



# Civil Resolution Tribunal

Date Issued: December 10, 2020

File: SC-2020-000601

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *All Elements Building Services BC Ltd. v. Kim*, 2020 BCCRT 1400

**B E T W E E N :**

ALL ELEMENTS BUILDING SERVICES BC LTD.  
and RYAN CAHOON

**APPLICANTS**

**A N D :**

GRACIE KIM

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This is a dispute about bathroom repairs. The applicants All Elements Building Services BC Ltd. (All Elements) and Ryan Cahoon, an All Elements employee, say that the respondent Gracie Kim has failed to pay for bathroom repairs that All Elements performed. They ask for an order that Ms. Kim pay the outstanding amount

of \$4,675, plus contractual interest. Ms. Kim says that the repairs were not completed properly, and so she does not owe this amount.

2. All Elements is represented by an employee. Mr. Cahoon and Ms. Kim are self-represented.

## **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 CRT considers appropriate.

## **ISSUES**

7. The issues in this dispute are:
  - a. Whether All Elements completed the agreed-upon work in Ms. Kim's bathroom, and
  - b. Whether Ms. Kim must pay the applicants \$4,675 as claimed.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
9. Ms. Kim had a leak from a shower in her home that also affected the suite below hers. In a July 9, 2019 email message, All Elements provided Ms. Kim with a quote of \$8,500 plus taxes to do repairs to her bathroom, and repairs to the ceiling in the neighbouring suite. The email stated that a 50% deposit was required before the work started, but it did not mention the requirement to pay GST on this amount. The quote did not break down the amount attributed to each portion of the job. However, there is no submission that the work done in the neighbouring suite is disputed.
10. Ms. Kim paid All Elements a \$4,250 deposit with an August 21, 2019 cheque. No amount was included for GST.
11. All Elements arranged for the old shower area to be demolished. All Elements says there was no mould present on the studs and framing at the time of demolition. Ms. Kim says that an unidentified worker told her that there were spots of mould on some studs. The studs and framing were not removed, and work to install the new shower proceeded.
12. A "hair line crack" was discovered in the shower pan after it was installed. A photo in evidence shows that the pan had a chip and crack in one corner that seem to be

coming from the area where the pan is screwed into a stud. Ms. Kim exchanged text messages with All Elements' contractor, who advised that the cracked area would be covered by tile. The contractor stated "I am having my guys install a waterproof membrane as well". Work on the shower continued with the shower pan in place, but apparently the contractor did not install a membrane, which I note was not included in All Elements' quoted scope of work.

13. After the project was completed, Ms. Kim identified some deficiencies. Among other things, she was concerned that the studs had not been replaced, no waterproof membrane had been installed, and that all of her insulation had not been replaced. All Elements responded that not all the walls were insulated originally, and that it installed insulation on those walls. According to All Elements, the studs did not require replacement and the work on the shower was water-tight. It says that its contractor did address some deficiencies in the work. Mr. Cahoon later revised All Elements' invoice to show a credit for the stud replacement, which was not required.
14. Ms. Kim did not pay the revised invoice. Ms. Kim took the position that the \$4,250 deposit she had paid already should cover the entire job. The parties had further discussions about whether additional work was required, but did not come to an agreement.
15. All Elements' position is that it completed the quoted scope of work in full, but Ms. Kim failed to pay the GST on her deposit or for the balance of the job. Ms. Kim says that All Elements did not complete the work to her satisfaction as it left in "mouldy studs" and the shower pan was broken. She also says that the contractor did not install the membrane, which she says was "compensatory work" as a result of the broken shower pan. Although Ms. Kim submits that she does not have "peace of mind" about her shower, she did not say that she has engaged another contractor to address any problems with it.
16. Although not specifically argued, I find that Ms. Kim seeks to deduct the potential costs related to the alleged quality issues against the amount she owes to All Elements (see *Wilson v. Fotsch*, 2010 BCCA 226 for the applicable criteria for an

equitable set-off). In the case of defective work, the burden of proof is on the party alleging defective work (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124). This means that while All Elements must prove that it completed the work required under the parties' agreement, Ms. Kim must prove that the work was deficient.

