



Civil Resolution Tribunal

Date Issued: April 1, 2021

File: SC-2020-007251

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *BCFS Residential Rentals Ltd. v. Steopan Remodeling*, 2021 BCCRT 360

B E T W E E N :

BCFS RESIDENTIAL RENTALS LTD.

APPLICANT

A N D :

STEOPAN REMODELING

RESPONDENT

A N D :

BCFS RESIDENTIAL RENTALS LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This dispute is about a bathroom renovation. The applicant and respondent by counterclaim, BCFS Residential Rentals Ltd. (BCFS), hired the respondent and applicant by counterclaim, Steopan Remodeling (Steopan), to partially remodel a bathroom. BCFS says Steopan's work violated the parties' contract and the BC plumbing and building codes. BCFS says it had to hire a different contractor to redo Steopan's deficient work that Steopan allegedly refused to fix. It claims \$3,093.48, as the difference between what it paid to redo Steopan's work and what it would have owed Steopan had Steopan properly completed the job.
2. Steopan says it completed most of the work as required under the parties' contract, but BCFS refused to let it finish the job. It says it performed all work to industry standards and it does not owe BCFS anything.
3. Steopan counterclaims for \$5,000 which it says BCFS owes under the parties' contract. BCFS denies this claim because the work was allegedly deficient.
4. Each party is represented by an employee or principal.

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). 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.
6. 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict,

cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

7. 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.
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.
9. During the adjudication phase Steopan resubmitted a piece of evidence that was not previously accessible to BCFS or the CRT. BCFS provided a response to it, and so I see no prejudice to admitting it. So, I have considered this evidence and BCFS' response in my decision.

ISSUES

10. The issues in this dispute are:
 - a. Was Steopan's work deficient or otherwise in breach of the contract, and if so, what is an appropriate remedy?
 - b. Does BCFS owe Steopan \$5,000 under the parties' contract?

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, the applicant BCFS must prove its claims on a balance of probabilities. This means I must find it is more likely than not that BCFS' position is correct. Likewise, Steopan must prove its counterclaim to the same standard.
12. I have reviewed all the parties' evidence and submissions but refer only to what is necessary to explain my decision.
13. It is undisputed that on June 10, 2020, Steopan emailed BCFS a \$10,850 estimate for the bathroom remodeling work (estimate). The parties agree that on June 15, 2020 they both signed a different document setting out the scope of work for a fixed price of \$9,850, including materials (contract). Each party submitted slightly different versions of the contract, but I am satisfied that the minor discrepancies between the 2 versions do not alter the contract's relevant terms. The parties did not explain the discrepancies between the estimate and the contract. However, since the contract is signed by both parties, I find it is the document governing the parties' agreement, not the estimate.
14. The parties agree that in June 2020 BCFS paid Steopan a \$4,500 deposit towards the contract price, leaving a balance of \$5,350. The parties also agree that by July 2, 2020, Steopan had removed the bathtub, finished the plumbing, and installed the shower pan and tiles, but had not yet completed the job. The parties agree that in the evening of July 2, 2020, BCFS told Steopan it was not satisfied with its tiling work and asked Steopan to leave, which it did. It is undisputed that Steopan did no further work for BCFS after that date. It is also undisputed that later in the summer of 2020, BCFS paid another contractor to redo Steopan's work.

Was Steopan's work deficient or otherwise in breach of the contract, and if so, what is an appropriate remedy?

15. BCFS says Steopan failed to complete the work to its satisfaction in breach of the contract. It says some of Steopan's measurements violated the BC *Building Code* and the BC *Plumbing Code*, and that Steopan refused to correct the deficiencies.

16. Steopan says it estimated the job professionally and met its obligations under the contract, using quality materials, experience, and knowledge. It says the contract did not require a full bathroom renovation, and BCFS' claims are outside the contract's scope of work.
17. I find it is an implied term of the contract that the work was to be performed in a good and professional manner, the materials were of proper quality, and the finished work was to be fit for its intended purpose (see *Morgan and Gaiga v. Pacific Coast Floor Covering Inc.*, 2018 BCPC 236). I also find that the contract has an implied term that the work will comply with all relevant building and plumbing codes.
18. I find that whether Steopan's work was deficient or below industry standards is technical and beyond ordinary knowledge, and so expert evidence is required to determine the appropriate standard of professional competence (see *Bergen v. Guliker*, 2015 BCCA 283). BCFS did not submit any expert evidence.

