



Civil Resolution Tribunal

Date Issued: May 29, 2020

File: SC-2019-009065

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nelson v. O'Dea*, 2020 BCCRT 591

BETWEEN:

MATTHEW NELSON

APPLICANT

AND:

KRISTINA O'DEA

RESPONDENT

AND:

MATTHEW NELSON

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about unpaid invoices for residential electrical work. The applicant and respondent by counterclaim is Matthew Nelson. The respondent and applicant by counterclaim is Kristina O'Dea.
2. Mr. Nelson says Ms. O'Dea owes \$2,405.08 for work done plus \$358.52 for materials left at her residence. He seeks an order for payment of \$2,763.60 in total. Ms. O'Dea disagrees she should pay any amount and says Mr. Nelson went overbudget, charged for some items twice, and charged for deficient work that was incomplete or had to be redone by another contractor, SE.
3. Ms. O'Dea counterclaims for \$2,500 as her estimate of the cost of SE remedying and completing Mr. Nelson's unfinished electrical work. Mr. Nelson disagrees that he is liable and says SE's invoices do not show that his work was deficient or had to be redone.
4. The parties are 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. Some of the argument in this dispute amounts to a "he said, she said" scenario. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me without holding an oral hearing. I have considered the tribunal's mandate

that includes proportionality and a speedy resolution of disputes. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

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. 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

9. The issues in this dispute are as follows:
 - a. Did Mr. Nelson breach the parties' agreement by going overbudget or behind schedule, by charging for some items twice, or by producing deficient work?
 - b. Must Ms. O'Dea pay Mr. Nelson \$2,763.60 for work done plus materials?
 - c. Must Mr. Nelson pay Ms. O'Dea \$2,500 to remedy work deficiencies?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Mr. Nelson and Ms. O'Dea must each prove their claims on a balance of probabilities. I have reviewed all the evidence and submissions and only refer to them as necessary to give context to my decision.
11. For the reasons that follow, I find that Mr. Nelson has proven his claims and Ms. O'Dea has not. I reach my conclusion based largely on the quotes, invoices (which do not always match a particular quote), and emails in evidence.

The Quotes at Issue

12. I will first outline what Mr. Nelson claims and what the evidence shows Ms. O'Dea has paid. Mr. Nelson says he did the following work totaling \$12,541.02:
 - a. \$3,870.79 for completed work under a May 31, 2019 quote (Quote 10),
 - b. \$2,880.64 for completed work under a July 9, 2019 quote (Quote 12) for \$3,905.60, less \$1,024.94 for incomplete hot tub electrical work,
 - c. \$5,301.67 for completed work under a September 3, 2019 quote (Quote 15.7) for \$5,812.58, less \$510.91 for undercabinet lighting not installed,
 - d. \$129.40 for installing smoke detectors under a September 3, 2019 quote (Quote 19.1) for \$939.56, less \$810.16 for other work not completed, and
 - e. \$358.52 for an LED ribbon and related materials for the undercabinet lighting, which was left uninstalled at Ms. O'Dea's residence.
13. I find the quotes largely contained the terms of the parties' agreement, which was for Mr. Nelson to do the work listed in the quotes at a fixed price.
14. In some submissions Ms. O'Dea says she paid Mr. Nelson \$10,776.37 and in others she says \$9,776.37. I find that the parties' evidence, including Ms. O'Dea's receipts, shows only the following payments to Mr. Nelson totaling \$9,776.37:
 - a. \$3,870.79 on July 13, 2019 for Quote 10,
 - b. \$2,000 on August 3, 2019 for an invoice of the same date (Invoice 11, which the parties dispute what it is billing for),
 - c. \$1,905.58 on August 9, 2019 for the balance of Invoice 11, and
 - d. \$2,000 on September 15, 2019 for a September 8, 2019 invoice (Invoice 16, which was a partial payment for work done under Quote 15.7).

