



# Civil Resolution Tribunal

Date Issued: July 29, 2020

File: SC-2019-008117

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Do It Right Properties Inc. v. Taylor*, 2020 BCCRT 839

BETWEEN:

DO IT RIGHT PROPERTIES INC.

**APPLICANT**

AND:

RITA MARLENE TAYLOR

**RESPONDENT**

AND:

DO IT RIGHT PROPERTIES INC.

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. This dispute is about house repair and renovation work. The respondent, Rita Marlene Taylor, hired the applicant, Do It Right Properties Inc. (DIRP) to work on her roof, deck, and back-entrance wall. DIRP filed the initial claim in this dispute and Ms. Taylor filed a counterclaim.
2. DIRP says Ms. Taylor breached the parties' contract by stopping work early and denying DIRP the opportunity to fix any deficiencies. It seeks payment of \$2,960.66 for work done to date. Ms. Taylor disagrees and says she was justified in asking DIRP to stop because the observed deficiencies were serious. She says the amount owing should be reduced by the cost of the deck work (\$1,767.59) or the cost of redoing it, as discussed below.
3. Ms. Taylor counterclaims for a total of \$4,999. She submits the work done on her back-entrance wall includes a faulty vapour barrier and a contractor has quoted \$5,000 to redo the work correctly. DIRP disagrees with the counterclaim. It says it built the vapour barrier, but it was meant to be temporary. DIRP says Ms. Taylor or her new contractors should not have enclosed it.
4. An employee or principal represents DIRP. Ms. Taylor represents herself.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The CRT 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 “she said, he 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 CRT’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 CRT’s process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
8. 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.

## **ISSUES**

9. The issues in this dispute are as follows:
  - a. Did Ms. Taylor reasonably stop ongoing work and provide DIRP an opportunity to fix deficiencies?
  - b. Did DIRP breach the parties’ agreement by providing deficient deck work, and if so, what is the appropriate remedy?
  - c. Did DIRP breach the parties’ agreement by incorrectly installing a vapour barrier, and if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, DIRP and Ms. Taylor must each prove their claims on a balance of probabilities. Although I have reviewed all the evidence and submissions, I only refer to them as necessary to give context to my decision.
11. As discussed below, I find that Ms. Taylor reasonably stopped DIRP from working based on observed deficiencies and provided DIRP an opportunity to fix them. I find that DIRP has proven its claim to the extent of \$1,836.66. This is because I find the claimed amount of \$2,960.66 must be reduced by \$1,124 to account for deck work deficiencies. I also find Ms. Taylor has proven her counterclaim as DIRP improperly installed the vapour barrier. I find she is entitled to payment of \$4,999 to redo the work. DIRP must pay Ms. Taylor a net amount of \$3,162.34 before CRT fees and dispute-related expenses. My reasons follow.

### ***The Parties' Agreement***

12. Ms. Taylor lives in a single-family home. It has a sloped shingle roof as well as an adjoining flat outdoor deck area. In July 2018, water penetrated between the deck vinyl and fascia of Ms. Taylor's house, resulting in mould, rot, and other damage to the deck. On July 17, 2019 Ms. Taylor hired DIRP to repair water damage affecting her roof and back entrance wall. Ms. Taylor provided a \$6,124 deposit for DIRP to begin work.
13. The scope of work and the payment are documented in a July 17, 2019 invoice. At some point after DIRP started, Ms. Taylor requested deck work as well. The deck work is outlined in an August 7, 2019 invoice. The parties did not sign any written agreement and the invoices are limited to outlining the work planned and a payment schedule.
14. On August 11, 2019, Ms. Taylor told DIRP to stop working because she had concerns about the deck work. She wrote that the vinyl decking stopped short of a wall, the flashing (strips of material to keep water out) had problems, and the deck comb face boards (or fascia boards) were made of several pieces joined together

crookedly, instead of one piece. She wrote she would withhold further payment on the next progress draw until she had an inspection done.

15. DIRP's representative, AM, emailed back that DIRP would be willing to change the comb face boards at no charge. AM also noted the work was still in progress.
16. The parties did not reach any consensus on how to proceed. On August 24, 2019, Ms. Taylor emailed DIRP a roofing report. She asked for DIRP to do corrective work based on the report. She also said a full report on the deck would be forthcoming. In an August 28, 2019 email, AM responded that DIRP was no longer interested in dealing with her.
17. In this dispute, DIRP claims \$1,767.59 for the entire balance of the August 7, 2019 invoice for deck work. It also claims only \$1,193.07 for the July 17, 2019 invoice. The total equals the claimed amount of \$2,960.66.

