



Civil Resolution Tribunal

Date Issued: May 27, 2020

File: SC-2019-009370

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bennison v. Dyer*, 2020 BCCRT 580

BETWEEN:

SEAN BENNISON

APPLICANT

AND:

KEVIN DYER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant, Sean Bennison, installed lighting in the respondent, Kevin Dyer's, house. The applicant says that the respondent has not paid his \$1,900.29 invoice for electrical parts.

2. The respondent says that the invoiced amount is unreasonable, that he already paid for some of the materials used, and that the applicant owes the respondent money for the respondent's plumbing services.
3. Both parties are self-represented.

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. 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.
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. 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.
8. During the facilitation process, the respondent indicated that he wanted to file a counterclaim for payment for the plumbing services he provided to the applicant. The tribunal provided the respondent with the opportunity to file a counterclaim, but the respondent did not complete the process. As such, no counterclaim was issued.

ISSUES

9. The issues in this dispute are whether the applicant's invoice amount is reasonable and whether the respondent must pay the applicant the invoiced \$1,900.29?

EVIDENCE AND ANALYSIS

10. In a civil claim, such as this one, the applicant must prove their claims on a balance of probabilities. In this case the applicant did not provide any submissions despite being given the opportunity to do so, although he did provide some evidence. The respondent did not provide any evidence but did file a Dispute Response form at the outset of this proceeding.
11. The applicant says that he installed electrical parts in the respondent's house. In a March 30, 2019 text message, the respondent asked the applicant to install some pot lights in the respondent's house. The respondent does not dispute that the applicant installed the requested lights. I find that the applicant installed electrical parts, including lights, at the respondent's house sometime after March 30, 2019.
12. On May 28, 2019 the applicant gave the respondent his invoice #1368, for \$1,900.29 including GST. The invoice is for "total parts cost" and identifies the parts used, including light fixtures, covers, cabling, and boxes. The invoice does not set out a cost for each individual item.
13. As noted above, the respondent acknowledges the invoice but says that the amount charged is unreasonable. However, he has not explained why the parts cost is unreasonable, or provided any evidence showing that the applicant overcharged for the parts. Without more, I find the respondent's "unreasonable" argument must fail.
14. The respondent also says that he paid the applicant's invoice #1189, which he says included most of the materials used by the applicant, and labour. However, neither party provided a copy of that invoice.

15. Earlier on May 28, 2019, the applicant texted the respondent's business and said that he was putting together the total cost of the electrical parts, which would be around \$1,800. I find this contradicts the respondent's statement that the applicant had already billed the respondent for the work done, as there is no evidence of any reply text to the applicant or other communication from the respondent saying that he had already paid for the parts and labour. Without evidence supporting the respondent's argument, I find that the applicant did not previously invoice the respondent for the pot light installation.
16. The respondent also says that he should not have to pay the applicant because the applicant owes him over \$7,000 on unpaid invoices for the respondent's plumbing services. The respondent is essentially arguing that the cost of his plumbing services be set off, or subtracted, from the amount owing to the applicant.
17. The respondent has the burden to prove that he is entitled to a set-off on a balance of probabilities. He must prove that the applicant owes him money that is reasonably connected to the debt he owes the applicant (see *Wilson v. Fotsch*, 2010 BCCA 226). The respondent has provided no evidence that the applicant owes him money for any plumbing services. Neither has the respondent proven that any such debt owed by the applicant is reasonably connected to the debt owed by the respondent. I find that the respondent has failed to prove that he is entitled to a set-off from the applicant's invoice.
18. I find that the applicant installed pot lights in the respondent's house, at the respondent's request. There is no dispute about the quality of the electrical work done. In the absence of any evidence to the contrary, I accept that the cost of the electrical parts is \$1,900.29, including GST. I find that the respondent has not paid any of the outstanding amount. Therefore, I find that the respondent must pay the applicant \$1,900.29 for the May 28, 2019 invoice.
19. The applicant says that he and the respondent agreed upon a "labour swap" and so he only charged the respondent for the cost of the parts used. The respondent denies that he agreed to a "labour swap". I find that I do not have to determine

whether the parties agreed to a labour swap or not, as the only thing the applicant has claimed is the cost of the electrical parts used, and not labour.

20. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$1,900.29 from May 28, 2019, the date of the invoice, to the date of this decision. This equals \$37.16.
21. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim dispute-related expenses.

ORDERS

22. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$2,062.45, broken down as follows:
 - a. \$1,900.29 in payment of the May 28, 2019 invoice
 - b. \$37.16 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
23. The applicant is entitled to post-judgment interest, as applicable.
24. 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 a Ministerial Order 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.

25. 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.

Sherelle Goodwin, Tribunal Member