



Civil Resolution Tribunal

Date Issued: June 8, 2020

File: SC-2019-008239

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Botrokoff v. Burgi*, 2020 BCCRT 634

BETWEEN:

LINDA SUSAN BOTROKOFF

APPLICANT

AND:

RYAN BURGI (Doing Business As RYDAN CONTRACTING)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Linda Susan Botrokoff says she hired the respondent Ryan Burgi, doing business as Rydan Contracting, to do bathroom tile work and a siding job.
2. Ms. Botrokoff says that Mr. Burgi left the bathroom tile job incomplete, and she had to pay another tiler \$585 to complete the work.

3. Ms. Botrokoff also says she paid Mr. Burgi \$3,000 towards a siding job for the outside of her house. However, when she changed her mind about having it done, Mr. Burgi only repaid her \$2,500.
4. Ms. Botrokoff claims \$1,085, broken down as \$500 for the siding job that was not refunded, plus the \$585 she paid to the second bathroom tiler.
5. Mr. Burgi says the \$500 he withheld was used to buy materials for Ms. Botrokoff's renovation but using his hardware store account.
6. Mr. Burgi says he completed the bathroom tile work, but that Ms. Botrokoff had it redone because she "changed her mind". Mr. Burgi says he did not return to reinstall the tile, and that Ms. Botrokoff did not pay him to do so. Mr. Burgi asks me to dismiss the dispute.
7. Both parties are self-represented.

JURISDICTION AND PROCEDURE

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
9. The CRT 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.
10. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

11. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
12. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. In particular, the CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a CRT facilitator).
13. Prior to adjudication, Ms. Botrokoff withdrew her claim against Danielle Burgi. I have therefore amended the style of cause above to reflect the withdrawal. My reasons below consider the dispute against the only remaining respondent, Mr. Burgi.

ISSUES

14. The issues in this dispute are:
 - a. Are Ms. Botrokoff's claims out of time under the *Limitation Act*?
 - b. If not, must Mr. Burgi pay Ms. Botrokoff
 - i. \$585 that Ms. Botrokoff paid another contractor to complete the bathroom tiling job Mr. Burgi was to complete, and
 - ii. \$500 Ms. Botrokoff says she paid to Mr. Burgi for a planned siding job that did not go ahead.

EVIDENCE AND ANALYSIS

15. In this civil claim, Ms. Botrokoff bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.

Limitation Period

16. In submissions, Mr. Burgi raised an issue about whether Ms. Botrokoff's claims were out of time. The *Limitation Act* applies to disputes before the CRT and sets out limitation periods which are specific time limits for filing a dispute.

17. As of June 1, 2013, section 6 of the *Limitation Act* says the basic limitation period is 2 years, and that a claim cannot be started more than 2 years after the day it was discovered. If the time limit expires, the right to bring the dispute disappears, and the dispute must be dismissed. I find that the 2-year basic limitation period applies to this dispute.

18. According to section 8 of the *Limitation Act*, a claim is discovered on the first day that a person knew or reasonably ought to have known that the loss occurred, was caused by an act or omission of the person against whom the claim was made, and that a court proceeding would be an appropriate means to seek to remedy the loss.

19. Because Ms. Botrokoff requested payment on June 11, 2018 and Mr. Burgi replied with a commitment to pay the claimed amounts, I find that the 2-year limitation period started running on that date. I say that because Ms. Botrokoff should reasonably have known there was a problem with payment at that point, and that she might bring a CRT proceeding regarding the money owed. I find that she discovered her claim on that date. The Dispute Notice was filed on October 21, 2019, which I find was within the two-year time limit to bring these claims.

Bathroom Tiling

20. In March 2017, Ms. Botrokoff hired Mr. Burgi to do tiling work in the bathroom. Ms. Botrokoff says she paid Mr. Burgi \$2,000 before he finished the job, but that he issued her only one receipt showing that \$1,100 had been used up. Ms. Botrokoff

says the job was unsatisfactory and left unfinished. Ms. Botrokoff had to hire another tiler, DG, to repair and complete the work at a cost of \$585.