***Issue #1. Did Ms. Taylor reasonably stop work ongoing work and provide DIRP an opportunity to fix deficiencies?***

18. DIRP says that Ms. Taylor prevented it from fixing any issues with its work. By doing so, DIRP says Ms. Taylor should not be allowed to claim for any work deficiencies. Ms. Taylor says that after seeing the DIRP's work, she did not trust them to finish the job until getting the work inspected. She also disagrees that DIRP was willing to correct any issues after she obtained her report.
19. I agree with the CRT members' comments in the non-binding decisions in *Alamolhoda v. Two Girls on A Roll Painting Ltd. et al*, 2019 BCCRT 1005 and *Bell v. Whyte*, 2020 BCCRT 84. As stated in *Alamolhoda*, the law does not require that a contractor perform its work to a standard of perfection. The standard is one of reasonableness. It may be common for minor deficiencies to arise in a contractor's work that require them to return and fix before finalizing the job.
20. However, as stated in *Bell*, it may also be reasonable to hire someone else to fix or redo work. This was the situation in *Bell*, where the applicant had lost confidence in

the respondent's drywall work based on negative comments by a general contractor and painter.

21. I find that Ms. Taylor reasonably halted the work to obtain evidence from a third-party contractor about her roof and deck. She obtained the roof report on August 16, 2019. The report is written by a project manager for a roofing company. The manager commented on DIRP's work and wrote that, overall, the installation was "improper" and that "the poor workmanship observed would result in no support by the manufacturer in the event of system failure". Ms. Taylor's emailed concerns about the vinyl decking, flashing, and deck comb were also subsequently justified by a December 5, 2019 home inspection report, discussed below.
22. DIRP says Ms. Taylor denied it the opportunity to return and fix the deficiencies but I disagree. She emailed the report to DIRP in August 2019 and DIRP refused to deal with Ms. Taylor any further. I find the email was an offer for DIRP to fix the deficiencies and continue work, which DIRP refused.

***Issue #2. Did DIRP breach the parties' agreement by providing deficient deck work, and if so, what is the appropriate remedy?***

23. Ms. Taylor says the deck was work deficient. I find that whether DIRP's work was deficient or below industry standards is beyond ordinary knowledge. This is because the standards of an industry are often outside of the knowledge or expertise of an ordinary person. See *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119. I find that expert evidence is needed to show DIRP's work was deficient.
24. Ms. Taylor obtained a December 5, 2019 home inspection report that largely comments on the roof and deck. The inspector also provided comments in a December 10, 2019 email to Ms. Taylor, which includes the inspector's qualifications. I consider the home inspector's email and report to be expert evidence under CRT rule 8.3. The inspector notes in the email that he has a background in construction, and 18 years in builder and carpenter experience.

25. Based on the inspector's expert evidence, I find that DIRP breached the parties' contract by providing deficient deck work. The inspector noted loose or missing flashing at the deck and roof junction. He also added in the report that there were 4 poorly connected fascia boards that should have been one piece. Ms. Taylor emailed DIRP about the flashing and fascia boards in August 2019, as noted above. The inspector noted rot still evident in 2 areas on the deck sheathing located under the vinyl, which was prep work DIRP charged for. The inspector also wrote that the vinyl decking material was loose and lifting at the wall and deck edge and improperly cut, leaving a seam on the deck floor. In the December 10, 2019 email, he wrote that the work was "sub-par at best and embarrassing" from a professional standpoint.
26. The inspector also negatively commented on the workmanship of a parapet wall (also called a parfait wall or triangular rise) located between the roof and the deck. The parties dispute whether DIRP or someone else built it. An adverse inference can be drawn against a party where, without sufficient explanation, it fails to produce evidence or call a witness expected to provide supporting evidence: *Port Coquitlam Building Supplies Ltd. v. 494743 B.C. Ltd.*, 2018 BCSC 2146 at paragraph 67. I find it likely that DIRP built the parapet wall as Ms. Taylor says she saw DIRP's employee, JP, build the wall, and JP did not provide any evidence. DIRP's representative, AM, says DIRP did not build it, but it is undisputed that AM only attended the house on the first day of work.
27. DIRP submits that the deck work was incomplete, and these concerns would have been addressed if it had finished its work. I disagree given the scope and number of issues identified by the inspector.
28. DIRP also says that Ms. Taylor's back addition was done without proper permits and had pre-existing issues. It also says that Ms. Taylor had hired another contractor to begin work before it started as part of an insurance claim. I found these submissions speculative and unsupported by the evidence.

29. In summary, I find that DIRP breached the parties' contract by providing deficient deck work. I conclude the amount owing should be reduced to account for the deficiencies. I reduce the amount owing by \$210 for the soffits as supported by Ms. Taylor's invoice for completing this work. I also further reduce the amount owing by \$385, which DIRP charged for the deficient deck comb face and offered to redo.
30. Ms. Taylor supplied a \$1,159.20 estimate for supplying and reinstalling the deck vinyl. DIRP did not charge for this work and left it incomplete. Its August 7, 2019 invoice is mainly for deck preparation work. However, Ms. Taylor says, and I accept, that she provided the vinyl decking to DIRP and she must obtain new decking. The estimate does not say how much the deck vinyl costs by itself. Ms. Taylor says it costs \$529. On a judgment basis, I find Ms. Taylor is entitled to a further reduction of \$529.
31. As noted above, DIRP claims \$2,960.66 for work done to date. I therefore reduce the amount owing under DIRP's claim by  $(\$210 + \$385 + \$529 =)$  \$1,124. Ms. Taylor therefore owes DIRP  $(\$2,960.66 - \$1,124 =)$  \$1,836.66, before accounting for the counterclaim.

