



Civil Resolution Tribunal

Date Issued: June 27, 2019

File: SC-2019-002834

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2386 v. D.S. CLAYTON ELECTRIC . LTD.*,
2019 BCCRT 781

BETWEEN:

The Owners, Strata Plan LMS 2386

APPLICANT

AND:

D.S. CLAYTON ELECTRIC . LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about payment for an invoice for electrical services.
2. The applicant, The Owners, Strata Plan LMS 2386, says that the respondent, D.S. Clayton Electric Ltd., improperly performed electrical services causing its fire panel

not to work. The applicant says it had to pay a third-party company, BFS, to investigate the issue, which the respondent then repaired. The applicant seeks reimbursement of \$2,772.00, the amount it paid to BFS. The respondent says it performed its services properly and is not responsible for BFS's invoice.

3. The applicant is represented by a strata council member. The respondent is represented by Abdul Arifi, its owner.

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. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.
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.

ISSUE

8. The issue in this dispute is whether the respondent performed improper electrical work, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. On November 1, 2018, the respondent performed electrical services for the applicant strata. It is not disputed that during this work, the respondent's technicians noticed illegal wiring and disconnected those wires.
11. Subsequently, the applicant's fire panel experienced a complete loss of power. BFS attended to troubleshoot and investigate the loss of power and determined that a circuit supplying the fire panel with power had been altered. Once notified, the respondent came back and reconnected the wire at no charge to the applicant.
12. The applicant does not contest that the connection was likely illegal, but submits that instead of merely cutting the connection, the respondent should have informed the applicant about the issue. The applicant also submits that the respondent cut the connection without a proper permit. The respondent submits that if an electrician

notices work that has been done illegally, they are obligated to correct the issue, which they did by cutting the connection. The respondent does not dispute that it did not inform the applicant when it cut the illegal connection.

13. In support of its argument, the applicant says that it spoke to the district electrical inspector, DH, who advised that the respondent should have had a permit prior to cutting the circuit in question. In contrast, the respondent submits it also spoke to DH, who advised the respondent was “in the right”. Notably, neither party provided any evidence from DH, such as a statement or expert report.
14. In BFS’s January 28, 2019 invoice, a technician detailed the various attempts between January 10 and 25, 2019 to determine the cause of the lack of power to the applicant’s fire panel. Ultimately, BFS found that the original fire alarm wiring had been run in a conduit for the parkade lighting. New LED lights had been installed between the last fire system inspection and the time the fire panel lost power. On January 25, 2019, BFS determined that the wiring supplying the fire panel had been “un spliced and capped off”, cutting off power to the fire panel, and the conduit had been removed. BFS confirmed it spoke to the respondent, who advised it would be returning to replace the wiring it had removed. BFS stated the respondent was “unfortunately the cause of the panel”.
15. The applicant says that the respondent is responsible for BFS’s invoice because the respondent’s actions of cutting the wire caused the applicant to have to spend money investigating the cause of the issue, and because the respondent did not inform the applicant about the illegal wiring issue and removed the illegal wiring without a permit.
16. Generally, in claims of professional negligence, it is necessary for the applicant to show a breach of the standard of care through expert opinion evidence. However, in this case, I find am able to reach a decision without such evidence.
17. As noted above, the respondent does not dispute that it did not notify the applicant about the illegal wiring, or that it cut the illegal connection, either before the wire

was cut or after. As a result of the respondent's actions, the applicant had to pay BFS to investigate the fire panel's power loss. I find the applicant would not have had to incur that expense if the respondent had notified it of the respondent's actions. In the circumstances, I find that cutting the connection without informing the applicant was unreasonable, and therefore negligent. I make no findings as to whether the respondent's actions in cutting the wire itself met the standard of care of an electrician.

18. Based on the evidence before me, I find the applicant has proven that the respondent acting negligently. It is unclear why the respondent did not inform the applicant of its actions. In any event, I find if the respondent had informed the applicant about the illegal wiring and its obligation to correct the issue, the subsequent investigations by BFS would have been avoided.
19. As a result, I order the respondent to reimburse the applicant \$2,772.00, the total cost of BFS's January 28, 2019 invoice. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from February 28, 2019, 30 days after date of the invoice.

ORDERS

20. Within 28 days of the date of this decision, I order the respondent to pay the applicant a total of \$2,914.77, broken down as follows:
 - a. \$2,772.00 for the cost of investigating the fire panel's power loss,
 - b. \$17.77 in pre-judgment interest under the COIA, and
 - c. \$125.00 in tribunal fees.
21. The applicant is also entitled to post-judgment interest, as applicable.
22. 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.

23. 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.

Andrea Ritchie, Vice Chair