Shower Curb and Stall

19. BCFS says both the shower curb and shower stall Steopan installed were the wrong size, and that Steopan could have moved the curb 2.5 inches closer to the toilet to widen the stall but refused to do so. Steopan denies this.
20. The contract does not specify the measurements of the curb or the stall. BCFS says that after Steopan started the work its representative's wife asked Steopan to make as much room as possible in the shower. Steopan does not dispute this. However, Steopan says that after the parties signed the contract it bought prefabricated shower materials, including the curb and floor pan, and showed them to BCFS. Steopan undisputedly told BCFS at that time that it is not authorized to alter the prefabricated pieces. Steopan also says that moving the shower curb would have required removing the floor tiles, part of the countertops, and the vanity cabinets, all of which were outside the contract's scope of work. On balance, I find BCFS has not

established that either the shower curb or stall Steopan installed were in breach of the contract.

21. BCFS relies on an interpretation document from the BC Building Code Interpretation Committee (code interpretation) for the standard size of a shower curb and stall. However, on a plain reading of the code interpretation, I find the document does not specify required shower measurements, and the attached drawing is merely one example of a compliant shower. BCFS also relies on NKBA and Uniform Building Code requirements, but it did not submit these alleged requirements as evidence or provide any expert or other evidence in relation to them.
22. BCFS says one of its estimator's asked why the curb was so big, and it says someone at a bath store said, "3 inches is the new 4 inches," but it did not provide a statement from either of these individuals or explain why it did not do so. It is also not clear whether either of these individuals would have qualified as an expert if they had provided a statement. For these reasons I place no weight on this hearsay evidence. I find that regardless of the size of the shower curb and stall, BCFS has now shown that Steopan breached the contract or any code requirements in relation to them. So, I find Steopan was not required to move the shower curb closer to the toilet.

Slope Towards Shower Drain

23. BCFS says Steopan failed to install the shower floor at the correct slope towards the drain. BCFS' photo of the shower floor with a level is unhelpful in determining the slope. The contract does not specify the required slope. BCFS relies on the code interpretation, which I have already found does not set out required measurements. BCFS also says one of its estimators said the slope of the shower floor should have been 2 percent, but for the reasons explained above I place no weight on this evidence. I find BCFS has not proven this aspect of its claim.

Shower Drain Location

24. BCFS says Steopan breached the contract by failing to move the drain to the centre of the shower. The scope of work in the contract states, “Change the position of drainage to the center.” However, it is undisputed that BCFS accepted Steopan’s recommended change to move the drain “back” as far as it could, to accommodate in-floor heating. BCFS says it later learned that the drain was unacceptably offset to one side by 3 to 4 inches, and not in the centre line, but it did not explain what was different between the change it accepted and the end result. As such, I find BCFS has not established this aspect of its claim.

Problems with the Tiling

25. BCFS seems to have taken issue with Steopan’s tiling, but it did not clearly articulate any related damages. The contract states only, “tile” with no description or specifications. BCFS says it told Steopan that it wanted the vertical tiling on the outside of the shower next to the toilet to reach the floor, and it submitted a photo showing a 1 to 2-foot gap in the tiling above the floor. However, I find this photo is insufficient to establish a breach of the contract or any code requirement.
26. BCFS also says Steopan “failed to accept that a single tile can be cut while attached to the wall” because Steopan was concerned about dust. However, it is unclear how this is connected to any of BCFS’ specific claims for breach of contract or generally deficient work. I find BCFS has not proven that Steopan’s tile work breached the contract or any code requirements.

