



# Civil Resolution Tribunal

Date Issued: April 15, 2020

File: SC-2019-008011

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Johnson v. Flaig*, 2020 BCCRT 407

**BETWEEN:**

RYAN JOHNSON

**APPLICANT**

**AND:**

BOYD FLAIG and MARI KOVIS

**RESPONDENTS**

**AND:**

RYAN JOHNSON

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This dispute is about home renovations.
2. The applicant, and respondent by counterclaim, is Ryan Johnson (contractor). The respondents are Boyd Flaig and Mari Kavis (owners). Ms. Kavis is the only applicant in the counterclaim against the contractor.
3. The contractor performed renovation work for the owners in 2018. The contractor originally claimed \$2,832.20 as the outstanding balance owed. In submissions, he revised his claim to \$2,632.22.
4. The owners say Mr. Johnson overcharged for his work, and that there are deficiencies. They also say they should not have to pay because he negligently caused a flood that caused them to make an insurance claim. They say the insurance claim has not made them whole.
5. In the counterclaim, Ms. Kavis seeks orders that the contractor pay \$600 for a dishwasher damaged in the flood and \$800 for things dirtied by the renovation work. Ms. Kavis also seeks \$3,600 because she says the cost of the contractor's work exceeded the original quote. In total, Ms. Kavis seeks \$5,000. The contractor generally denies the allegations in the counterclaims.
6. The parties are each self-represented.

## **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, both parties in this dispute call into question each other's credibility. 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 *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.
9. 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.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something or pay money. The tribunal may also order any terms or conditions the tribunal considers appropriate.

## **ISSUES**

11. The issues in this dispute are:
  - a. Do the owners owe the contractor \$2,632.22, or some other amount, for completed renovation work?
  - b. Does the contractor owe the owners for deficiencies, damage, or for exceeding the original estimate? If so, how much?

## **EVIDENCE AND ANALYSIS**

12. In a civil dispute like this one, the applicant contractor must prove his claim on a balance of probabilities. Ms. Kovic must prove her counterclaim to the same standard. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
13. The owners hired the contractor to renovate their downstairs bathroom. There was no written contract but it is undisputed that the owners agreed to pay the contractor \$50 per hour. It is also undisputed that the contractor quoted \$15,000 to \$18,000. Based on the contractor's unchallenged submissions about the invoices, I find the work took place between August and November 2018.
14. The owners' basement flooded November 13. The contractor does not dispute that he left the septic pipe open with no back flow preventer, which allowed septic water to flood the basement.
15. The owners' evidence indicates they paid a \$2,000 insurance deductible. The contractor says he paid the deductible. The evidence is unclear, but I find I do not need to determine who paid the deductible because the deductible does not form part of either party's claim.

### ***Third invoice***

16. The contractor says he has issued 3 invoices. The first is not in evidence but there is no dispute it was for \$8,208.39 and was paid. The second is for \$8,887.25, and was also paid. The owners paid in periodic increments of \$2,500 or \$1,000.
17. The third invoice is dated "Nov 12 + 22 2018". The contractor says the invoice covers the period from November 12 to November 22, 2018. It is for \$2,736.50 for 48 hours of work. The work identified in the invoice includes tiling and grouting the shower, and installing a backsplash, caulking, and garbage removal.
18. The owners say they never saw the third invoice until this dispute, and say it is not legitimate. They acknowledge that the contractor caulked the shower on November

12, but say the November 13 flood was the last time the contractor was in their home.

19. The contractor says the flood had “no bearing” on his work and he continued to work after the flood, which he says was only half an inch of water. The contractor says he has photos showing he worked after the date of the flood. Parties are told by tribunal staff to submit all relevant evidence during the evidence submission process. It is not enough to say that one has evidence that can prove a disputed fact. I find the contractor has failed to provide necessary evidence that would prove the validity of his third invoice.
20. That said, the owners acknowledged that the contractor worked an additional day grouting the shower after the second invoice. The contractor is presumptively entitled to payment for that work. Based on the agreed rate of \$50 per hour plus a portion of the material costs on the invoice, I find the owners owe \$500, subject to any reduction proven in the counterclaim.

### ***Ms. Kovic's counterclaims***

21. Ms. Kovic's counterclaim includes requested resolutions with dollar values, such as her claims for dishwasher repair or replacement and pressure washing and cleaning. Other aspects of her claim are not assigned a dollar value, presumably because her claims were over the small claims \$5,000 limit. Still others were more in the nature of defences to the contractor's claim than true counterclaims. That said, I consider all the counterclaims and defences here for readability purposes.

### ***Dishwasher***

22. Ms. Kovic claims \$600 for a dishwasher. She says the dishwasher sat in the flood water, “which corroded the contacts while remediation was done.” She does not explain why the dishwasher was not part of the insurance claim, but I infer it was because she did not discover the damage until after remediation was complete.