17. Where subject matter is technical, or beyond common knowledge, it is necessary refer to expert evidence to determine the appropriate standard of care (see *Bergen v. Guliker*, 2015 BCCA 283). I find that the question of whether All Elements' work was deficient is beyond common knowledge, and must be answered with reference to expert evidence.
18. The quoted scope of work required the removal and replacement of "rotted studs" in the shower surround. There is no dispute that, when the shower was demolished, the existing studs and framing were left in place. Ms. Kim says that a worker told her that there was mould on some of the studs. All Elements says that there were no damaged studs in the wall cavity, or they would have been removed or repaired during the demolition process.
19. Photos of the demolished shower stall do show several dark spots on some of the studs. However, it is not clear what these spots represent. There is no statement from the worker with whom Ms. Kim spoke or other industry professional to comment on whether the spots are mould or whether the studs had any signs of rot. Based on the evidence before me, and in the absence of expert evidence, I am unable to conclude that the studs should have been removed by All Elements as part of the agreed-upon scope of work.
20. Turning to the shower pan, there is no dispute that there is an area of damage in the corner of the installed pan. Ms. Kim suggests that the "broken" shower pan will not function as intended. All Elements says that the crack in the shower pan is not a structural issue and will not cause leaking in the future. All Elements says that the crack was in an area that was not a leaking point or weak point, and that it would be covered by the aqua board and tile when the work was completed. Photos of the

shower stall show that the damaged area was not visible after the aqua board was installed, and that this area later was covered by tiles and grout.

21. All Elements' evidence contains a statement from AM, a plumber who did not work on the project, who advised that it is proper practice to screw the upper lip or flange of a shower pan when installing them. According to AM, "[s]ome cracking can be expected and shouldn't cause any issues as long as it is completely covered by grout and tile". Although there is a mention in the evidence of Ms. Kim's intention to get her own opinion from a plumber about the crack in the shower pan, there is no such opinion in evidence. I accept AM's opinion that the damage to the shower pan does not affect its function. I also note that there is no evidence that the shower has leaked since the work was completed.
22. I acknowledge Ms. Kim's submission that she did not receive the waterproof membrane that she says was offered as "compensatory work". There is no dispute that a membrane was not included in the quoted scope of work. However, despite the damage to the corner of the shower pan, I find that Ms. Kim has not established that there was any defect in its function that would require compensatory work. I find that Ms. Kim did not receive less than she bargained for with respect to the shower installation.
23. The evidence before me supports the conclusion that All Elements completed the work required by the parties' agreement. I find that the evidence does not show that there are defects in All Elements' work, or that Ms. Kim incurred any expenses in addressing her concerns with the shower. Therefore, I find that she is not entitled to set-off any costs against the amount owing to All Elements.
24. The next consideration is the calculation of the outstanding balance. As noted above, All Elements claims \$4,675. According to an August 18, 2020 statement, this amount comes from the August 7, 2019 invoice for \$212.50 in unpaid GST for the deposit and the November 13, 2019 invoice for \$4,462.50. However, this does not reflect the fact that All Elements revised the November 13, 2019 invoice to remove the charge for the work on "rotted studs" that was not necessary and not completed. The revised

invoice, which was sent to Ms. Kim on January 2, 2020, was for a total of \$3,937.50, inclusive of taxes. I find that All Elements is entitled to payment of this revised amount, plus the outstanding GST, for a total of \$4,150.

25. Ms. Kim is responsible for the \$4,150 invoiced by All Elements, and must pay it this amount. I find that there is no indication that Mr. Cahoon had dealings with Ms. Kim in his personal capacity outside the scope of his employment. I dismiss Mr. Cahoon's claims.
26. A September 26, 2019 Work Authorization signed by Ms. Kim includes a provision that All Elements may charge interest on overdue accounts at an annual rate of 24%. The contractual interest associated with the August 7, 2019 invoice amounts to \$68.75, and \$890.63 for the November 13, 2019 invoice. In total, this equals \$959.38 in contractual interest. However, I will not make an order for this amount.
27. The CRT's monetary limit for small claims matters is \$5,000. A CRT Vice Chair has determined that, given binding decisions from the Provincial Court, contractual interest must, together with the principal debt, fall within this monetary limit (see *EASYFINANCIAL SERVICES INC. v. Rosvold*, 2019 BCCRT 68). This means that the maximum contractual interest available is \$850, and so I order that Ms. Kim pay All Elements this amount.
28. 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 All Elements is entitled to reimbursement of \$175 in CRT fees.
29. All Elements made submissions about whether Ms. Kim was required to pay its legal fees. All Elements did not make a claim for a specific amount or provide evidence that it incurred legal fees. In any event, CRT rule 9.4(3) states that, except in extraordinary cases, the CRT will not order one party to pay to another party fees charged by a lawyer or other representative. I do not find that the circumstances of

this case are extraordinary. I would not have made an order for these expenses even if they had been supported by documentation.

## **ORDERS**

30. Within 30 days of the date of this order, I order Ms. Kim to pay All Elements a total of \$5,175, broken down as follows:
  - a. \$4,150 in debt for work completed under the parties' agreement,
  - b. \$850 in contractual interest, and
  - c. \$175 for CRT fees.
31. All Elements is entitled to post-judgment interest, as applicable.
32. Mr. Cahoon's claims are dismissed.
33. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.



34. 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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Lynn Scrivener, Tribunal Member