



Civil Resolution Tribunal

Date Issued: February 19, 2020

File: SC-2019-006318

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Booth Mechanical Ltd v. Dayal*, 2020 BCCRT 190

B E T W E E N :

BOOTH MECHANICAL LTD

APPLICANT

A N D :

KAVIRAJ DAYAL AKA Meharkaviraj Dayal

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about whether a plumbing subcontractor satisfactorily completed the scope of work agreed to by the parties.

2. The applicant Booth Mechanical Ltd says it paid the respondent, Kaviraj Dayal aka Meharkaviraj Dayal, for plumbing work that the respondent failed to complete. The applicant claims a \$4,000 refund for work it says was unfinished.
3. The respondent denies any unsatisfactory work. The respondent agrees that he resigned before completing all the plumbing work. When he resigned, the respondent says a small portion of the work remained incomplete, because he was waiting for mechanical rooms to be finished and countertops installed. The respondent estimates the value of the incomplete work at \$1,300.
4. The applicant is represented by business contact KB. The respondent is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. 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.

8. In submissions, the respondent referred to an outstanding amount of statutory vacation pay he says the applicant owes him. As I understand it, that amount arises out of a prior employment relationship between the applicant and respondent. While the respondent did not file a counterclaim, I note the tribunal has no jurisdiction over an employee's claim for statutory entitlement to wages under the *Employment Standards Act* (ESA). That is within the Employment Standards Branch's exclusive jurisdiction: see *Speed Up Education v. Wang*, 2019 BCCRT 838 at paragraph 8, a decision that is not binding but which I find useful.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. whether the respondent complete the scope of work agreed between the parties under the subcontract starting in May 2019,
 - b. whether the work the respondent completed for the applicant was satisfactory, and
 - c. if not, what remedy is appropriate.

EVIDENCE AND ANALYSIS

11. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. The applicant also alleges defective work, but the burden remains with him to prove these defects. I have reviewed the evidence and submissions but only refer to them as I find necessary to explain my decision.
12. I find the following undisputed facts:

- a. The applicant engaged the respondent as a plumbing subcontractor on a townhouse building construction project.
- b. The parties agreed that the respondent would work for \$35 per hour for finishing work.
- c. The applicant paid the respondent \$11,640 for the plumbing subcontract work.

13. The parties disagree about:

- a. how much work the respondent completed under the subcontract, and
- b. whether the work completed was satisfactorily.

14. For the reasons given below, I find that the work completed was as the respondent describes it, and not as incomplete as the applicant alleges. I also find that the work was completed in a mainly satisfactory manner, but for one leaking sink and the parts of the project that the respondent agrees were left incomplete.

15. In May 2019, the applicant's principal went out of town for 7 weeks. The applicant's principal says he sat down with the respondent and agreed on a pay and time schedule for jobs that needed to be completed. In his evidence, the respondent describes reaching agreement to a "schedule written on paper". However, the applicant did not file the written schedule in evidence, even though it is central to this dispute. For this reason, I draw an adverse inference against the applicant and prefer the respondent's evidence about the scope of work and the agreed price for the work, where their evidence differs.

16. While the applicant's principal was away, the respondent invoiced the applicant for the work as he completed it. Over the 7 weeks, the applicant paid the respondent the \$11,640.00 charged in those invoices. I find that those handwritten invoices describe the respondent's work in several buildings, for both plumbing and rough in work. Plumbing finishing work was charged at \$35 per hour, as agreed by the parties. Rough in work was charged at a lower rate per unit of labour, and certain

other tasks were charged at lower rates than the finishing work as well. Based on the invoices, I also find these other prices and rates were charged as agreed by the parties.

