



# Civil Resolution Tribunal

Date Issued: June 16, 2020

File: SC-2019-010028

Type: Small Claims

Civil Resolution CRT

Indexed as: *Rotter v. Schroeder*, 2020 BCCRT 669

BETWEEN:

EUGENE ROTTER

**APPLICANT**

AND:

JOHN SCHROEDER

**RESPONDENT**

AND:

EUGENE ROTTER

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about a tiling job. The applicant and respondent by counterclaim, Eugene Rotter, says the respondent and applicant by counterclaim, John Schroeder, owes an outstanding balance of \$1,179.45.
2. Mr. Schroeder says there were several deficiencies with Mr. Rotter's work, which Mr. Schroeder says left an unsightly result and to some extent will require repair. Mr. Schroeder counterclaims for a total of \$4,150: \$650 for labour to complete Mr. Rotter's unfinished work, \$700 for "overcharges", \$1,100 for a new glass shower door, and \$1,600 to fix Mr. Rotter's alleged errors. Mr. Rotter says he tiled to a professional standard and denies any deficiencies.
3. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
6. 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.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. To what extent, if any, has Mr. Schroeder proved deficiencies in Mr. Rotter's tiling work, such that Mr. Schroeder is entitled to damages claimed in his counterclaim?
  - b. To what extent, if any, has Mr. Rotter proved he is entitled to payment of his outstanding balance?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant Mr. Rotter bears the burden of proof, on a balance of probabilities. Mr. Schroeder bears this same burden on his counterclaim. I have only discussed the parties' evidence and submissions to the extent necessary to give context to my decision.
10. It is undisputed the parties' agreement was a verbal one. In a Statement of Facts, the parties agree:
  - a. Mr. Schroeder hired Mr. Rotter in June 2019 to tile a bathroom in Mr. Schroeder's client's home.
  - b. Mr. Schroeder would pay Mr. Rotter \$48 per hour, excluding materials. The parties disagree about whether Mr. Schroeder's client bought all the materials or whether Mr. Rotter bought some himself also. As set out below, I find Mr. Rotter bought some.
  - c. Mr. Rotter sent Mr. Schroeder photos of his work throughout the project.

- d. At some point in mid-June, Mr. Schroeder told Mr. Rotter he was not satisfied with his work, though Mr. Rotter says this conversation was limited to his tiling behind a cabinet.
  - e. Mr. Rotter completed the tiling job in June 2019, and sent Mr. Schroeder 3 invoices. Mr. Schroeder paid the first \$3,000 invoice in full, and paid only \$3,000 of the second \$3,470.45 invoice. Mr. Schroeder paid nothing towards the third \$1,179.45 invoice (which carried over the \$470.45 balance from the second invoice).
11. The parties expressly disagree about whether Mr. Schroeder gave Mr. Rotter sufficient verbal instruction at the outset of the job. Mr. Schroeder says he did, but Mr. Rotter says he was never given any diagrams or a visual explanation of the requested tiling work. I accept Mr. Rotter's evidence on this point, since there are no diagrams in evidence.
12. I will deal with Mr. Schroeder's counterclaim first. As noted above, Mr. Schroeder's counterclaim and defence to Mr. Rotter's claim are based on his allegations that Mr. Rotter's work was deficient. Summarized below are Mr. Schroeder's allegations:
- a. Mr. Rotter tiled in an area where he was expressly instructed not to tile. Mr. Schroeder says cabinetry had been measured for a specific fit and so it had to be adjusted to accommodate this error.
  - b. Mr. Rotter incorrectly tiled the opening of the shower door, shortening the opening so that the existing door could not be re-used. Mr. Schroeder says this required the purchase of a new shower door for about \$1,100.
  - c. Mr. Rotter incorrectly spaced and set tile on one wall, leaving a half-inch space at the corner. Mr. Schroeder says instead of fixing this error, Mr. Rotter cut and set several very small ½" tiles in the space. Mr. Schroeder refers to photos he submitted and says this is unsightly and that his customer expects it to be fixed.

