



# Civil Resolution Tribunal

Date Issued: December 27, 2019

File: SC-2019-002555

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rahmani v. Sidhu*, 2019 BCCRT 1443

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

ABDUL RAHMAN RAHMANI

**APPLICANT**

**A N D :**

MYCK SIDHU

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kathleen Mell

## **INTRODUCTION**

1. This dispute is about non-payment for two central vacuum installations. The applicant, Abdul Rahman Rahmani, says the respondent Myck Sidhu, agreed to pay him \$2,600.00. However, the applicant says that after he finished roughing in two properties for the installation, the respondent refused to pay him.

2. The applicant says that he hired a lawyer and signed up for monthly legal services to settle the dispute. He says he is paying \$43.50 per month and this will be ongoing until the dispute ends. He requests this undetermined amount of money plus \$500.00 he paid a lawyer. The applicant also says that he spent time and missed work to deal with this dispute which included placing and removing a lien on the respondent's properties, he asks for \$1,816.50 to cover these costs. He also says he took 4 days off work to go back and forth to a lawyer's office and wants reimbursement for this. The applicant represents himself.
3. The respondent says that he did not agree to pay \$1,300.00 per house but \$1,000.00 in total but then he got a lower quote from a different company. The respondent has not paid the applicant any money. He says that the applicant's completed work was worth \$819.00. He says he should not have to pay the applicant's legal fees or for time the applicant spent on the dispute. The respondent represents himself.

## **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 some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. 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 therefore decided to hear this dispute through written submissions.

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.
8. During the course of this dispute a question came up as to the correct spelling of the respondent's first name. The tribunal told the parties they could provide evidence and submissions about the correct spelling and, if they did not, the name would stay the same as the one used on the Dispute Notice. Neither party provided evidence or submissions so I will use the spelling Myck as shown on the Dispute Notice.

## **ISSUE**

9. The issue in this dispute is whether the respondent breached an agreement with the applicant for the vacuum installations and, if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil dispute such as this, the applicant must prove his claim. He bears the burden of proof on a balance of probabilities.
11. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

12. The respondent says that he, along with three business partners, build residential homes. Neither party disputes that the applicant personally entered into an agreement with the respondent in September to install vacuums in the properties. Neither party suggested anybody else was also party to this agreement.
13. Although the respondent is named personally, I find the work done was for a business venture and was not a consumer contract. Therefore, the *Business Practices and Consumer Protection Act* does not apply.

### ***The Agreement***

14. The parties did not have a written contract but both parties agree they entered into an agreement for the applicant to install vacuums in the two properties. I note that a contract does not need to be written or signed, but when a contract is written and signed, it creates certainty about its terms and the parties' intentions. When there is no written contract, the party trying to prove that a verbal contract exists must prove that the parties agreed on the essential terms of the agreement.
15. It is undisputed that in September 2017 the applicant quoted the respondent \$1,300.00 to install vacuums in the two properties. In his Dispute Response, the respondent says that he did not agree to pay \$1,300.00 per property. However, in contradiction to this, he also says in his submissions that the applicant quoted \$1,300.00 per property which he thought was fair as it included the vacuums which cost between \$800 and \$900.
16. The respondent provided quotes from other companies showing a lower estimated cost. These estimates are from 2019 and it is not clear that they are for the exact same or extent of work contracted for in 2017. He also provided invoices for work done on other homes in 2016 and 2017. Again, I am not able to determine if this is for the same work the applicant performed.
17. I do not rely on these quotes, given the limitations described above. Instead, I prefer the respondent's direct statement that \$1,300.00 per house was quoted and that he

thought this amount was fair. Based on the evidence provided, I find that the respondent agreed to the quoted price of \$1,300.00 per house.

