



Civil Resolution Tribunal

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File: SC-2020-000252

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nercessian v. Blake*, 2020 BCCRT 672

B E T W E E N :

G A R O N E R C E S S I A N

A P P L I C A N T

A N D :

N A T H A N B L A K E

R E S P O N D E N T

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about a painting agreement. The applicant, Garo Nercessian, says that the respondent, Nathan Blake, did not complete the painting work and that

some of the painting was defective. Mr. Nercessian requests \$1,260 he says he paid to fix the paintwork on interior doors and frames plus \$2,436 to fix peeling paintwork on staircases, for a total of \$3,696. Mr. Nercessian represents himself.

2. Mr. Blake says that there were only minor touchups needed and there is \$2,765.25 still owing under the agreement. He says that the delay in completing the job was because Mr. Nercessian was focusing on getting his flooring installed. Mr. Blake also says he suggested finishing the work in June 2019, but Mr. Nercessian did not accept the number of days he offered to repair and finish his work. Mr. Blake says he was busy with other projects and was not responsible for chasing Mr. Nercessian down to find a date to complete the work. Mr. Blake represents himself.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.

6. 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 tribunal considers appropriate.

ISSUE

7. The issue in this dispute is whether Mr. Blake breached the terms of the painting agreement and, if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove his claim on a balance of probabilities.
9. 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.
10. Most of the facts are undisputed. The parties entered into an agreement in October 2018 for Mr. Blake to perform drywall repairs and paint all ceilings, walls, doors, baseboards, chair rails, windowsills, baseboards and staircase banister handrails. Mr. Blake was also to paint the entrance door. The total cost was \$11,765.20. The agreement stated that the work would begin October 15, 2018 and be completed by November 15, 2018. Mr. Nercessian paid \$9,000.00, leaving \$2,765.25 outstanding.
11. The work was not completed by November 15, 2018. Mr. Blake says this is because Mr. Nercessian interrupted the work due to flooring installation. Mr. Nercessian submits that Mr. Blake should have completed the work by November 15, 2018. For the reasons outlined below, I prefer Mr. Blake's argument on this point.
12. Both parties supplied emails and texts. Mr. Blake provided a December 11, 2019 email in which he told Mr. Nercessian that he would come back to finish the work and repair any defects once the flooring was completed. Mr. Nercessian has not provided any evidence that he was contacting Mr. Blake in November or December

2018 about why the work was not completed. The evidence shows that it was not until January 15, 2019 that Mr. Nercessian texted Mr. Blake to say that some of the paintwork was peeling. There was no comment that Mr. Nercessian was alleging that Mr. Blake breached the contract by not completing the work by November 15, 2018. The text conversation between the parties indicates that they were both discussing how to carry out the terms of the agreement. Also, subsequent texts indicate Mr. Blake was waiting for Mr. Nercessian to complete the flooring before he could finish painting. Mr. Nercessian did not provide proof that the flooring did not interfere with Mr. Blake's ability to finish the work by November 15, 2018. I find that Mr. Nercessian has not shown that Mr. Blake breached the agreement by not completing the work by November 15, 2018.

13. Mr. Nercessian also submits that Mr. Blake's work was defective. Where one party asserts defective work, that party, here the applicant Mr. Nercessian, has the burden of proving the defects: see *Lund v. Appleford*, 2017 BCPC 91 at paragraph 124. I have reviewed the pictures and they do show paint peeling in several areas including on the staircases.
14. In response to the January 15, 2019 text, Mr. Blake acknowledged there was a problem with the paint peeling and admitted it was his fault. He said he could fix it by peeling back the paint, sanding and priming before repainting. Mr. Blake estimated it would take 4 hours to fix. I find that Mr. Blake admitted that his work was defective. However, Mr. Blake indicated that he would repair his defective work and the parties began to communicate about when that would occur and how long it would take.
15. Mr. Nercessian texted on January 19, 2019 stating that the paint was peeling in other areas too. He also said the flooring was not finished and told Mr. Blake that the painting work could begin once the flooring was done. He also stated that he thought the whole staircase would have to be redone.
16. There is a gap in communication until April 2019. Mr. Nercessian has not submitted evidence showing that he tried to get Mr. Blake to come and complete the project

before this date and acknowledges that the flooring was not finished until March 2019. I find that this part of the delay was due to Mr. Nercessian and not Mr. Blake.