***Issue #3. Did DIRP breach the parties' agreement by incorrectly installing a vapour barrier, and if so, what is the appropriate remedy?***

32. As noted in the July 17, 2019 invoice, Ms. Taylor hired DIRP to replace a wall section at the back entrance. This work included installing new wall sheathing, drywall on the interior side and stucco on the exterior. DIRP did not complete the stucco work and is not claiming for it. Ms. Taylor subsequently hired 2 different contractors to finish the drywall and stucco work.
33. As part of the wall section work, DIRP's underlying claim includes \$1,500 for installing drywall and interior wall vapour barrier. DIRP says it completed this work and Ms. Taylor removed it. I find this improbable, as DIRP acknowledges that Ms. Taylor contacted it at one point to finish the drywall work, which it refused to do. Ms. Taylor also denies removing any drywall or vapour barrier and I agree with her



submission that she would have no incentive to do so, if they were properly completed.

34. The question that remains is what work was actually done, and whether this work was deficient, as Ms. Taylor alleges. I find that DIRP's work is documented in a December 20, 2019 estimate that Ms. Taylor obtained from a contractor. The estimate shows DIRP did some drywall preparation work and installed interior wall vapour barriers. The contractor wrote that the vapour barrier was installed on the "cold side" of the insulation. This is the side closer to the exterior of the house. The contractor said that the barrier had to be replaced because it would trap moisture, creating mould, and rot the wooden studs and plates over time. He added that to repair this, he would need to remove the drywall, stucco, insulation and vapour barrier.
35. I find the proper installation of the vapour barrier is beyond ordinary knowledge. I do not find the estimate to be expert evidence under CRT rule 8.3, as the contractor's qualifications are not stated. However, I find it appropriate to rely on the estimate, because DIRP does not deny that the depicted barrier would cause problems if it was permanent.
36. DIRP acknowledges installing the barrier, but says it was meant to be temporary to stop water ingress over the weekend. I disagree. DIRP did not provide any evidence from anyone that actually worked on the barrier to say whether this was true. I find it appropriate to draw an adverse inference against DIRP as this was a key issue argued at length by the parties.
37. The contractor also included a picture in his estimate that shows the vapour barrier with no drywall installed over it. The barrier resembles a thin, translucent plastic sheet. It is located between the wall studs and wall sheathing. I find there is nothing in the picture to suggest that it would be easy to remove. I find the picture inconsistent with DIRP's submission that the barrier was a temporary measure to keep out water.

38. DIRP says that Ms. Taylor or her contractors should not have enclosed the barrier. However, I find this consistent with my conclusion that the vapour barrier was built in a manner to suggest that it was permanent and not temporary. DIRP also did not make a third party claim against the contractors and I do not find there to be any evidence of negligence by Ms. Taylor. There is nothing to suggest she knew or should have known that the vapour barrier was incorrectly installed.
39. In summary, I am satisfied that DIRP installed the vapour barrier in a deficient manner. Ms. Taylor counterclaims \$4,999 as compensation. As this amount is supported by the December 20, 2019 estimate, I find that DIRP must pay Ms. Taylor \$4,999, less \$1,836.66 for its own proven claim. DIRP must pay a net amount of \$3,162.34 as damages.
40. The *Court Order Interest Act* applies to the CRT. Ms. Taylor is entitled to pre-judgement interest on the \$3,162.34 damages award from August 7, 2019, the date of the last DIRP invoice, to the date of this decision. This equals \$56.71.
41. 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 see no reason in this case not to follow that general rule. I find Ms. Taylor has been substantially successful as she proved her counterclaim and reduced the amount owing under DIRP's claim. I find she is entitled to CRT fees of \$125. Ms. Taylor also claims \$292.95 as reimbursement for the home inspection report as a dispute related expense. I find the report was reasonably necessary and the claimed amount is supported by a receipt. I award Ms. Taylor \$292.95 as reimbursement for the report.

## **ORDERS**

42. Within 14 days of the date of this order, I order DIRP to pay Ms. Taylor a total of \$3,637.00, broken down as follows:
- a. \$3,162.34 in damages,

- b. \$56.71 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$417.95, for \$125.00 in CRT fees and \$292.95 for dispute-related expenses.
43. Ms. Taylor is entitled to post-judgment interest, as applicable.
44. DIRP's remaining claims are dismissed.
45. 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.
46. 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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David Jiang, Tribunal Member