



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dumais v. Kelly Rabb dba Kelly's Plumbing and Gas Services*,
2019 BCCRT 831

B E T W E E N :

FRANCOISE DUMAIS

APPLICANT

A N D :

KELLY RABB (Doing Business As KELLY'S PLUMBING AND GAS
SERVICES)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about plumbing services provided under a \$4,725 fixed price contract. The job was to install plumbing for a 3-piece basement bathroom. The

applicant, Francoise Dumais, says the work done by the respondent, Kelly Rabb (Doing Business As Kelly's Plumbing and Gas Services), was poorly done and also incomplete. She claims a total of \$2,722.94, namely a \$2,200 refund from the \$4,200 she paid towards the contract price, plus various damages she said arose from the respondent's alleged negligence and failure to fulfil the contract.

2. The respondent denies liability and says he did a lot of extra work that the applicant failed to pay for as agreed. He says the applicant has withheld his tools, which she admits and says she will continue to do until this matter is resolved.
3. The parties are each 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* (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. 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.

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: 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.

ISSUE

8. The issue in this dispute is whether the respondent's plumbing services were poorly done and/or incomplete, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant to prove her claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.
10. As noted above, the parties' fixed-price contract was \$4,725. On November 6, 2018 the applicant paid the respondent \$2,625 that was "due up front" under the contract, and then on November 30 another \$1,575 "due on rough in", for a total of \$4,200. As discussed below, there were 'extras' charged by the respondent, but not paid.
11. In addition to the \$2,220 claimed partial refund for the \$4,200 she paid under the contract, the applicant also claims various damages discussed separately below, which says the respondent caused and must pay for. I note the applicant withdrew her claim of \$131.25 for emergency services she says were necessary to assess the reason for water backfilling, because her strata corporation repaid her.
12. The respondent last worked on site on or about November 28, 2018. It is undisputed the applicant fired the respondent on December 12, 2018.

13. One of the respondent's invoiced 'extras' is a November 29, 2018 invoice for \$630, for chipping concrete and removing a broken piece of cast iron pipe, and a re-pipe to Code. I accept the applicant asked the respondent to do this work and agreed to pay him for it. I note the respondent's contract expressly excluded cement work, but ultimately, I accept the respondent ended up doing some cement work along with digging dirt. While the applicant says her contractor Tom Fowler with Second Life Renovations did all of the cement work, Mr. Fowler's April 14, 2019 statement does not say this. Rather, he simply says the cement was removed as the respondent indicated and that he cut some concrete, and that the respondent removed the dirt. The second 'extra' was a November 26, 2018 \$997.50 invoice for installation of a back-flow valve, discussed further below.
14. It appears the parties' relationship soured after the applicant became frustrated with the respondent's approach to handling an issue that arose during the plumbing work, namely that water was filling trenches that had to be dug into her basement floor cement to facilitate the plumbing work. In a text the respondent said he thought it was the applicant's condensate furnace dripping. Later, the applicant determined it was ground water from heavy rains, and perhaps a problem with her drain tile. The applicant filed a January 15, 2019 statement from ASAP Plumbing & Heating Ltd. (ASAP) who said the issue was groundwater. Nothing in that statement was critical of the respondent. I find nothing turns on the diagnosis of this water issue, which I find fell outside the scope of the respondent's work, which was to install a bathroom. There is no suggestion the respondent caused the water problem.
15. Generally, the respondent denies liability for everything except perhaps part of the cost of the faucet, which he admits was damaged although he says her claim is excessive. For the rest, the respondent says he is a plumber, not a contractor or framer, and that he finished about half the job before the applicant fired him. The applicant says he was not hired to do a review of the applicant's plumbing system. He says he was only paid for work that he actually completed plus the agreed upon extras, such as re-piping and digging cement. The respondent denies telling the

applicant on November 29, 2018 that he was 90% done the contract, as she alleges.

16. As for the respondent's tools that the applicant has refused to return, the applicant provided an April 14, 2019 statement from Mr. Fowler, who said in his opinion the tools were not worth \$4,000 as claimed by the respondent (although there was no counterclaim filed). He said they were old and included only a Hitachi demolition hammer, bolt cutters, and a shop vacuum. I note the applicant's photos of the respondent's tools appear to show a box of piping and a filter, shovels, and other items in bags so I cannot see their contents. I find there was no legitimate basis for the applicant to withhold the respondent's tools in an attempt to leverage a refund. I will address the respondent's tools at the end of this decision.