15. Mr. Nelson claims \$2,763.60 as the shortfall between 2 totals (\$12,541.02 - \$9,776.37), though I calculate it to be \$2,764.65. With this in mind, I now turn to the issues.

Issue #1. Did Mr. Nelson breach the parties' agreement by going overbudget or behind schedule, by charging for some items twice, or by producing deficient work?

Did the work go overbudget?

16. Ms. O'Dea says she budgeted \$10,000 for the work and Mr. Nelson exceeded this amount. Mr. Nelson denies ever being told about a \$10,000 budget. For the following reasons I find that the parties did not agree to any budget. Instead, I find Ms. O'Dea agreed to a number of quotes for a fixed price and work proceeded based on that basis. Mr. Nelson therefore did not breach any obligation to stay within a budget.

17. The emails show that Ms. O'Dea asked for additional work in stages without ever mentioning a budget. In May 2019 the parties discussed having Mr. Nelson upgrade the electrical service to Ms. O'Dea's house from 100 amps to 200 amps, plus related work. Mr. Nelson provided Quote 10, dated May 31, 2019, for \$3,870.79. I find this quote was for a fixed price, as were all the other quotes in evidence.

18. Subsequently, Ms. O'Dea emailed Mr. Nelson for additional house-wide work. Mr. Nelson provided Quote 12 in July 2019 for \$3,905.58 for a variety of tasks, including installing new electrical outlets and a circuit breaker for the hot tub. Mr. Nelson emailed Ms. O'Dea to ask if she had a budget. Ms. O'Dea did not answer directly but gave no indication of having one.

19. After Quote 12, Ms. O'Dea continued to ask for more additions throughout the house. These included heaters, smoke detectors, under-cabinet lighting, and related electrical work. These additions were put into Quote 15. Quote 15 was updated several times with additional items and each new version was identified as Quote 15.2, 15.3, and so on. In a July 29, 2019 email, Mr. Nelson noted that with

Quote 15.4, the total work was now a “considerable sum”. He wrote that Quote 10 (\$3,870.79), Quote 12 (\$3,906.58), and Quote 15.4 (\$4,562.56) now totaled \$12,338.83. Ms. O’Dea replied to this email the next day without expressing any concerns about the price. She requested further work and by early September 2019 Quote 15.4 was updated to Quote 15.7 for \$5,301.67. In late September 2019 Mr. Nelson provided Quote 19.1 for \$939.56. This work concerned supplying and connecting smoke detectors and doing work in the mud room and garage.

20. From the above I find Mr. Nelson kept Ms. O’Dea reasonably updated on the cost of the work. The first indication in the correspondence that Ms. O’Dea had a budget was in October 2019, when the parties’ relationship broke down. She advised in an October 8, 2019 email that the quotes were “way over budget” and she had concerns about duplication of billing and quality of work. Even then, she did not say what the budget was.
21. In summary, I find the correspondence shows the parties never agreed on a budget. I am satisfied that Mr. Nelson charged an amount consistent with his fixed-price quotes.

Did the work get behind schedule?

22. Ms. O’Dea said the work had to be done urgently because an ill family member had to move in after December 2019. Ms. O’Dea submitted Mr. Nelson was aware of either this or the general urgency of the situation (her submissions were not clear on which). She says Mr. Nelson stopped work and unreasonably asked for full payment of his quotes before work was finished in October 2019. Ms. O’Dea says this jeopardized her ill family member moving in on time.
23. I disagree that Mr. Nelson stopped work to ask for payment and find that Ms. O’Dea requested the work stoppage. On October 8, 2019 Ms. O’Dea asked Mr. Nelson to cease work because she was concerned about the billing, as noted above. When Mr. Nelson asked for more details, Ms. O’Dea did not express any concerns about the pace of work.

