Civil Resolution Tribunal

Date Issued: July 30, 2019

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Type: Small Claims

Civil Resolution Tribunal

Indexed as*: Cunningham v. Van Isle Paint Inc.,* 2019 BCCRT 918

B E T W E E N :

RANDY CUNNINGHAM

APPLICANT

A N D :

VAN ISLE PAINT INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Randy Cunningham, says the respondent, Van Isle Paint Inc., did a poor job of painting his home's exterior, and that it needs to be repaired and repainted. The applicant claims a $3,725 refund of the parties' full contract price.

2. The respondent denies its work was substandard and says the problems are related to the age of the applicant's home and the applicant's choice of a cheaper paint that the respondent did not recommend. The respondent says its paint job comes with a 24-month warranty to fix common deficiencies like these, and so an opportunity to remediate the work should at most be given, not a full refund.

3. The applicant is self-represented. The respondent is represented by Glen Smethurst, the respondent's 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* (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 do one or more of the following where permitted under section 118 of the Act: 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 to what extent, if any, the respondent paint company must refund the applicant $3,725 for an allegedly poor paint job.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant to prove his 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. After preliminary discussions that began in February 2018, in early April 2018 the applicant hired the respondent to paint the exterior of his 1944 home located on Vancouver Island. Based on the respondent's "paint log", the job was done between August 27 and September 13, 2018. The applicant's home has cedar wood siding, and wood soffits, fascia, windows, and trims. The scope of work included: pressure wash, bleach and clean, scrape, sand, caulk, fill, prime and paint the exterior siding, soffit trim, windows, sills, and fascia.

11. The applicant says soon after completion, he started to notice problems with the paint quality and application: dark streaking, then numerous paint blisters. Based on the 'paint log', the respondent spent 2.5 hours fixing deficiencies on September 14, 2018. On October 9, 2018, the applicant called with concerns about 'streaking'. The applicant says the painter said the problem was with the home's old wood and moisture, which the respondent does not deny. On October 26, 2018, the respondent gave the applicant a deficiencies report and said it would put the

applicant on the schedule for 'late spring' to address them under the 24-month warranty.

12. The applicant was unhappy with the respondent's explanation and suggested timeline. He found a paint inspector with the Master Painters and Decorators Association (MPDA), who did an inspection in December 2018. As noted by the applicant, the December 3, 2018 MPDA inspection report in evidence, which contains annotated photos, says the inspector noted debris, runs, and sags within the paint coating, limited scraping, no sanding, pressure nozzle water damage, soffits with mildew and numerous paint blisters on the siding. The report concluded the quality of the paint application did not meet industry standard, and that the home's exterior would need to be repaired and repainted.

13. The applicant filed this tribunal proceeding on January 16, 2019, unprepared to wait for 'late spring' 2019 for the respondent to fix the deficiencies.

14. The applicant says his contract with the respondent included "low pressure wash with fan tip", bleaching to kill mildew, and surface sanding. Yet, there is the noted pressure washer nozzle damage, soffit mildew, and apparent rough surface prep. The applicant says the claimed $3,725 represents only a refund of what he paid the respondent and will not come close to the cost of remediation. Nothing turns on this, though I accept that the remediation will cost at least $3,725.

15. The respondent denies it did a poor paint job. It says that due to the age of the home and the increased moisture in the Vancouver Island air, there is an increased chance of defects surfacing after the job is completed. The respondent says this is the reason for its "24-month workmanship" warranty to fix deficiencies. As discussed below, I reject the respondent's argument.

16. Also, the respondent notes the applicant specifically chose a cheaper paint, and not the one the respondent recommended that came with a lifetime warranty against bubbling and blistering paint. However, I find the fact the more expensive paint had a lifetime warranty is irrelevant because there is no dispute the paint failed within a

few months. Based on the emails before me, the respondent also never said the paint chosen by the applicant would be unsuitable.

17. The respondent denies there is any industry standard and says the MPDA inspector is not a recognized entity. The inspector, Glen Ashmore, identifies himself as an MPI Certified Architectural Coating Inspector. The respondent also questions whether the inspector was told the applicant chose the cheaper paint against advice. The respondent says it consulted "another professional" who worked for years in Victoria as a painter and who confirmed it is normal for old houses to require fixing of these sorts of deficiencies. Yet, the respondent did not provide a statement from this other professional.

18. On balance, I find the respondent failed to meet the requisite standard of care in painting the applicant's home. It may be true that there is no universally acknowledged painting "code" or standard and no licensing or regulatory body. However, I find I can rely on the MPDA report to conclude the respondent's work was substandard. The photos and accompanying narrative are detailed. The inspector noted the particular type of paint used by the respondent, as chosen by the applicant, and so that paint's characteristics were considered. While the respondent emphasizes the applicant chose a cheaper paint, there is no evidence the respondent altered its warranty in any way or provided a warning about the deficiencies that occurred based on the applicant's paint selection. I reject the respondent's speculation that the MPDA report is biased because "it is likely" the applicant will hire them to complete the paint job. Further, the applicant says the MPDA does not offer painting services and while that was in a final reply submission there is no evidence before me to the contrary.

19. Based on the photos, I accept the respondent's paint job was unsightly and unsuccessful. The photos show drips, bubbling, cracking, and some mildew growth. The MPDA report identified pressure wash nozzle damage and based on the photo I accept this is what happened. On balance, I am satisfied that the MPDA inspector Mr. Ashmore is qualified to provide expert opinion on the respondent's paint job,

and I accept that opinion. I accept his recommendation is that the house essentially has to be re-prepped and re-painted.

20. I turn then to the respondent's argument that the applicant should have waited for it to fix deficiencies in the spring of 2019, and, that an 'order to fix' should be the remedy now. I disagree. Based on the photos and my conclusions above, I find the substandard quality of the work went beyond mere deficiencies that the respondent could address the next spring. Further, if I were to order the respondent to fix the deficiencies, that value could exceed the tribunal's $5,000 jurisdiction. Finally, even if section 118 of the Act permitted me to make an order to fix the paint job, which would be a form of injunctive relief, I find such an order for specific performance would be inappropriate. There could be a further dispute about whether the repair job was adequate, and that would not bring finality to this dispute. The applicant seeks only a refund of the $3,725 he paid to the respondent, which I find reasonable. I find an order for the $3,725 refund is the most appropriate outcome in this dispute.

21. The applicant is entitled to pre-judgment interest on the $3,725 under the *Court Order Interest Act* (COIA), from September 14, 2018, when the applicant paid the respondent's invoice. This totals $58.12.

22. In accordance with the Act and the tribunal's rules, I find the successful applicant is entitled to reimbursement of $175 in paid tribunal fees. The applicant says he paid $449.06 on December 6, 2018 for the MPDA report, but the associated invoice was for a total of $420 inclusive of GST. I find the MPDA report was reasonably obtained and it was useful, and I allow the $420 expense, plus pre-judgment interest under the COIA from December 6, 2018. This totals $5.17.

23. The applicant also claims $21.06 in postage expenses to serve the Dispute Notice, plus $8 for "printing". I find the $21.06 expense is reasonable and I allow it. I dismiss the $8 claim for printing as there is no explanation for why it was necessary.

ORDERS

24. Within 14 days of this decision, I order the respondent to pay the applicant a total of $4,404.35, broken down as follows:

    a. $3,725.00 in damages,

    b. $63.29 in pre-judgement interest under the COIA,

    c. $175.00 for tribunal fees, and

    d. $441.06 for dispute-related expenses.

25. The applicant's remaining claim for $8 reimbursement of printing costs is dismissed. The applicant is entitled to post-judgment interest as applicable.

26. 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.

27. 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.

Shelley Lopez, Vice Chair