21. While Mr. Burgi provided some photographs of tiling work he completed, he did not provide photographs showing all the tiling work complete. In one photograph, a tarp covers part of the tiled area. In the other, grout appears to be missing and some tile edges appear uneven.
22. DG provided a statement that he tiled beside the toilet and shower, two rows at the end of the bathroom, cleaned off excess grout and grouted the bathtub, and removed and replaced some tiles in other areas. I find that in around May 2018, Ms. Botrokoff paid DG \$585 for this repair and completion of the bathroom tiling. I accept DG's statement as expert evidence that Ms. Botrokoff's tiling work was incomplete and needed repair, because DG's qualifications as a tiler were uncontested
23. On June 11, 2018, Ms. Botrokoff texted Mr. Burgi asking to be paid \$500 as a refund for the siding job, which I will discuss further below, and \$585 for the tile work done by DG. Mr. Burgi replied writing "asap i have 2 jobs that owe me money so as soon as they pay ill pay u (smiling face emoji) sorry for inconvenience" (quote reproduced as written except that the emoji is described).
24. Mr. Burgi says he was "confused" when he sent this text. However, Mr. Burgi continued to send additional texts confirming that he would pay these amounts, even after June 11, 2018. I find that he understood the nature of the payments when he sent his texts.
25. Based on Mr. Burgi's texts, I find that he agreed to pay Ms. Botrokoff the \$585 she paid DG to complete the bathroom tiling work. From this text exchange, I infer that Mr. Burgi had agreed to complete all the bathroom tiling work for the fixed price of \$2,000 that Ms. Botrokoff initially paid. When Mr. Burgi was unable to complete the work in a satisfactory way, I find he agreed to pay DG's bill to complete and repair it. I therefore order that Mr. Burgi pay Ms. Botrokoff \$585.

Siding

26. Ms. Botrokoff asked Mr. Burgi to complete some siding work on the outside of her house.
27. In September 2017, Ms. Botrokoff says Mr. Burgi told her siding had increased in price, and that if she gave him \$3,000 cash, he could get a good deal on it.
28. Mr. Burgi agrees that Ms. Botrokoff paid him \$3,000 towards work and materials for the siding job. However, Ms. Botrokoff then decided not to proceed with the siding work.
29. Ms. Botrokoff says she was refunded all but \$500 of the \$3,000 deposit. Mr. Burgi says that, rather than a cash refund, Ms. Botrokoff purchased \$2,575.96 in materials for her use, through his account at Central Hardware. I accept this evidence as it is consistent with the Central Hardware invoices and invoices Mr. Burgi issued to Ms. Botrokoff.
30. Therefore, I find that this claim is about the \$424.04 difference between the \$3,000 deposit and the \$2,575.96 in materials. Based on Mr. Burgi's admission that he was paid the \$3,000, and his text message agreeing to repay the difference, I find that he must pay Ms. Botrokoff \$424.04.
31. The *Court Order Interest Act* applies to the CRT. Ms. Botrokoff is entitled to pre-judgement interest on the \$1,009.04 total award from May 15, 2018, which I find is when Ms. Botrokoff paid for the tiling repair, to the date of this decision. This equals \$28.75.
32. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I find Ms. Botrokoff is entitled to reimbursement of \$150 in CRT fees and \$24.27 in dispute-related expenses for reasonable photocopying and mailing expenses that are supported by receipts.

ORDERS

33. Within 30 days of the date of this order, I order Mr. Burgi to pay Ms. Botrokoff a total of \$1,212.03, broken down as follows:
 - a. \$1,009.04 for completion of the tiling work and a refund,
 - b. \$28.75 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$174.24 for \$150 in CRT fees and \$24.27 for dispute-related expenses.
34. Ms. Botrokoff is entitled to post-judgment interest, as applicable.
35. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that CRTs may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
36. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member