24. Ms. O’Dea also did not say Mr. Nelson breached any contract term about deadlines for work done. I accept Mr. Nelson’s evidence that he was unaware that Ms. O’Dea’s family member was ill. I find that Mr. Nelson did not breach any contract terms about work deadlines.
25. I also disagree that Mr. Nelson jeopardized the move-in date for Ms. O’Dea’s ill family member. As stated above, Mr. Nelson ceased work in early October 2019. Ms. O’Dea provided an eviction notice showing the ill family member had until the end of January 2020 to move out and find other accommodations. There is no evidence that Mr. Nelson could not have finished the work by then. The correspondence shows the parties’ working relationship deteriorated based on billing and quality of work concerns in October 2019, rather than scheduling. After Mr. Nelson stopped work, Ms. O’Dea did nothing to complete the electrical work until she hired SE in January 2019. SE continued to work into February 2019. I find this inconsistent with Ms. O’Dea’s claim that she had to replace Mr. Nelson because he was behind schedule.
26. In summary, I find that Mr. Nelson did breach any obligations about when his work had to be completed.

Did Mr. Nelson charge twice for the same work?

27. Ms. O’Dea says Mr. Nelson double charged her based in large part on Quote 12. Quote 12 totals \$3,905.58 and is divided into 2 parts, each with a subtotal of \$1,952.79. She says the price for Quote 12 should only have been \$1,952.79.
28. I disagree and find Ms. O’Dea’s interpretation objectively unreasonable. The 2 parts describe different tasks. The “Grand Total” amount of \$3,905.58 is clearly printed at the bottom. Consistent with this, Mr. Nelson referred to Quote 12 as being for \$3,905.58 in the correspondence without any objection from Ms. O’Dea, including the July 2019 emails.

29. Ms. O’Dea also handwrote “duplication” beside certain items on Quote 12 and Quote 15.7. I found nothing noteworthy about these entries and I am not satisfied that Mr. Nelson wrongly charged Ms. O’Dea for these items.

Did Mr. Nelson charge for incomplete or deficient work?

30. Ms. O’Dea says Mr. Nelson charged for incomplete work or deficient. I find the evidence falls short of proving this.

31. A main point of conflict is the hot tub circuit work. Ms. O’Dea says Mr. Nelson charged her this work, which the parties agree Mr. Nelson did not complete. The hot tub work appears on Quote 12 and Invoice 11. On its face, Invoice 11 appears to charge for all the work listed under Quote 12, including the hot tub circuit work. However, Ms. O’Dea’s argument ignores Mr. Nelson’s emails of August 1 and 3, 2019 and the surrounding context.

32. In early August 2019 one of Ms. O’Dea’s other contractors, K, stopped working for her under acrimonious circumstances. I infer from the correspondence that Mr. Nelson had some concerns about being paid, given K’s departure. By email, Mr. Nelson asked Ms. O’Dea if he could invoice the total for Quote 12, not because all the work was complete but because he was “quite extended” financially. From the emails I find it clear that Mr. Nelson treated Invoice 11 as being for work generally done to that point, rather than for any incomplete work, such as the hot tub. In this dispute, Mr. Nelson agrees he did not complete the hot tub work of Quote 12 and I find he does not claim for that line item.

33. Ms. O’Dea also says Mr. Nelson overcharged or produced deficient work. The party alleging work is defective has the burden of proof to establish the defects: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124. Where a dispute’s subject matter is technical or beyond common understanding, it is necessary to produce expert evidence to help the decision-maker determine the appropriate standard of care: *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 124 to 131.