Refund for allegedly incomplete and incorrect work - \$2,200

17. In her January 13, 2019 demand letter to the respondent, the applicant said she had his work reviewed by 2 plumbing companies and both agreed the respondent had done only \$2,000 worth of work. I infer the \$200 balance of the \$2,200 claim relates to the GST the respondent charged. This is why the applicant claims a refund of \$2,200 from the total \$4,200 she paid the respondent.
18. The applicant wrote that 95% of the concrete removal was done by Mr. Fowler, which as noted above I find is unsupported by the evidence. The applicant also submits that both of the companies she contacted said "a good amount" of the respondent's work would have to be re-done to pass a plumbing inspection.
19. I will deal with the quality of the respondent's work next.
20. One of the companies the applicant contacted was ASAP, but in their December 14 and 18, 2018 emails there is nothing critical of the respondent's work, other than a suggestion that there was no real gain to a back-valve in the floor, for which the respondent invoiced the applicant \$997.50. The respondent says the applicant did not pay that invoice, but he also says their agreement was that her payments under

the contract were first applied to these invoiced 'extras'. On balance, I find ASAP's comments about the back-valve are not sufficiently clear that the respondent's decision to proceed with the back-valve was unreasonable, such that the applicant should not have to pay for that work, which she had agreed to at the time.

21. ASAP's December 14, 2018 quote was \$3,250 plus GST to "complete your bathroom reno". It involved: completion of the rough in drainage and water piping, installation of the shower valve and drain after the concrete work and framing was done, installation of hot water tank pan and pipe to floor drain, and installation of the toilet, sink and shower trim. Nothing in this quote is critical of the respondent or in any way addresses the quality of the work the respondent did.
22. In a separate December 18, 2018 email, ASAP said the rough-in was only 40% complete because the vent needs to be complete for the drainage and none of the water piping for the fixtures was done. Here, ASAP estimates that the respondent had done about \$2,000 worth of work, based on the completed drainage rough-in and the removal of existing plumbing with the main water pipe being moved into the wall. Otherwise, ASAP said for a few things it would do it differently if it did the job, but that "what is done is not wrong but different". ASAP also said from its "experience" the inspector would not allow an automatic air vent because there was an option to vent the plumbing. Other than the latter comment, which I find is somewhat speculative, there was no criticism of the respondent's work.
23. In a January 10, 2019 email from Mike Bowles at Lionview Contracting and Maintenance Ltd., he said "most rough plumbing done, some needs redone", but did not specify what needed to be re-done or why. Mr. Bowles said all piping to fixtures, vent pipe, and rough-in inspection still needed doing, which the respondent admits was still outstanding. Mr. Bowles said, "maybe 50% done at most", but that he would not get involved in any legal issues with past plumbers. Given the lack of specificity in Mr. Bowles' email, and that there is insufficient evidence he was aware of the scope of work the respondent did, I find I can place little weight on Mr. Bowles' statement.

24. Given the above, I find the weight of the evidence does not show that the respondent's work failed to meet the required professional standard. The applicant has not met the burden of proof.
25. Next, I will address the scope of the respondent's work and what amount of the contract he had completed by the time he was terminated, plus what extras are owing. I find the amounts of the applicant's payments under the contract are not necessarily determinative.
26. Based on the evidence, including the parties' emails and text messages, I find the applicant agreed to pay the respondent for the extras, in addition to the contract price. Those extras totaled \$1,627.50. The applicant says she is owed \$2,200 under the contract, but she does not factor in the \$1,627.50 that I find is payable. In other words, the combined project total was \$6,352.50, and the applicant paid \$4,200, or 66% of the total. I find ASAP's and Lionview's estimates of the amount of work done, 40% or 50%, to be speculative. I am not prepared to order a refund based on those estimates, given the \$1,627.50 figure that effectively added to the \$4,725 contract amount. While the respondent did not file a counterclaim, I find this \$1,627.50 would be appropriate to consider as a set-off.
27. The applicant also says the respondent installed her laundry connection box backwards, and ASAP fixed it. The respondent says it was installed backwards with the applicant's consent during the construction, so the applicant could still use her laundry machines on the other side of the wall, away from the construction area. There is no monetary claim attached to this issue, and I find no compensation is warranted given the respondent's explanation which is not particularly disputed.
28. I say the same about the applicant's references to a 'cheater vent' and a ground wire. There is no plumbing evidence critical of the respondent's work or any value attached to these issues.
29. Given my conclusions above, I dismiss the applicant's claim for the \$2,200 refund from the \$4,200 paid.

