



Civil Resolution Tribunal

Date Issued: May 29, 2020

File: SC-2020-000187

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dean v. Jhurry*, 2020 BCCRT 596

BETWEEN:

AIYAZ DEAN

APPLICANT

AND:

AKASHSING JHURRY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This decision addresses the second of 2 related disputes, which are about a painting contract. I have written 2 separate decisions for the two disputes because

although this second dispute is essentially a counterclaim to the first one, the named parties are not identical in the 2 disputes.

2. In this dispute, the applicant Aiyaz Dean says that the respondent, Akashsing Jhurry, performed defective painting work. He requests \$1,887.76 in damages for incomplete work, paint damage to his kitchen fixtures, and reimbursement of payments he made to others to complete the work and cleanup the paint droppings. The applicant represents himself.
3. The respondent says the applicant and his wife breached the contract when they refused to pay him the second installment for work completed. The respondent says that the applicant damaged the fixtures himself. The respondent says he is not liable for any damages. 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. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. 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. 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. I note that the painting contract that is the subject of this dispute was signed by the applicant's wife and not the applicant. The applicant says that his wife signed the contract on his behalf. The respondent does not dispute that he dealt with both the applicant and his wife while carrying out the work. Because the respondent does not dispute that the applicant has standing to file this dispute, I did not request further submissions on whether the applicant has standing.

ISSUE

9. Is the respondent responsible for paying damages for allegedly defective painting work?

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, the applicant must prove his claim 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. In SC-2019-008042, I found that the applicant's wife had not proved that the respondent's painting work was defective. I also found that the applicant's wife did not pay the respondent the second installment as required by the contract before asking him to perform paint cleanup. I note that the applicant has not provided any additional evidence that would persuade me that the respondent's work was defective. The applicant says that 'people' have told him that they are not willing to repaint the doors and cabinets because they do not know how it was prepped before painting. He says that they told him he should just replace the entire kitchen. However, the applicant provided no evidence of who made these statements and no statement or expert evidence showing that the respondent's work was defective. Therefore, I do not accept the applicant's submission on this point.
13. The respondent stopped work because the second instalment was not paid as required under the contract. The contract specifically stated that the paint cleanup did not have to be done until the project was completed. Further, the applicant says that the cabinet doors were not closing properly but the evidence shows that the respondent had promised to have a colleague adjust the hinges. The respondent was not given an opportunity to complete the project and cleanup the paint droppings to the applicant's satisfaction before the third instalment was paid as required by the contract. Since I have found that the respondent's work was not defective, I find that the applicant is not entitled to the damages he claims resulted from the respondent's work.
14. I also note that even if I had found the applicant successful, I would not have awarded the \$1,887.76 claimed. The applicant has provided a receipt for \$700 for paint cleanup but other than this amount the applicant has not itemized how he reached the \$1,887.76 requested.
15. 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. As the applicant was unsuccessful, he is not entitled to reimbursement of \$75 in tribunal fees. There were no dispute-related expenses claimed.

ORDER

16. I dismiss the applicant's claim and this dispute.

Kathleen Mell, Tribunal Member