- d. Mr. Rotter incorrectly cut and installed the tile edge rail (Schluter edge) on one wall. Mr. Schroeder says rather than install the correct single length, Mr. Rotter added “an unnecessary join”.
  - e. Mr. Rotter incorrectly cut and set the Schluter edge on a divider wall, which Mr. Schroeder says is unsightly.
13. The burden of proving deficiencies is on the party alleging them, which here is Mr. Schroeder (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91). I find Mr. Schroeder has not met that burden with respect to Mr. Rotter’s work. My reasons follow.
14. Mr. Schroeder’s only submitted evidence is his own statement, a few emails from Mr. Rotter to Mr. Schroeder’s client noting Mr. Rotter had not been paid, and some photos of tiling work. First, I cannot tell from the submitted tiling photos that there are deficiencies. Second, I have no statement in evidence from Mr. Schroeder’s customer indicating any unhappiness with the work. I acknowledge the photos do show some tiles with a series of offset ½” deep tiles at an edge. However, based on the evidence before me, I am not prepared to conclude this was deficient. I say the same about the Schluter edging, and here I note Mr. Rotter says it is not possible to install a single Schluter edge as Mr. Schroeder says should have been used. Mr. Rotter says the problem with the shower door not fitting was due to a framing error, where the divider wall was built too thick.
15. Third, as there is nothing obviously deficient in the photos, I find expert evidence would be required to prove the alleged deficiencies, as I find the alleged errors are matters outside ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). While I have insufficient evidence that Mr. Schroeder is an expert tile setter, I would not accept his comments as expert opinion because I find he is not sufficiently objective as an interested party. Mr. Schroeder says he had another “tile guy” come look at Mr. Rotter’s work, but says that this person did not want to become involved. However, as noted above Mr. Schroeder bears the burden of providing deficiencies, and I find he has not done so.

16. Further, while Mr. Schroeder claims \$650 in labour, \$700 in “overcharges”, \$1,100 for a new glass shower door, and \$1,600 to fix Mr. Rotter’s alleged errors, Mr. Schroeder submitted no proof of these claimed damages. In particular, he did not submit any photos of any work he allegedly re-did, there are no timesheets from anyone, and there is no receipt for a new shower door. I also acknowledge Mr. Rotter’s submission of a May 8, 2020 statement from a framer who confirmed Mr. Rotter’s approach to installing the tile around cabinetry.
17. Given my conclusions above, I find Mr. Schroeder has not met the burden of proving Mr. Rotter’s work was deficient. I dismiss his counterclaim on that basis alone, but I would also dismiss it for failure to prove damages.
18. I turn then to Mr. Rotter’s claim for payment of \$1,179.45.
19. Mr. Rotter’s June 16, 2019 invoice #319127 was for \$6,470.45, less the \$3,000 “deposit” already paid, leaving a \$3,470.45 balance. This invoice says it is for renovation work, materials, and supplies. It says it covers work done between May 29, 2019 (when work started) and June 14, 2019. As noted above, Mr. Schroeder paid \$3,000 towards the second invoice.
20. Mr. Rotter’s June 28, 2019 invoice #319128 for \$1,179.45 is for work done on 4 days between June 17 and June 29, 2019. It also includes the \$470.45 unpaid balance from invoice #319127.
21. On August 8, 2019, Mr. Rotter wrote Mr. Schroeder asking for payment, noting that Mr. Schroeder had not communicated for almost a month and a half. Mr. Rotter followed up again on October 3, 2019, without response. Mr. Rotter sent his letters by registered mail, and the evidence shows the first was delivered on August 20, 2019 and a later letter was refused by the addressee, Mr. Schroeder.
22. I have addressed Mr. Schroeder’s counterclaim above. I have also reviewed Mr. Rotter’s submitted photos, which go beyond those submitted by Mr. Schroeder. I similarly find there is nothing in Mr. Rotter’s photos that is obviously deficient. I find no basis to order any deduction from his invoice.

23. As for the invoice itself, Mr. Schroeder does not identify anything in it that is objectionable, apart from his allegations about deficiencies. In particular, he does not challenge the hours billed. Plus, to the extent Mr. Schroeder appeared to challenge Mr. Rotter's purchase of materials in the Statement of Facts, I find the materials' purchase is supported by receipts dated May 29 and 30, 2019, at the outset of the job. I find Mr. Rotter is entitled to payment of the claimed \$1,179.45 invoice balance.
24. In submissions, Mr. Rotter claims "1,5% interest" (quote reproduced as written) on the outstanding balance. I have no evidence before the parties agreed to any contractual interest rate, and so I do not allow it. However, the *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Rotter is entitled to pre-judgment interest under the COIA on the \$1,179.45, from the June 28, 2019 invoice date to the date of this decision. This interest equals \$22.37.
25. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees. I see no reason to deviate from that practice here. I find Mr. Rotter is entitled to reimbursement of \$150 in paid CRT fees. I dismiss Mr. Schroeder's claim for CRT fee reimbursement. No dispute-related expenses were claimed.

## **ORDERS**

26. I order the respondent Mr. Schroeder to pay the applicant Mr. Rotter a total of \$1,351.82, broken down as follows:
  - a. \$1,179.45 in debt,
  - b. \$22.37 in pre-judgment interest under the COIA, and
  - c. \$150 in tribunal fees.
27. Mr. Rotter is entitled to post-judgment interest as applicable. Mr. Schroeder's counterclaim is dismissed.

28. 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 tribunals 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.
29. 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.

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Shelley Lopez, Vice Chair