23. Ms. Kovis' dishwasher claim is essentially rooted in negligence. The general elements of a negligence claim are that the contractor owes a duty of care, the contractor failed to meet a reasonable standard of care, it was reasonably foreseeable that the contractor's failure to meet that standard could cause the owner's damages, and the failure did cause the claimed damages.
24. Often in claims of professional negligence, an applicant must establish a breach of the standard of care through expert opinion evidence (*Bergen v. Guliker*, 2015 BCCA 283). In the circumstances here, I find expert evidence is not required to establish the standard of care. I find the standard of care is that of a reasonably prudent renovation contractor taking reasonable care not to cause of a flood. The contractor does not dispute that he caused the flood.
25. Has Ms. Kovis proved her claimed damages for the dishwasher? She submitted a photo of the model number of her dishwasher. She says the water corroded the contacts, but there is no photo confirming the corrosion. She does not say that the dishwasher no longer functions, although she does say it smells of sewage from the flood. Even assuming the dishwasher does not function, Ms. Kovis does not say that the corroded contacts cannot be repaired. Moreover, she does not provide evidence of the cost to repair or replace the dishwasher, such as an estimate or invoice. Given that the dishwasher is used and may be able to be repaired, on a judgment basis I award \$100 in damages for the dishwasher.

### ***Pressure washing and cleaning***

26. Ms. Kovis claims \$800 for pressure washing, window cleaning and garage cleaning. She relies on an invoice for \$300 for pressure-washing and \$600 to clean "all items in garage". With GST, the total is \$945.
27. The owners say the contractor caused ceramic dust to accumulate on the front of their house and on items in their garage. The contractor denies this and says Ms. Kovis was pressure washing during his renovation work and blew debris from the yard into the garage.

28. There are no photos showing ceramic dust on any items or on the house. Given that the owners submitted other photos, I find the lack of photos of the dirty or dusty items undermines Ms. Kovic's claim.
29. The invoice also does not say what was pressure-washed. In addition, the invoice is dated either December 10, 2019. This means the cleaning occurred more than a year after the contractor finished his work and after this tribunal proceeding began. Ms. Kovic does not explain the reason for the delay. I dismiss this aspect of the counterclaim for lack of evidence that the contractor's work made the cleaning expense necessary.

### ***Quoted price***

30. Ms. Kovic claims \$3,600 "to keep the contract that was agreed upon of \$15-18,000." The owners say the renovation ended up costing over \$40,000. There is no evidence the owners paid \$40,000. To the contrary, the owners do not dispute the contractor's accounting that shows they paid \$18,500.
31. The contractor says the owners asked for additional work, such as installing new flooring in the laundry room and a new double door. The owners did not dispute this, so I find that there were changes to the scope of the work. Moreover, there is no dispute that the owners agreed to pay the contractor by the hour, not a flat rate. I dismiss this aspect of the counterclaim.

### ***Deficiencies and other allegations***

32. Ms. Kovic alleges 2 deficiencies, although she does not claim any specific value for those deficiencies.
33. First, Ms. Kovic says every tile on the bathroom wall has chips from using a grinder rather than a wet saw. The contractor says the owners had no complaints about the tile work when it was completed. There are no photos of the tiles, so I find Ms. Kovic has failed to prove this deficiency.

34. Ms. Kovic says the contractor failed to install “kerdi board” to prevent moisture penetration in shower. The contractor says at the owner’s request he used an industry-standard water proofing board rather than the kerdi board at the owners’ request. Ms. Kovic does not dispute this. For that reason and because there is no evidence of moisture penetration or damage, I find this alleged deficiency unproved.
35. Ms. Kovic says the contractor cut the legs of a \$2,000 cabinet to make it fit against a wall. The contractor says he discussed this with Ms. Kovic, and she “was fine with it.” Ms. Kovic does not dispute this, so for that reason and because there is no evidence of the cabinet’s value, I dismiss this aspect of the counterclaim.
36. The owners allege that the contractor stole some equipment and tools, that they lost revenue from Airbnb due to the flood, and that WorkSafe BC advised that they may incur costs because the contractor was not registered with WorkSafe BC. However, the owners provided no objective evidence in support of any of these allegations, so I find them unproved.
37. The owners say the contractor advised that their septic system failed and was overloaded, so they had it inspected and pumped out unnecessarily. They say the receipt shows that it did not need to be pumped out. The owners do not explain why they relied on their general contractor’s advice about their septic tank or why reliance on that advice was reasonable. However, given that the septic tank backed up, I find an inspection and pump out was a reasonable step to take. The pumping receipt says 600 gallons were pumped out. I find the owners benefited from the pump out of 600 gallons, as the septic tank would have needed pumping eventually. I decline to award any reimbursement for the septic work.

### **Summary**

38. In summary, I find that the contractor is entitled to \$500 for tiling work performed, less \$100 in damages for the dishwasher. There is no suggestion that Ms. Kovic independently owned the dishwasher, so I find the set-off is applicable to the amounts the owners owe the contractor.



39. The net result is that the owners owe the contractor \$400.
40. The *Court Order Interest Act* applies to the tribunal. The contractor is entitled to pre-judgment interest on the \$400 from November 13, 2018 to the date of this decision. This equals \$10.83
41. 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 find the contractor was more successful and is entitled to reimbursement of \$125 in tribunal fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

42. Within 14 days of the date of this order, I order the owners to pay the contractor a total of \$535.83, broken down as follows:
  - a. \$400 in debt, and
  - b. 10.83 in pre-judgment interest under the *Court Order Interest Act*
  - c. \$125 in tribunal fees.
43. The contractor is entitled to post-judgment interest, as applicable.
44. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if

they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

45. 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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Micah Carmody, Tribunal Member