34. I find the value and quality of the electrical work is a matter beyond common understanding and Ms. O'Dea must provide expert evidence to show Mr. Nelson's invoices were unreasonable or his work was deficient.
35. Ms. O'Dea provide 3 invoices from SE, the contractor that finished the electrical work. The first is a January 31, 2020 invoice for \$1,472.63, for checking Mr. Nelson's rewiring and "[a]dditional work" in the living room and kitchen. The second invoice is a January 31, 2020 invoice for \$762.30 for completing wiring in a bathroom. The third invoice dated February 24, 2020 was for \$1,113 for the hot tub electrical work.
36. I find the invoices are not expert opinion evidence under the tribunal's rules. Rule 8.3(2) says an expert must state their qualifications in any expert opinion evidence. The invoices do not fulfill that criteria. In any event, I find these invoices support Mr. Nelson's position that he did nothing wrong.
37. In the first invoice SE wrote that the all the wiring adhered to Canadian and BC electrical codes. There is nothing in that invoice, or any other invoice, that shows SE identified any deficiencies in Mr. Nelson's work. I have also reviewed the work listed in the first and second invoices and I do not find it apparent that SE had to remedy or complete any of the claimed items contained in Quotes 10, 12, 15.7 or 19.1. SE's invoices were vague about the work done and I find the additional work in the living room and kitchen went beyond what Mr. Nelson agreed to do or charged for in this dispute.
38. I also find the third invoice of \$1,113 for the hot tub electrical work is very close to the \$1,024.94 that Mr. Nelson intended to charge, which suggests his billing practices are reasonable. In any event, Mr. Nelson does not claim for the hot tub work, as stated earlier.
39. Ms. O'Dea's other evidence of overcharging or charging for incomplete work was largely writing the word "incomplete" next to certain items on Quote 12 and 15.7, which I do not find compelling.

40. In summary, I find that Mr. Nelson did not go overbudget or over time, did not charge for some items twice, and did not produce deficient work. I find Mr. Nelson did not breach the parties' agreement for electrical work.

Issue #2. Must Ms. O'Dea pay Mr. Nelson \$2,763.60 for work done?

41. I am satisfied that Mr. Nelson completed the work under Quote 10 for \$3,870.79 as Ms. O'Dea paid it without issue in late July 2019. I am also satisfied that Mr. Nelson completed the work claimed for under Quotes 12, 15.7, and 19.1, given Mr. Nelson's invoices, the correspondence, and my findings that he did not overcharge, produce deficient work, or otherwise breach the parties' agreement.

42. Mr. Nelson also claims \$358.52 in materials costs, which he says was for an LED ribbon and related materials for installing the undercabinet lighting. Although Mr. Nelson did not provide a receipt for these materials, I find from the parties' October 7, 2019 emails show that the materials arrived at Ms. O'Dea's residence and were left there. On balance, I accept Mr. Nelson's submission that the lighting materials cost \$358.52 and find he is entitled to this amount in debt.

43. I have already found that Mr. Nelson's claims total \$12,541.02, for which he was paid \$9,776.37. So, I find he has proven Ms. O'Dea owes him \$2,764.65, which I reduce to the claimed amount of \$2,763.60.

44. The *Court Order Interest Act* applies to the tribunal. Mr. Nelson is entitled to pre-judgement interest on the \$2,763.60 debt award from October 8, 2019, the date Ms. O'Dea told Mr. Nelson to cease work and refused further payment, to the date of this decision. This equals \$34.69.

Issue #3. Must Mr. Nelson pay Ms. O'Dea \$2,500 to remedy work deficiencies?

45. Ms. O'Dea claims \$2,500 as her estimate of SE's repairs, though I find SE's 3 invoices, mentioned above, total (\$1,472.63 + \$762.30 + \$1,113 =) \$3,347.93. In any event, I have already found that SE's work did not remedy any deficiencies in

Mr. Nelson's work and that Mr. Nelson did not breach the parties' agreement for electrical work. I therefore dismiss this claim.

TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES

46. 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 Mr. Nelson is the successful party and is entitled to reimbursement of \$175 in tribunal fees. Mr. Nelson did not claim dispute-related expenses, so I do not award any to either party.

ORDERS

47. Within 14 days of the date of this order, I order Ms. O'Dea to pay Mr. Nelson a total of \$2,973.29, broken down as follows:

- a. \$2,763.60 in debt,
- b. \$34.69 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175.00 in tribunal fees.

48. Mr. Nelson is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

49. I dismiss Ms. O'Dea's claims entirely.

50. 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.

51. 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.

David Jiang, Tribunal Member