



Civil Resolution Tribunal

Date Issued: October 16, 2019

File: SC-2019-002842/SC-2019-002978

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ritchie v. Rather Be Plumbing Ltd.*, 2019 BCCRT 1191

B E T W E E N :

CHELSEA RITCHIE

APPLICANT

A N D :

RATHER BE PLUMBING LTD.

RESPONDENT

A N D :

CHELSEA RITCHIE

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. These disputes are about residential construction services.
2. In the Dispute Notice for SC-2019-002842, the respondent is identified as Rather Be Plumbing Ltd. In SC-2019-002978, the party is identified as Rather Be Plumbing Ltd without punctuation. I have used the Dispute Notice format in the style of cause.
3. In SC-2019-002842, the applicant Chelsea Ritchie says the respondent Rather Be Plumbing Ltd. (Rather Be) overcharged, did incompetent work and wrongly removed materials during work on her detached garage suite. Ms. Ritchie seeks an order that Rather Be not seek payment of \$3,851.16, made up of a \$3,105.78 invoice and \$745.38 interest. Ms. Ritchie also asks that Rather Be remove any “collections/liens/claims” from her credit report and property.
4. Rather Be says the job was completed satisfactorily, on time and that billing for the work was appropriate. Rather Be asks that I dismiss Ms. Ritchie’s dispute.
5. In SC-2019-002978, Rather Be claims for an order that Ms. Ritchie pay the \$3,105.78 it says she owes for the work completed, plus interest.
6. Ms. Ritchie is self-represented. Rather Be is represented by owner Jarod Hughes.

JURISDICTION AND PROCEDURE

7. 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.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects,

this dispute amounts to a “she said, he said” scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

9. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
10. 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.
11. 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.

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12. Ms. Ritchie’s claim is for injunctive and declaratory relief only. Standing alone, I cannot grant the orders she seeks because they are outside the tribunal’s jurisdiction. I refuse to resolve them under section 10 (1) of the CRTA.
13. To the extent that Ms. Ritchie’s claims are defences to Rather Be’s claim in SC-2019-002978, I will address them as part of that dispute.

ISSUES

14. The issues in this dispute are:

- a. whether Rather Be performed satisfactory construction work for Ms. Ritchie, and
- b. whether Rather Be is entitled to payment of their \$3,105.78 invoice, plus interest.

EVIDENCE AND ANALYSIS

15. In SC-2019-002978, Rather Be bears the burden of proving its claim on a balance of probabilities. That is, Rather Be must prove that it completed the work charged for, on a balance of probabilities. Ms. Ritchie raises several defences, including an allegation that Rather Be's work was defective. As discussed further below, where a party alleges defective work, they bear the burden of proving the defect. I only refer to the evidence and submissions below as I find necessary to provide context for my decision.
16. On September 20, 2018, Ms. Ritchie texted Mr. Hughes and asked him to do plumbing work for her detached garage suite, on a time and materials basis. Mr. Hughes agreed that Rather Be would take the job.
17. The parties also agreed that Rather Be would provide gas contractor services for installation of Ms. Ritchie's on-demand gas hot water tank.
18. On October 3, 2018, Ms. Ritchie paid a \$1,200 deposit to Rather Be. Rather Be started work on the project in early October.
19. On October 8, 2018, Ms. Ritchie texted Mr. Hughes saying that she did not have the budget to keep going with the project. Ms. Ritchie wrote that she would have her brother and his friend finish the plumbing work. Ms. Ritchie thanked Mr. Hughes and wrote that she appreciated the work done to date.

20. On October 9, 2018, Ms. Ritchie texted asking Mr. Hughes to confirm that his crew would stop work on the project. She also requested Rather Be's final invoice. In these texts, Ms. Ritchie did not raise any issues with the quality of work completed.
21. On October 11, 2018, Rather Be delivered its invoice for \$3,105.78. The invoice says that payment is due on receipt and that payments are subject to 24% interest after 30 days.
22. The invoice is detailed. It explains the work completed, each labourer's name, hourly rate, and the time spent. The invoice also provides a cost breakdown per item of material. I find the invoice to be a detailed description of the time spent and materials used on the project.
23. On November 19, 2018, Ms. Ritchie emailed Mr. Hughes expressing her dissatisfaction with the hours worked and materials taken from the site. Specifically, Ms. Ritchie raised concerns that:
 - a. labourers did not arrive before 9-9:30 and were not ever there after 2:30-3,
 - b. when she came home at lunch, at least one person would be on their lunch break,
 - c. materials were removed from her property despite being billed to her.
24. Mr. Hughes says the hours charged include travel time to the site and time spent to pick up materials. I accept this evidence. Ms. Ritchie does not say which of the hourly charges she contests and to what extent. Ms. Ritchie's evidence is that the labourers sometimes arrived at 9 and left at 3. This is 6 hours of onsite work per day, which is consistent with charges on the invoice. The invoiced labour charges go up to a maximum of 7.3 hours per labourer per day. I find this consistent with 6 on site hours plus travel and material pick up time. I find that the hours invoiced are appropriate for the tasks recorded on the invoice.
25. Turning to the question of materials, Ms. Ritchie prepared a list of what she called "Home Depot prices" for the materials on the invoice, containing lower per item

