



Civil Resolution Tribunal

Date Issued: September 6, 2019

File: SC-2019-001699

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cohen v. Pure Design Inc.*, 2019 BCCRT 1060

BETWEEN:

AMI COHEN

APPLICANT

AND:

PURE DESIGN INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Ami Cohen, provided tiling services to the respondent, Pure Design Inc. Mr. Cohen wants the respondent to pay him \$3,616.76 for unpaid tile installation services and \$367.50 for unpaid tile repair services for a total of \$3,984.26.

2. The respondent says the applicant installed improper materials and his work was deficient, which caused the respondent to lose money. The respondent says it is not required to pay the applicant the full amount of his invoices, but offered to pay him \$1,000, which he refused.
3. The applicant is self-represented and the respondent is represented by an employee or principal.

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. Some of the evidence in this dispute amounts to a "he said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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 make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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 is required to pay the applicant \$3,984.26 for tile installation and repair services.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
11. The applicant submitted a July 18, 2018 quote he sent to the respondent to provide tiling services in the kitchen and 3 bathrooms of a home for a total of \$11,756.50. The quote indicates that the respondent had already paid a deposit of \$3,606.54, and that the balance owing was \$8,149.96.
12. The quote states that for 2 of the bathrooms the applicant would supply and install "infloor nu heat wire 240w 40sqft kit inc. thermostate" (reproduced as written), and

for the third bathroom he would install the same thing, but only 20 square feet instead of 40 square feet.

13. The respondent submitted a statement from the electrician on the project who said he spoke with the applicant on 2 separate occasions during the project about using 120-volt in-floor mats instead of 240-volt mats, though he could not recall the dates. He said on the first occasion he told the applicant that the in-floor mats in the bathrooms had to be 120-volt and not 240-volt. He said on the second occasion he reminded the applicant of the importance of the mats being 120-volt. The respondent says that despite these 2 conversations with its electrician, the applicant installed the incorrect 240-volt heating mats instead of the required 120-volt mats, and then installed tiles over them.
14. The applicant says the respondent never raised the issue of the heating mats with him until this dispute, so he was unable to resolve the issue at the time he was completing the work.
15. On balance, I find there is insufficient evidence that the applicant installed the wrong voltage mats against the respondent's instructions. The quote clearly indicates the mats were to be for 240 volts, not 120 volts. There is no evidence the respondent told the applicant that 120-volt mats were required before he started work on the project. While the respondent's electrician said he told the applicant the mats needed to be for 120 volts, he did not indicate at what stage of the applicant's work on the project he informed him of this, and the applicant denies that these undocumented conversations occurred. The respondent says that to correct the applicant's error its electrician ran new wiring behind the baseboards and walls for an additional cost of approximately \$2,500. While the applicant admits that the respondent spent \$2,500 for new electrical wiring, he says this was not a result of any errors on his behalf.
16. The applicant submitted a July 18, 2018 invoice showing a total of \$12,123.30, and indicating the respondent had paid \$7,606.54, with a balance owing of \$4,516.76. The applicant acknowledges the parties agreed on a \$900 deduction from this

invoice to account for his mistake on a previous project. This leaves a \$3,616.76 balance owing. Since it is undisputed that the applicant completed the work included in the invoice, and since I have found the applicant did not install the incorrect heating mats against the respondent's instructions, I find the respondent is required to pay the applicant the \$3,616.76 balance owing on the invoice.

17. The applicant submitted a second invoice for the same project dated January 1, 2019 for extra work removing tiles in the children's bathroom and removing backsplash in the kitchen for a total of \$367.50. It is undisputed that the applicant completed this work. The applicant says this work was to correct the respondent's mistakes, while the respondent says the work was to correct the applicant's deficiencies, and it should not be required to pay for this additional work. However, the respondent provided no evidence that the applicant's initial work in these areas was deficient. Therefore, I find the respondent is required to pay the applicant the full amount of this invoice.
18. In total, I have found the respondent is required to pay the applicant \$3,984.26. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant is entitled to pre-judgment interest under the COIA on the amount owing calculated from January 1, 2019, which is the date of second invoice, to the date of this decision. This equals \$53.00.
19. Under section 49 of the CRTA 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 see no reason in this case not to follow that general rule. Since the applicant was successful I find he is entitled to reimbursement of \$175 in tribunal fees. He has not claimed any dispute-related expenses.

ORDERS

20. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$4,212.26, broken down as follows:
- a. \$3,984.26 as payment of the 2 invoices,
 - b. \$53.00 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in tribunal fees.
21. The applicant is entitled to post-judgment interest, as applicable.
22. 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.
23. 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.

Sarah Orr, Tribunal Member