Other alleged breaches

27. BCFS submitted an undated photo it says shows Steopan installed a steel strap over a copper pipe, in breach of the plumbing code. BCFS submitted an excerpt from the 2012 BC Plumbing Code to support this allegation. However, I find I cannot rely on the photo, as without expert evidence I cannot determine whether the photo shows a breach of the plumbing code.

28. BCFS submitted photos it says show Steopan failed to connect a ground wire, installed a switch box upside down, and improperly installed a light switch. However, the contract is silent about these items, and I find there is insufficient evidence to establish that any of this work was deficient or in violation of any code.
29. BCFS says it is not 100 percent satisfied with Steopan's work and relies on Steopan's "100 percent satisfaction guarantee" in the estimate. However, I have found it is the contract, not the estimate, that governs the agreement between the parties. The contract contains no such guarantee, and so I decline to address this issue further.
30. BCFS says that on Jul 2, 2020 Steopan demanded full payment under the contract before it had completed the work, in breach of the contract. The contract states that the \$5,350 balance will be paid when the job is done. However, the parties clearly had a disagreement that day, and I find that by asking to be paid the contract's balance Steopan did not breach any of its terms. Even if it did, BCFS has not shown that it suffered any damages from Steopan's demand for payment.
31. In summary, I find BCFS has failed to establish that Steopan's work was deficient or that it otherwise breached the contract. So, I find Steopan was not required to repair any of its own work. I dismiss BCFS' claims.

Does BCFS owe Steopan \$5,000 or some other amount under the parties' contract?

32. Steopan says BCFS refused to let it complete the work set out in the contract and that BCFS owes it the \$5,350 balance remaining under the contract. However, Steopan limits its counterclaim to \$5,000, which is the CRT's monetary limit in its small claims jurisdiction.
33. After BCFS asked Steopan to leave its property on July 2, 2020, the parties were unable to resolve their differences. In a July 13, 2020 letter, BCFS notified Steopan that since it had not repaired the alleged deficiencies with its work, BCFS would hire another contractor to redo it. I find BCFS' July 13, 2020 letter showed an intention to

no longer be bound by the contract, which is a repudiation (see *Kuo v. Kuo*, 2017 BCCA 245.) Later that day Steopan emailed BCFS that it had put a lien on BCFS' property for the \$5,350 balance of the contract. I find this email was Steopan's acceptance of BCFS' repudiation, which means the contract was terminated on July 13, 2020, and the parties had no further obligations under it.

34. I note that the CRT has no jurisdiction to resolve claims under the *Builder's Lien Act* (BLA), however the parties' claims in this dispute are for breach of contract, and the remedies requested are not remedies under the BLA.
35. The remedy for repudiation is damages, which are meant to put a party in the position it would have been in if the contract had been carried out as the parties agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319.) On the evidence before me, I find Steopan had completed the job except for the installation of one fixed glass panel and one sliding glass panel, including a silicone seal for both panels. Steopan undisputedly told BCFS on July 2, 2020 that the sliding glass door for the shower was ready for installation the following morning. Steopan submitted a July 9, 2020 invoice from a glass company for \$777 for a shower door, which it says it has not yet paid.
36. I find that if Steopan had been able to continue its work under the contract it would have completed it on or about July 3, 2020, and BCFS would have paid it \$5,350. I find BCFS must pay Steopan the claimed \$5,000.
37. The *Court Order Interest Act* applies to the CRT. Steopan is entitled to pre-judgment interest on the \$5,000 owing under the contract calculated from July 3, 2020, which is the date it would have completed the work, to the date of this decision. This equals \$16.78.
38. 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 Steopan's counterclaim was successful I find it is entitled to

reimbursement of \$125 in CRT fees. Steopan did not claim any dispute-related expenses. As BCFS was unsuccessful, I dismiss its claim for reimbursement of fees and expenses.

ORDERS

39. Within 30 days of the date of this order, I order BCFS to pay Steopan a total of \$5,141.78, broken down as follows:

- a. \$5,000 in in debt,
- b. \$16.78 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

40. Steopan is entitled to post-judgment interest, as applicable.

41. I dismiss BCFS' claims.

42. 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.

43. 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.

Sarah Orr, Tribunal Member