costs than what Rather Be charged her. She did not provide a primary source for this pricing, such as a catalogue, website print out or quote. Mr. Hughes says the materials used were higher grade and had better warranties than Home Depot products. I find Ms. Ritchie did not prove that the lower priced items are the same, nor their actual prices. I find she did not prove that Rather Be overcharged for materials.

26. Ms. Ritchie identified a “philmac fitting” (\$22.08) and a “phimac (sic) coupling” (\$19.52) that she says were charged to her but not used or left on site. Given that she failed to provide evidence from a subsequent plumber, I prefer Rather Be’s evidence that all materials charged to Ms. Ritchie were used or left on site.
27. In video evidence, Ms. Ritchie describes a cold-water line she says Rather Be ran for her dishwasher, where a hot water line should have been placed instead. I cannot make this determination from a visual inspection alone. Ms. Ritchie did not file evidence from her subsequent plumber, or a layout plan, to prove the alleged mistake she describes.
28. Ms. Ritchie wrote that on the final day that Rather Be was on site, Mr. Hughes estimated that there were 2 weeks of work remaining for 2 or more labourers. Ms. Ritchie then wrote that the work was later completed by one plumber in 6 hours. However, Ms. Ritchie did not prove evidence from the plumber who allegedly completed the work. I find Ms. Ritchie has not proved that the job was later completed in only 6 hours.
29. Ms. Ritchie says she asked for the GPS tracking details of Rather Be’s truck, to verify against the time charged by it. It was not clear whether Rather Be has tracking data for its trucks. I find this information is unnecessary, given the specificity of the invoice.
30. The parties also disagree about who dug a portion of the trench outside the suite. Ms. Ritchie says she did so. In photographs filed by Rather Be, it forms part of the

work their crew completed. Based on the whole of the evidence, I prefer Rather Be's account because it is consistent with the invoice issued at the time.

31. Where defective work is alleged, the burden of proof is on the party asserting the defects. So, Ms. Ritchie must prove on a balance of probabilities that Rather Be breached their agreement by failing to complete the work properly: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124.
32. Ms. Ritchie submits that Rather Be's work was incompetent and that much of it had to be redone or replaced. She did not file evidence from another plumber or tradesperson to prove that Rather Be's work was deficient. To find that the plumbing and other trades work was negligent, I would need evidence from someone qualified to complete such work that the work was substandard. Ms. Ritchie did not produce such evidence. As noted above, Ms. Ritchie did not complain about the quality of Rather Be's work until after she received their invoice. I find that she has failed to meet the burden upon her to prove that Rather Be's work was defective.
33. I dismiss Ms. Ritchie's claims and her dispute. I allow Rather Be's counterclaim and order that Ms. Ritchie pay the \$3,105.78 for the work completed, plus contractual interest of 24 % annually from November 11, 2018 to the date of this decision. This equals \$692.29.
34. 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. Ms. Ritchie was unsuccessful so I do not award her any fees or expenses. I find Rather Be is entitled to reimbursement of \$150 in tribunal fees and \$1 in postage to deliver the Dispute Notice, which I find is a reasonable dispute-related expense.

ORDERS

35. Within 30 days of the date of this order, I order Ms. Ritchie to pay Rather Be a total of \$3,798.08, broken down as follows:
- a. \$3,105.78 in debt,
 - b. \$692.29 in pre-judgment contractual interest at 24% annually, and
 - c. \$151, for \$150 in tribunal fees and \$1 in dispute related expenses.
36. Rather Be is entitled to post-judgment interest, as applicable.
37. I refuse to resolve Ms. Ritchie's claims in SC-2019-002842.
38. 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.
39. 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.

Julie K. Gibson, Tribunal Member