Broken kitchen faucet - \$261.80

30. It is undisputed that on November 29, 2018 the applicant's kitchen faucet was inadvertently damaged during the respondent's work, because when the water was turned back on a small amount of sand must have got into the faucet aerator. The respondent says he tried to fix it, but because her faucet was "cheap" it could not be fixed. He offered to replace the sprayer, but the applicant refused and said she would replace the whole faucet and back-charge him. The respondent says the amount claimed is excessive, and that the applicant is trying to get a faucet upgrade at his expense.
31. The applicant provided a screenshot of a Glacier Bay faucet, the type that was damaged, priced at \$169, though the image in evidence does not show a date or store. This was to show that the replacement faucet did not cost more than the original. I accept this evidence.
32. The applicant claims \$156.80 for a new Moen faucet she bought on December 13, 2018 from Home Depot, plus \$105 for its December 17, 2018 installation by ASAP. The applicant's receipts match these amounts. The applicant says Home Depot told her the sprayer in her Glacier Bay faucet could not be replaced, and so that is why she bought the Moen replacement. I find the \$156.80 amount is reasonable, but I dismiss the \$105 installation charge. The applicant has not provided a reasonable explanation for why she did not allow the respondent plumber to install the replacement faucet, rather than later paying ASAP to do it. I allow \$156.80, plus pre-judgment interest under the *Court Order interest Act* (COIA) from December 13, 2018, the date the applicant bought the faucet, until the date of this decision. This equals \$1.72.

Damage to support wall - \$226.14

33. The applicant says the respondent cut holes for pipes larger than was necessary. Photos show large holes, but it is unclear what turns on it. I note the applicant did not include this item in her January 13, 2019 demand letter. There is nothing in

evidence from a plumber criticizing the respondent's work, including from either ASAP or Lionview. While the applicant provided Mr. Fowler's February 10, 2019 \$226.14 invoice to add 2" x 4" support studs due to large holes, this does not necessarily mean the respondent's work was substandard. In other words, I do not know if the added support studs would have been required in any event.

34. In his April 14, 2019 statement, Mr. Fowler denied the respondent's allegation that he asked Mr. Fowler to "fir" out the wall to make it wider. However, again, this does not mean the respondent's holes in the wall represent substandard work. The respondent says the holes needed to be somewhat larger to accommodate expansion. I have no plumber evidence to the contrary. On balance, I find the evidence does not show the respondent's work was wrong here, and so I dismiss the applicant's claim for \$226.14.

Dirt in freezer vent - \$35

35. The applicant paid her cleaner \$35 in January 2019 to clean the freezer vent, which the applicant says was filled with dirt due to the respondent failing to take appropriate care when he was piling the dirt that came out of the floor. I note the applicant did not include this in her January 13, 2019 demand letter to the respondent.
36. In Mr. Fowler's April 14, 2019 statement, he said that the respondent said he would remove the dirt from the trenches dug in the basement floor cement, and that the respondent never asked him to remove the dirt. However, there is nothing in the respondent's plumbing contract that indicates he is responsible for removal of dirt, and again I note that his contract expressly excluded cement work. While the respondent ultimately did some digging as agreed between the parties, that does not mean he is responsible for the dirt removal.
37. The applicant did not provide any photo of the freezer vent or the surrounding dirt. She did not provide a statement from her cleaner either. Quite apart from the fact it is not shown the respondent was responsible for dirt removal, the applicant's receipt

simply says, “freezer cleaning” and I find that does not show the respondent’s work required that cleaning. I dismiss the \$35 claim.

38. In summary, I have dismissed all of the applicant’s claims except for \$156.80 for the broken faucet, plus \$1.72 in pre-judgment interest.
39. As noted above, I find the applicant has unreasonably withheld the respondent’s tools pending resolution of this dispute. I find the respondent is entitled to the tools’ return, or an order for compensation for their value. I do not have a complete description of those tools, other than they include a shop vacuum, a Hitachi hammer drill, 2 shovels, and 2 boxes of “fittings”. I also have insufficient evidence as to their value. Under section 118(1)(b), I find the most appropriate outcome is an order that the applicant to return the respondent’s tools to him, as set out in my order below.
40. In accordance with the Act and the tribunal’s rules, as the applicant was almost entirely unsuccessful, in all of the circumstances in this dispute I exercise my discretion to find she is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDERS

41. Within 21 days of this decision, I order the respondent to pay the applicant a total of \$158.52, broken down as follows:
 - a. \$156.80 in damages, and
 - b. \$1.72 in pre-judgment interest under the COIA.
42. Within 21 days of this decision, I order the applicant to return the respondent’s tools and fittings to him, by making them available for pick-up by the respondent or someone he designates in writing: a) at the applicant’s address specified in this tribunal proceeding, or at another location agreed to in writing by the parties, and b) at a reasonable time on 3 days’ written notice from the respondent, which can be by email using the email addresses provided in this tribunal proceeding.

43. The applicant's remaining claims are dismissed. The applicant is entitled to post-judgment interest, as applicable.
44. 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.
45. 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. This tribunal order can only be enforced 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.

Shelley Lopez, Vice Chair