



Civil Resolution Tribunal

Date Issued: April 30, 2021

File: SC-2020-008446

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Howden v. Petersen*, 2021 BCCRT 465

BETWEEN:

PHILIP HOWDEN

APPLICANT

AND:

GAIL PETERSEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about home repair services. The applicant, Philip Howden, performed home repairs for the respondent, Gail Petersen. Mr. Howden claims that Ms. Petersen owes \$1,972.73 for unpaid repair services.

2. Ms. Petersen says that she does not owe Mr. Howden anything because his work was incomplete, defective, and he allegedly damaged her window. She also says that Mr. Howden has not provided an itemized description of his services.
3. Both parties are 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). 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.
5. 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.
6. 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.
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.

ISSUES

8. The issues in this dispute are:
 - a. Does Ms. Petersen owe Mr. Howden \$1,972.73 for unpaid repair services?
 - b. If so, is Ms. Petersen entitled to a set-off because Mr. Howden's work was defective and he allegedly damaged her property?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Howden must prove his claims on a balance of probabilities. Ms. Petersen has the burden of proving any set-offs. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision. Mr. Howden did not provide any evidence though he had the opportunity to do so.
10. The parties agree that Ms. Petersen hired Mr. Howden to provide multiple house repairs at the rate of \$50 per hour. Mr. Howden started working in May 2020 and he performed repairs on multiple unspecified dates.

Mr. Howden's \$1,972.73 invoice

11. Mr. Howden sent Ms. Petersen an \$1,972.73 invoice on September 25, 2020 charging \$1,650 for labour and \$240.23 for parts and supplies. It is undisputed that the invoice is unpaid.
12. Ms. Petersen says she requested a detailed itemization of Mr. Howden's charges before paying the invoice, which he has not provided. Although Ms. Petersen does not say this directly, based on her submissions and evidence, I infer that Ms. Petersen disputes the amount of Mr. Howden's charges.
13. The invoice says Mr. Howden (1) removed and reinstalled awnings, (2) repaired chairs, (3) repaired a faucet, (4) painted a door, (5) painted the front stoop and (6)

painted railings. Ms. Petersen does not dispute that these services were performed. However, as discussed below, she says this work was defective and incomplete.

14. In his application for dispute resolution, Mr. Howden says he performed a “variety of small jobs” for Ms. Petersen and he describes the scope of work as a “fair amount.” Mr. Howden does not provide his dates of service or say how much time he spent performing the work. However, since Mr. Howden charged \$1,650 for labour, at the rate of \$50 per hour, I find that Mr. Howden has invoiced Ms. Petersen for 33 hours of labour, which Ms. Petersen does not dispute.
15. Although Ms. Petersen says that Mr. Howden repeated tasks to correct defective work, she does not explain why this work was unnecessary or say how much time he wasted. I find that Ms. Petersen has not provided sufficient evidence to show Mr. Howden wasted time.
16. Ms. Petersen also says that the work was incomplete. However, Mr. Howden charged Ms. Petersen on an hourly basis and there is no evidence before me that Mr. Howden charged for work not performed. So, whether the work was completed does not change the amount of Ms. Petersen’s debt for the work Mr. Howden has performed.
17. Based on Mr. Howden’s invoice, I am satisfied that he performed the 33 hours of labour. So, I find that Ms. Petersen owes Mr. Howden a debt of \$1,650 for labour.
18. Ms. Petersen also says that Mr. Howden has overcharged for supplies. Mr. Howden’s invoice charged \$240.23 for parts and supplies described as paint, rope, screws and shop supplies. However, there are no itemized costs for each part and Mr. Howden has not provided any invoices or receipts supporting his claimed supply costs.
19. Ms. Petersen says the same supplies that Mr. Howden invoiced cost less at a retail hardware store. Although Ms. Petersen did not provide any supporting price listings, she provided an itemized list showing that Mr. Howden’s supplies would cost approximately \$105 at a retail store, which Mr. