



# Civil Resolution Tribunal

Date Issued: August 20, 2019

File: SC-2019-003147

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1031990 BC Ltd. v. Alleylane Homes Construction & More Ltd. et al*,  
2019 BCCRT 988

B E T W E E N :

1031990 BC LTD.

**APPLICANT**

A N D :

ALLEYLANE HOMES CONSTRUCTION & MORE LTD. and TRAIL  
APPLIANCES LTD.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. The applicant, 1031990 BC LTD. (homeowner), built a laneway home (project). The homeowner hired the respondent, ALLEYLANE HOMES CONSTRUCTION & MORE LTD. (Alleylane), to build the project, but the homeowner says it took over

construction after Alleylane's builder license was revoked. This dispute is about a \$1,500 credit balance held by the respondent, TRAIL APPLIANCES LTD. (Trail). The \$1,500 relates to an overpayment for appliances Alleylane ordered for the homeowner but which the homeowner paid for. The homeowner wants an order that Trail release the \$1,500 to it. The homeowner is represented by Anil Chauhan.

2. Trail admits it refused to refund the homeowner the \$1,500 credit balance, because the order was placed through Alleylane's account. Trail is represented by Bryan Shane, its credit manager.
3. Alleylane did not file a Dispute Response or participate in this proceeding as required, despite being served, and so it is in default as discussed below.

## **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 (CRTA)*. 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.
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 CRTA: 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 applicant is entitled to the \$1,500 appliance credit held by the respondent Trail.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the burden of proof is on the applicant homeowner to prove its 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 provided under the tribunal's rules, the tribunal served Alleylane with the Dispute Notice at its registered business address, by sending it through regular mail. The tribunal's rules state there is deemed service within 10 days of mailing. As noted, Alleylane never filed a Dispute Response. This means it is in default. Generally, liability is assumed when a party is default, meaning the other party's position is considered accurate.
11. Based on the evidence before me, it is clear the parties all understood the appliances would be purchased through Alleylane's account with Trail, to get better pricing. However, the undisputed evidence before me is that the homeowner paid for the project's appliances, and overpaid by \$1,500.
12. Given Alleylane's default, I find that the homeowner is entitled to the \$1,500, rather than Alleylane. This conclusion is also supported by the evidence filed, which

includes copies of 3 cheques totaling \$31,612.83, between September 2016 and May 2017, which the homeowner wrote to Trail as payment for kitchen appliances for the project. Trail's invoices addressed to Alleylane for the project total \$30,112.83. The difference is \$1,500, the amount claimed in this dispute.

13. Trail admits that it has a \$1,500 credit balance for the project. It only refused to return the \$1,500 to the homeowner because the order was placed through Alleylane's account and Alleylane had refused to allow Trail to release it. Trail does not otherwise object to releasing the \$1,500 to the homeowner. I find Trail must refund the homeowner the \$1,500 at issue, given it is undisputed Trail holds those funds that were paid by the homeowner.
14. The homeowner is entitled to pre-judgment interest under the *Court Order Interest Act* on the \$1,500, from May 18, 2017 which was Trail's last invoice date showing the credit was available. This equals \$45.04, which I find Trail should pay since it has had the use of the homeowner's funds.
15. In accordance with the CRTA and the tribunal's rules, the successful party is generally entitled to reimbursement of tribunal fees and reasonable dispute-related expenses. The applicant homeowner was successful and so it is entitled to reimbursement of \$125 in tribunal fees.
16. The question here is whether Alleylane or Trail should pay those tribunal fees. On the one hand, Alleylane is in default and unreasonably refused to give Trail consent to release the \$1,500 to the homeowner. On the other hand, Trail's submission is that it has provided its general response, as discussed above, and that it will abide by the tribunal's decision. Apart from asserting that Alleylane refused its consent to release the funds to the homeowner, Trail has not provided any evidence that would show it reasonably believed Alleylane had a valid claim to the \$1,500. Trail knew the homeowner had paid all of the money for the appliances and so it knew it was the homeowner who had overpaid by \$1,500. Bearing in mind the tribunal's mandate that includes proportionality, I exercise my discretion and find the most

appropriate result is to order Trail to reimburse the applicant the \$125 in tribunal fees. There were no dispute-related expenses claimed.

## **ORDERS**

17. Within 14 days of this decision, I order the respondent Trail to pay the homeowner a total of \$1,670.04, broken down as follows:
  - a. \$1,500 in debt, and
  - b. \$45.04 in pre-judgment interest under the COIA, and
  - c. \$125 in tribunal fees.
18. The applicant homeowner is entitled to post-judgment interest, as applicable.
19. Under section 48 of the CRTA, 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.
20. Under section 58.1 of the CRTA, 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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Shelley Lopez, Vice Chair