18. The respondent says that the applicant began to work on the properties but then the tradesman who introduced the parties was let go from the project so the respondent had no way to contact the applicant. Because of this, the respondent says he hired another company to install the vacuums.
19. The applicant provided the September 11, 2017 text message which shows the amount quoted. By sending this text message the applicant provided his contact information to the respondent. He says that the respondent called him and told him to start the job. There is no dispute that the applicant began the work which I find supports his assertion that the respondent was able to contact him. I also note that the respondent submitted that the original text messages shows that the applicant quoted for a "4 point" vacuum. Given this, I find that the respondent received this text message and therefore had the applicant's contact number.
20. The applicant says that after doing the rough-in work he asked the respondent for half payment of the \$2,600.00. The applicant says the respondent said that he would pay him after the work was finished.
21. The applicant states that the respondent also called him and asked him to move the location of one of the vacuum pans. This again supports the applicant's assertion that the respondent was able to contact him. The respondent did not deny that he asked the applicant to move one of the vacuum pans.
22. The applicant says he began calling the respondent asking for payment in October 2017. He says that in February 2018 the respondent called him asking to change an inlet in the kitchen and that he did it the next day. Again, the respondent does not deny that he asked the applicant to do this work.
23. The applicant says that in April 2018 he asked if the house was ready for finishing, but the respondent did not reply. The applicant says that in May 2018 he again called the respondent who told him that he had given the job to somebody else to

finish. In the texts the applicant also says that he has been calling the respondent who hung up on him.

24. As noted, the respondent states that he did not hear from the applicant until the applicant contacted him seeking full payment. Based on the evidence, I do not accept the respondent's evidence that he had no way to contact the applicant or that the applicant was not in contact with him.
25. The applicant says that after the respondent indicated he hired somebody else to finish the job he asked the respondent to pay him \$1,200.00 for the work he had completed, which included the rough-in and the vacuum pan installation. There is a text message which shows that the applicant asked for \$1,200.00 plus \$60.00 GST in May 2018.
26. Based on all of the evidence, I find that the parties had an agreement that the applicant would install the two vacuums and receive \$2,600.00 for this work. The respondent broke that agreement and I do not accept his explanation that this was because he could not contact the applicant.

### ***Remedy***

27. The question then becomes what damages the applicant suffered when the respondent breached the agreement. The applicant submitted that he is very busy and works multiple days a week. He did not suggest that he had to forego any work opportunities because of his agreement with the respondent, aside from time spent on this dispute, which I address below.
28. Therefore, I find it appropriate to only award the applicant compensation for the work performed since he did not suffer any loss of opportunity. The evidence shows that the completed work was to cost \$2,600.00. However, the applicant did not get to complete the work. The respondent submits that the value of the completed work is \$819.00 but again he is basing this on estimates he obtained that I have rejected as not reflecting the work the applicant actually did.

29. Once the applicant realized that the respondent was breaking the agreement, he requested \$1,260.00 for the work he had performed including GST. Based on the evidence I find this is a fair estimate. I find the respondent must pay this amount.
30. The applicant has requested \$500.00 in legal fees for a lawyer he hired plus an unspecified amount for ongoing legal services contract. The fees were paid for the same issue which is before me in this dispute. Tribunal rules set out that except in extraordinary cases the tribunal will not order a party to pay legal fees. This is not an extraordinary case and therefore I decline to order reimbursement of the applicant's legal fees.
31. The applicant has also requested reimbursement for time he spent on this dispute. The tribunal also does not usually reimburse a party for this, given it also does not generally reimburse legal fees. I see no reason to deviate from that practice here. I also note that the applicant did not set out details of the specific time spent. I decline to order reimbursement for the time the applicant spent on this dispute.
32. I find the applicant is entitled to \$1,260.00 for work performed including GST. The applicant is also entitled to interest under the *Court Order Interest Act* (COIA). The applicant told the respondent that he expected payment by May 24, 2018 or he would try to collect it. I find that the applicant is entitled to interest on the \$1260.00 from May 24, 2018 until the date of this decision. This totals \$35.08.
33. 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. As the applicant was successful in his claim he is entitled to reimbursement of his \$150.00 tribunal fees.

## **ORDERS**

34. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$1,445.08 broken down as follows:
- a) \$1,260.00 for work performed (includes GST),

b) \$35.08 in pre-judgement interest under the COIA, and

c) \$150.00 for tribunal fees.

35. The applicant is entitled to post-judgement interest under the COIA. The applicant's remaining claims are dismissed.

36. 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.

37. 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 passes. 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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Kathleen Mell, Tribunal Member