17. In June 2019, the applicant did a walk-through of the job site to inspect the work. The applicant says many aspects of the work were incomplete. The applicant says the respondent agreed to complete the items “after hours and on his weekend time.” I find that the respondent did agree to complete the incomplete work. However, as discussed further below, I find that that the work was incomplete only because other aspects of the building had not been finished in time for the respondent to complete the plumbing.
18. On August 6, 2019, the respondent walked off the job site. It is undisputed, and I find, that when the respondent walked out, there was still some work to be done, for which the applicant had already paid him.
19. In August 2019, the applicant took a video that shows a leaking sink pipe in one of the units where the respondent completed the plumbing. I find that this was an obvious deficiency in the respondent’s work. Based on the respondent’s evidence about how such a leak would be fixed, I estimate that 1 hour of plumbing labour would be required to address this deficiency. I award the applicant \$35 for this one hour of labour.
20. Otherwise, I find that the applicant has failed to prove any deficiencies in the respondent’s work, except where the work was left incomplete.
21. The central remaining issue in this dispute is determining the value of the remaining work that was to be completed.
22. The applicant says he had to hire a new plumber and pay him 3-4 weeks’ wages to complete the respondent’s unfinished work. I assume this is how the applicant arrives at the claimed \$4,000 figure.

23. JC, the plumber hired by the applicant after the respondent walked off the job site, provided a statement. JC writes that the respondent completed 30 - 50% of the work on 15 buildings in the project. JC also wrote that the respondent installed 70% of the fixtures in 18 of the units but did not turn on the water and test for leaks. JC says this aspect of the work was left for JC to complete. JC does not offer an invoice for what he ultimately charged the applicant to complete this work. Nor does he explain how his estimate aligns with the claimed \$4,000 figure.
24. The respondent filed a statement from a registered red seal plumber, SK, who offered his opinion that the estimated time per item used by JC to complete the plumbing work is a “potential” over-statement. I agree with SK’s opinion, particularly given that JC did not explain his monetary estimate of the remaining work.
25. I also find that most of the photographs filed by the applicant do not prove the extent of the alleged incomplete work. Most of the photographs are not explained. I cannot make any finding about them.
26. The photographs show that some sinks were not installed by the respondent. However, the respondent filed audio evidence from a countertop installer, AJ, in which AJ admits initially installing countertops of the wrong colour in several units. I accept this uncontested evidence. AJ’s evidence is important because it establishes that the respondent could not complete plumbing installations while awaiting the replacement countertops.
27. The respondent says he could not complete some of the other work he was paid for because he was awaiting the completion of mechanical buildings on those sites. Given AJ’s corroborative evidence about the countertops, I accept the respondent’s evidence and find that the plumbing work remained incomplete because the respondent was awaiting countertop installation and completion of mechanical rooms.

28. Contrary to the applicant's submissions, I find that the applicant has not proven that the respondent was unreliable, frequently late or generally incompetent in the plumbing work he completed.
29. The respondent estimates the value of the work left incomplete as \$1,300.
30. Because the applicant, who bears the burden of proof,
- a. did not file a document showing the scope of work agreed to in the parties' subcontract, despite referring to such a document in his own evidence, and
 - b. failed to prove his claimed damages, such as through an invoice from JC detailing the completion of specific tasks,

I prefer the respondent's evidence and find the incomplete work would cost \$1,300 to finish.

31. Taking the \$1,300 for incomplete work and the \$35 for the leaking sink pipe together, I order the respondent to refund the applicant \$1,335, within 30 days of this decision.
32. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$1,335 from August 6, 2019, when the respondent stopped working, to the date of this decision. This equals \$14.12.
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. The applicant was the successful party, though it failed to prove its full claim. I find the applicant is entitled to reimbursement of \$175 in tribunal fees. The applicant did not claim dispute-related expenses.

ORDERS

34. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,524.12, broken down as follows:

- a. \$1,335 as a refund for incomplete plumbing work and the hour of labour to fix one leaking sink pipe,
 - b. \$14.12 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in tribunal fees.
35. The applicant is entitled to post-judgment interest, as applicable.
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 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