



# Civil Resolution Tribunal

Date Issued: February 22, 2021

File: SC-2020-007463

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Miertsch v. Duke*, 2021 BCCRT 206

BETWEEN:

HEIDI MIERTSCH

**APPLICANT**

AND:

LLEWELLYN DUKE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about bathroom renovations. The applicant, Heidi Miertsch, says she hired the respondent, Llewellyn Duke, to do some work in her bathroom. Mrs. Miertsch says she gave Mr. Duke \$4,000 to replace her bathtub and toilet and install new trim. According to Mrs. Miertsch, the tub Mr. Duke installed was broken and the toilet and trim were never supplied or installed. Mrs. Miertsch asks for an order that

Mr. Duke pay her \$2,427.72 to remedy his defective work. Although Mr. Duke initially stated that he received \$3,500, he later admitted that he received \$4,000 from Mrs. Miertsch. Mr. Duke admits that he made a mistake while caulking the tub, but says that fixing the problem would not cost as much as Mrs. Miertsch claims. He also says that he was never paid for the toilet or trim.

2. The parties 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
5. Section 42 of the CRTA says 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 Mr. Duke damaged the bathtub,
  - b. Whether Mr. Duke failed to meet the terms of the parties' agreement around providing materials and labour for the toilet and trim, and
  - c. Whether Mr. Duke must reimburse Mrs. Miertsch for the \$2,427.72 she claims.

## **EVIDENCE AND ANALYSIS**

8. In a civil proceeding like this one, applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions but will refer only to the evidence and argument that I find relevant and necessary to provide context for my decision.
9. The parties agree that they had a verbal agreement for Mr. Duke to perform some plumbing work for Mrs. Miertsch, and that Mr. Duke received \$4,000 from Mrs. Miertsch. However, they disagree about the scope of work and materials that this money was intended to cover.
10. In the Dispute Notice, Mrs. Miertsch says that Mr. Duke was paid \$4,000 to provide and install a bathtub, trim, and toilet. Mr. Duke says that he does not have invoices to show the breakdown of his work, but that he was paid only for the work he completed and the materials he supplied. I will address the bathtub first.
11. Mrs. Miertsch says that, although Mr. Duke installed the tub, there were problems with the caulking, as well as damage to the tub's surface. She provided photos showing chips, cracks, and caulking applied in what appears to be a sloppy fashion. Mrs. Miertsch provided an estimate from a supplier who says that the tub cannot be repaired and needs to be replaced.
12. Mr. Duke admits that he installed the bathtub and that there were problems with the caulking. However, he says that he was not allowed to fix the caulking, and that the

problem could have been fixed by another professional for about \$1,000. Mr. Duke denies that the tub was cracked or scratched after he installed it.

13. The estimate from the supplier states that the bathtub cannot be repaired and needs to be replaced because of a gap in a seam between 2 pieces of the tub that creates issues with both waterproofing and stability. The supplier did not say that the replacement was necessary due to the caulking issues. The supplier said the chipping could be repaired, but the repair could fail due to the stability issue created by the gap.
14. I find that the question of whether the bathtub may be repaired or replaced is a matter outside of the knowledge of an ordinary person, and must be answered with reference to expert evidence (*Bergen v. Guliker*, 2015 BCCA 283). I find that the supplier's statement about the need to replace the bathtub amounts to expert evidence as contemplated by CRT rule 8.3, and I give it significant weight. There is no other expert evidence before me that provides a differing view.
15. Whether or not Mr. Duke was responsible for the chipping, I find that he is responsible for the gap between the 2 pieces of the bathtub and that the issues associated with the gap prevent the tub from being repaired. I am satisfied that the bathtub must be replaced.
16. As for the remainder of the items, Mrs. Miertsch claims that Mr. Duke never supplied or installed a toilet or trim despite receiving funds for these items. However, in her submissions, she describes more than 1 toilet, unspecified work done at other locations, and other fixtures, but no trim. Mr. Duke says that he supplied materials and did work at 3 additional locations and denies that he failed to provide any materials for which he had been paid.
17. The invoices that list the fixtures Mrs. Miertsch says Mr. Duke was paid for but did not install include 2 toilets, 2 washing machine hoses, a shower head, and various plumbing items and pipes. Mrs. Miertsch did not explain which of these items amount to the trim associated with her claim.

18. The invoice from the plumber who completed the work for Mrs. Miertsch includes not only charges for work that Mrs. Miertsch says Mr. Duke was to have done, but additional charges for installing 2 vanities, a laundry sink, and a hot water tank, as well as for a number of other tasks in kitchens and bathrooms. It is not clear whether any of the fixtures listed in the invoices are related to this additional work.
19. Based on the evidence before me, I am unable to determine what scope of work was contemplated by the parties' agreement beyond the bathtub installation, or what items should have been supplied by Mr. Duke. Similarly, I am unable to determine what work Mr. Duke did or what materials he supplied. Without this information, I cannot conclude whether the \$1,572.28 Mrs. Miertsch says Mr. Duke is entitled to for work that he did at the bathtub's location and the 3 other locations is reasonable payment for the work he did and materials he supplied, or whether he should reimburse Mrs. Miertsch for any amount related to this work or materials.
20. Keeping in mind that Mrs. Miertsch bears the burden of proof, I find that she has established that Mr. Duke is responsible only for the bathtub damages.
21. Mrs. Miertsch is entitled to reimbursement for the cost of the replacement bathtub which, according to an invoice in evidence, was \$235.19. I also find that she is entitled to reimbursement for the labour associated with removing the damaged bathtub and installing the new bathtub. According to the plumber's invoice, Mrs. Miertsch paid for 2 hours of tub removal, 3 hours of tub installation, and 2 hours of installation of the tub surround. At a rate of \$40 per hour, this equals \$280. She also paid \$100 for a plumber's helper for the tub installation. Although there is a charge for materials on the plumber's invoice, it is not clear whether they were related to the work done on the bathtub. I find that Mrs. Miertsch is entitled to \$380 for labour costs associated with the bathtub.
22. In summary, Mr. Duke must pay Mrs. Miertsch a total of \$615.19 in damages for the bathtub.

23. Although Mrs. Miertsch made a claim for interest in her Dispute Notice, she specifically stated in her submissions that she is not requesting any interest. Accordingly, I will not make an order for interest.
24. Under section 49 of the CRTA and CRT rules, the CRT generally will 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 Mrs. Miertsch is entitled to reimbursement of \$125 in CRT fees. She did not make a claim for dispute-related expenses.

## **ORDERS**

25. Within 30 days of the date of this order, I order Mr. Duke to pay Mrs. Miertsch a total of \$740.19, broken down as follows:
  - a. \$615.19 in damages, and
  - b. \$125 for CRT fees.
26. The remainder of Mrs. Miertsch's claims are dismissed.
27. 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.

28. 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