delivery date because one of the

pieces required input from a designer, and that the parties agreed that all the items would be delivered together.

20. MA attempted to deliver the items to the Richardses on November 16, 2018. The Richardses submit that Mr. Richards met MA in the driveway to the Richardses' apartment. Upon inspection of the items, Mr. Richards was not satisfied and sent the items back with MA.
21. The Richardses submit that upon inspection of the over-the-toilet cabinets, they found that the wood was warped, the door hinges were crooked, the doors did not close properly and there were fingerprints on the stain. As well, the stain on the cabinets did not match each other and did not match the various other items. The Richardses submit that MA took measurements and found that the cabinets would not fit through the bathroom doors. They would need to be taken apart and reassembled inside the bathroom, which MA refused to do.
22. RLM denies that the wood for the cabinet doors was warped. The photos do not permit me to draw any conclusions on this point. RLM concedes that there were defects related to stain drips or fingerprints, mismatched stain among the items, and failure of the cabinet doors to close. However, it blames the Richardses for these defects. It submits that the poor staining is due to Ms. Richards' insistence on pine wood and instructions to apply more coats of stain. I note the contract says the cabinet doors would be made of oak. The Richardses' submissions did not address the wood choice, but in a text message to Mr. Marchildon, Ms. Richards disputed insisting on pine and said they followed Mr. Marchildon's advice with respect to wood choice. RLM argues that the cabinet doors did not close because of Ms. Richards' choice of hinges despite being advised the hinges she picked would not work. This assertion is not supported by the evidence.
23. RLM denies that the cabinets would not fit through the bathroom doors. It submits that upon delivery, MA measured the bathroom and discovered that the cabinets were too tall for the bathroom itself. RLM blames this on the Richardses and says they provided measurements that were longer than the height of the bathroom. RLM

submits that when the Richardses discovered this, knowing it was their own fault, they insisted that everything be taken away.

24. MA did not provide evidence and I understand that Mr. Marchildon was not present for the November 16, 2018 delivery. Neither party provided the tribunal with the actual dimensions of the finished cabinets or the height of the bathroom ceiling, so I cannot determine with certainty whether the problem with the cabinets was that they were too tall for the bathrooms or too large to fit in the bathroom doors, or both. Regardless, I accept that the cabinets, as delivered, were not usable. Ms. Richardson accepted some of the blame for this in a text message to Mr. Marchildon, although she insisted the measurements she provided were correct and she simply failed to consider the doorframe. However, I find that RLM also bore some responsibility for checking the measurements to ensure the cabinets would fit both through the door and in the bathroom. At common law, it is an implied term of every contract for work and materials that the materials, when completed, will be fit for their intended purposes. As well, it was an explicit term of the parties' contract that RLM would undertake all work diligently in a good workmanlike manner, in accordance with good quality construction standards and practices. I find that good quality construction practices include verifying measurements and spatial constraints, particularly when the contractor has access to the customer's space, as RLM did.
25. There is no dispute that the wall feature arrived unfinished as it did not have the required hooks along the bottom for towels. RLM says it couriered the hooks to the Richardses' home so they would arrive during install and says Ms. Richards was aware of this. It is not clear whether they arrived on November 16, 2018, or at all.
26. Based on all the evidence, I conclude that there were defects in materials and workmanship. Specifically, I find that the stain had drips or fingerprints and was mismatched, the cabinet doors did not close properly, the cabinets did not fit in the bathrooms, and the wall unit was unfinished.

27. The Richardses acknowledge that MA did “a beautiful job” on the step stools as well as the “other small pieces” which I understand to mean the bath caddy tray and the smaller wall unit. They say, “we would have loved to have these in our home.” Ms. Richards said that MA agreed there were problems with the other items but said he was not going to fix anything because he was angry with how long the job had taken and how much he was being paid by RLM.
28. On November 18, 2018, Ms. Richards reached out to Mr. Marchildon by phone and text message. On review of the lengthy text messages exchanged, I find that the Richardses reasonably attempted to work toward an amicable solution. They proposed solutions for each of the defects they perceived in the items, including re-staining wood, replacing hinges, disassembling the over-the-toilet cabinets and reassembling them in the bathrooms, straightening the warped wood, and purchasing less expensive hooks. I find that the Richardses were interested in finding solutions. There was no indication they would not pay the balance of the contract if the defects were addressed.
29. In response to Ms. Richards’ proposed solutions, Mr. Marchildon refused to accept any blame and accused Ms. Marchildon of bullying. Eventually he said he would speak to his team and company lawyer about what to do and would present it to Ms. Richards.
30. From November 19 to November 30, 2018, Ms. Richards continued to invite Mr. Marchildon to provide a plan to address the defects. Mr. Marchildon failed to do so and continued to argue that RLM was not to blame for the defects. The last text message in evidence on December 3, 2018, shows Mr. Marchildon providing his lawyer’s contact information and RLM’s new business address.
31. I find that RLM failed to meet its obligations under the contract. As noted above, I found that there were defects in materials and workmanship. Under the contract, RLM was required to correct, at its own expense, defects in the work due to faulty materials or workmanship. On delivery, MA made clear that he would not remedy the defects. In later text messages, Mr. Marchildon made clear that RLM was not

accepting responsibility for the defects and would not remedy them. By refusing to correct the defects, RLM breached its contract with the Richardses.

What is the appropriate remedy?

32. Given my finding that RLM breached its contract with the Richardses, I dismiss RLM's claim for payment of the outstanding invoice amount.
33. RLM submits that it spent \$4,750 on the job. However, because it breached the contract, it is responsible for any resulting losses it suffered. I note that RLM could have mitigated its losses by fixing the defects in the items. There was no indication the Richardses were unwilling to pay the balance of the contract if the defects were addressed.
34. The Richardses paid RLM \$2,500 and received nothing. I am satisfied that the Richardses suffered a loss of \$2,500. The contract does not say the deposit is non-refundable. I order RLM to pay the Richardses \$2,500 as reimbursement of their deposit. The Richardses are also entitled to pre-judgment interest under the *Court Order Interest Act* from November 16, 2018, which is the date RLM should have refunded the deposit.
35. Nothing in this decision prevents the Richardses from purchasing some or all of the items from RLM, if they are still interested and if the parties can agree on price.
36. 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 find the Richardses are entitled to reimbursement of \$125 in tribunal fees. They did not claim any dispute-related expenses.

ORDERS

37. Within 14 days of the date of this order, I order RLM to pay the Richardses a total of \$2,652.84, broken down as follows:

- a. \$2,500.00 for return of their deposit;
- b. \$27.84 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125.00 for tribunal fees.

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

39. 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.

40. 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.

Micah Carmody, Tribunal Member