



Civil Resolution Tribunal

Date Issued: September 8, 2020

File: SC-2020-003787

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *White v. Richard Brooks (dba Richard's Island Perimeter Drains)*, 2020
BCCRT 1002

B E T W E E N :

MICHEL WHITE

APPLICANT

A N D :

RICHARD BROOKS (Doing Business As RICHARD'S ISLAND
PERIMETER DRAINS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about a deposit refund. The applicant, Michel White, hired the respondent, Richard Brooks (Doing Business As Richard's Island Perimeter Drains)

to replace the perimeter drain system for her house and paid a \$4,462.50 deposit. After Mr. Brooks started the work, Ms. White cancelled the project and now seeks a full refund of the deposit.

2. Mr. Brooks says the project was scheduled for 3 weeks but Ms. White cancelled the project after 2 days. He says that he missed 3 weeks of work and Ms. White is not entitled to a refund. In any event, Mr. Brooks says any deposit refund should be set-off against the value of the services he provided.
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. 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.
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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is to what extent, if any, Mr. Brooks must refund the deposit to Ms. White.

EVIDENCE AND ANALYSIS

9. In this civil claim, Ms. White 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.
10. On January 31, 2020, the parties entered into a written contract which included the following terms:
 - a. Mr. Brooks, doing business as Richard's Island Perimeter Drains would provide materials and labour to replace Ms. White's water line. I note Mr. Brooks referred to the project as replacing the perimeter drain system in the Dispute Notice and I infer it means the same thing,
 - b. Ms. White would pay Mr. Brooks a total of \$17,000 plus \$850 in GST, which included a \$4,462.50 deposit (deposit), and
 - c. The work would start by February 19, 2020.
11. Ms. White paid the deposit the same day the contract was signed.
12. I infer from the submissions that Mr. Brooks and his workers, worked at Ms. White's house on February 20, 2020 and February 21, 2020. Ms. White says on February 21 she saw Mr. Brooks' workers "smoking weed" before they started work, by which I infer she meant marijuana. She says she informed Mr. Brooks and that he stated he would tell them to go home. She says she also informed him she thought they smoked marijuana the previous day (February 20) as well before he had arrived on site.

13. Ms. White says she was worried that if the workers were impaired, it could negatively affect the quality of their work, and they could be injured while using equipment. She says she lost confidence in Mr. Brooks and felt he was unprofessional. Because of this, Ms. White says she called Mr. Brooks on February 23 and terminated the contract.
14. Mr. Brooks denies his workers smoked marijuana at Ms. White's house or that they were impaired while working. Mr. Brooks says he was present on February 20 and his workers worked on their own on February 21. He also says his son was one of the workers.

Is Ms. White entitled to a deposit refund?

15. Ms. White says she should receive a full deposit refund since the contract did not state the deposit was non-refundable, it took her 1 month to find a new contractor to complete the project, and her plants and lawn died due to the delay. She also says Mr. Brooks only did one day's worth of work and stored his tools and equipment on her property until early March 2020.
16. Mr. Brooks says he had to leave town for a family emergency on February 23, 2020 and so could not pick up his tools and equipment until he returned 8 days later. Mr. Brooks says if he has to refund the deposit, he should be able to deduct the value of work done until Ms. White cancelled the contract, although he did not state how much this was. Mr. Brooks also says he lost 3 weeks of work after Ms. White terminated the contract.
17. The written contract does not say the deposit is non-refundable but simply describes it as a "Deposit". There is no indication that the parties discussed whether the deposit was refundable until after Ms. White cancelled the contract. Thus, I find there was no meeting of the minds on this issue and there is no evidence that the deposit was not non-refundable.
18. For Ms. White to succeed in her claim for the return of her deposit, she must prove that it was more likely than not that Mr. Brooks breached the contract's terms and,

therefore, the deposit must be returned. I am faced with conflicting evidence from the parties about whether Mr. Brooks' workers smoked marijuana or were impaired while working at Ms. White's house. I find it is impossible to know what truly happened. As noted above, the burden is on Ms. White to prove on a balance of probabilities that she was entitled to terminate the contract. I find she has not met that burden on this issue. Therefore, I dismiss Ms. White's claim for a refund of the deposit.

19. Even if I found Ms. White was entitled to a refund, the amount would have been subject to a set-off. I say this because Mr. Brooks worked at Ms. White's house for 2 days and Mr. Brooks says the project was scheduled for 3 weeks. This means Mr. Brooks had completed approximately 13% of the project when the contract was terminated (2 days out of a total of 15 work days). Since Mr. Brooks charged \$17,850 for the project, then 13% is \$2,320.50, which would have been deductible from the deposit.
20. 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. Since Ms. White was unsuccessful, I dismiss her claim for CRT fees.

ORDER

21. I dismiss Ms. White's claim and this dispute.

Rama Sood, Tribunal Member