17. In April 2019 the parties exchanged a series of emails discussing the work that needed to be done and the available dates. On April 10, 2019, Mr. Blake acknowledged that it would take 3 days to sand, prime, and paint the staircase. Mr. Nercessian stated that there was also incomplete work that had to be finished. On April 23, 2019, Mr. Blake sent Mr. Nercessian the original quote and an additional quote for extras and touchups. There was no charge for the touchups.
18. Mr. Nercessian stated that he wanted Mr. Blake to finish the original work and fix the staircase starting on May 8, 2019. The parties then exchanged multiple emails about dates. Mr. Blake stated that it was a busy time but that he would get back to Mr. Nercessian with a date. On May 28, 2019 Mr. Blake explained that it was his busy season because he was now doing exterior painting work but that he could begin work on June 25, 2019.
19. On May 30, 2019, Mr. Nercessian gave Mr. Blake a deadline of the end of June to repair the defective staircase and some of the doors. Mr. Nercessian stated that three days was not enough time to complete this work. He told Mr. Blake he wanted the entire staircase stripped to bare timber before the application of the primer and the topcoat. Mr. Blake said that he was not going to strip the staircase to bare wood and that this was an impossible task and said that he was only willing to sand down the paint. Mr. Nercessian told Mr. Blake that the request to sand down the surface was based on information he received from the paint supplier and other decorators who saw the staircase and said this was necessary.
20. On June 3, 2019, Mr. Blake asked Mr. Nercessian if he wanted him to start the work on June 25th. Mr. Nercessian stated that Mr. Blake would not be able to complete the sanding and painting of the staircase in 3 days. There was no further communication between the parties after that.

21. Mr. Blake says that they were negotiating to find a suitable date to finish the work and make the repairs but then Mr. Nercessian hired somebody else. Mr. Blake says he was not the one who broke the contract because he was willing to complete the work.
22. I find that Mr. Blake did offer to complete the work but that it was Mr. Nercessian who rejected his offer to start on June 25, 2019. Mr. Nercessian provided no evidence, such as from the paint supplier, showing that the staircase had to be sanded down to its bare timber. The two quotes Mr. Nercessian did provide indicate that the scope of the work required was to remove paint that was not sticking to the surface and to sand the edges. Therefore, I find it was unreasonable to estimate it would take longer than 3 days to repair the staircase based on Mr. Nercessian's claim that it had to be sanded down to bare timber. His own quotes indicate this was not necessary.
23. Mr. Nercessian also says that even though the staircase was not sanded down to bare timber that it took the new painting company, C, 5 days with 4 decorators working fulltime to complete the staircase. He has provided C's invoice, but it does not itemize how many days it took to complete the work or the number of workers necessary. Mr. Nercessian has not proved that more than 3 days was necessary.
24. I also note that Mr. Nercessian indicates that he was anxious to get the work completed and did not want to wait for Mr. Blake to have more availability. However, although Mr. Nercessian obtained quotes in July 2019, he did not actually have the work completed until October 2019.
25. Based on the evidence, I find that Mr. Nercessian has not proved that Mr. Blake breached the terms of their agreement. Mr. Blake was willing to repair the defects, but Mr. Nercessian did not give him the opportunity to do so on the basis that the work would take more than three days. I find the evidence shows that the scope of the repair work was not as intensive as Mr. Nercessian claims. Further, Mr. Nercessian has not established that Mr. Blake could not have completed the repair

work in the three days offered. Therefore, I deny Mr. Nercessian's claims and this dispute.

26. Under section 49 of the CRTA and CRT rules, the CRT 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 Mr. Nercessian was unsuccessful, he is not entitled to reimbursement of his tribunal fees. Mr. Blake did not pay fees or claim expenses.

ORDER

27. I dismiss Mr. Nercessian's claims and this dispute.

Kathleen Mell, Tribunal Member