



# Civil Resolution Tribunal

Date Issued: September 12, 2019

File: SC-2018-008422

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Neal Wilkinson (dba Neal Wilkinson Furniture) v. Kanne*,  
2019 BCCRT 1075

**B E T W E E N :**

Neal Wilkinson (Doing Business As Neal Wilkinson Furniture)

**APPLICANT**

**A N D :**

Reayane Kanne

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. This dispute is about the amount owing for home restoration after a fire. The applicant, Neal Wilkinson (doing business as Neal Wilkinson Furniture), says that

the respondent, Reayane Kanne, still owes \$2,252.12 for his services. The respondent says the applicant did an incomplete and deficient job.

2. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the 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.
4. 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 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.
5. 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.

6. 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**

7. The issue in this dispute is whether the respondent must pay the applicant \$2,252.12, or some other amount, for unpaid restoration work.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The respondent hired the applicant in November 2017 to complete restoration work after fire damage. The respondent had fired a previous repair company that had done some beam repair work. The applicant provided an estimate for the remaining beam repair work and overall restoration and repair work. The respondent's insurer agreed to pay \$45,706.28 for the work, which were provided in two payments of \$22,853.14.
10. The insurer provided the first payment directly to the applicant. The second payment was provided to the respondent, to be paid to the applicant when the work was finished to her satisfaction. After the respondent received the second cheque on February 7, 2018, the work and corresponding payments to the applicant were delayed. At least part of the delay was prompted by the respondent's continuing conflict with the first restoration company.

11. On June 12, 2018, the respondent fired the applicant. She provided a cheque for \$1,600 only. The applicant sent a final June 13, 2018 invoice for labour and material totaling \$3,650.89. As noted in a July 2, 2018 email, this invoice was for work actually completed, and after accounting for the \$1,600 payment, \$2,050.89 remains unpaid. Similarly, the applicant provided a July 23, 2018 summary invoice that states \$2,050.89 is still owing.
12. I note that the summary invoice amount provided a subtotal of \$32,058.50, which is less than the total funds allocated to the repair work by the insurer. The evidence shows that this is in part attributable to the work being incomplete. More significantly, the applicant also did not replace the beams installed by the first contract as he felt that they were good and only required sanding and finishing. The insurer had allocated \$8,797.60 of the total funds for the beam replacement. The applicant says, and I find, that he advised the insurer and the respondent of this and the respondent decided not to replace the beams.
13. The applicant claims that \$2,252.12 remains unpaid. However, I find this to be in error. According to the submissions and evidence (including the summary invoice mentioned above), the respondent owes \$2,050.89. My reasons follow.
14. The applicant supports his claim with the parties' contract, a logbook showing the hours worked, receipts for materials, and documents consistent with the work being done, including payment records and text messages. I find that these documents are accurate and support the applicant's claim.
15. In a "defective work" case such as this, the ultimate burden of proof is on the party asserting that a breach has occurred: *Lund v. Appleford*, 2017 BCPC 91. Here, the respondent says the applicant breached the parties' contract by producing poor work and inflating his hours. Further, she says the applicant did not provide invoices in a timely manner and acted unprofessionally. This entitled her to fire the applicant early.

16. In this case, the respondent must show that the applicant breached the standards expected of a competent member of the roofing trade. Evidence from those in the occupation is necessary as this is not a non-technical matter or matter on which an ordinary person may be expected to have knowledge: *Burbank v. R.T.B.*, 2007 BCCA 215.
17. This applicant's claim is for work that he completed and was not paid for. The respondent provided no evidence or details from anyone in the applicant's trade about the quality of the work done or how the hours worked were allegedly inflated. Instead, the respondent provided a number of undated photographs, which I infer were used to show the applicant's alleged poor workmanship. However, the significance of the photographs is not self-evident and little explanation was offered by the respondent. I find the photographs to be largely irrelevant. I also accept the applicant's detailed explanations of each of the photographs. In general, they either show the state of the building before the applicant began or completed work, or fire damage that was not his responsibility to fix. The respondent did not contradict these explanations.
18. The respondent's position was largely that the applicant did not complete all of the work. She also alleges that her walls were damaged, and she had to repaint both bathrooms. She submits she should be reimbursed \$2,080 for her own labour, and materials she purchased to complete the job. She also provided a July 11, 2019 estimate and March 13, 2019 estimate for further remediation work and skylight replacement from third parties.
19. I am unable to place significant weight upon this submission. The respondent fired the applicant before he could complete the work. I was not provided enough evidence to conclude that this was reasonable in the circumstances.
20. As for the third-party estimates, I find they are largely irrelevant. They do not comment on the quality of the applicant's work. They also include work that the applicant had been hired to do but did not complete because he was fired early (in particular, skylight replacement). One of the estimates also includes replacing a

beam. As noted above, this was not part of the contemplated work as he explained to the insurer and the respondent that replacing the beam was unnecessary, and the respondent agreed.

21. In summary, I find the applicant is entitled to payment of \$2,050.89. He is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from June 13, 2018, being the date of the last invoice.

## **TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES**

22. Under section 49 of the CRTA, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.
23. The applicant was successful in this dispute. I therefore award the applicant \$125 for reimbursement of tribunal fees. The applicant did not claim for dispute related-expenses.

## **ORDERS**

24. I order the respondent to pay the applicant a total of \$2,220.03, broken down as follows:
- a. \$2,050.89 in debt;
  - b. \$44.14 in pre-judgment interest under the COIA from June 13, 2018, and
  - c. \$125.00 as reimbursement of tribunal fees.
25. The applicant is entitled to post-judgment interest under the COIA.
26. 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.

27. 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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David Jiang, Tribunal Member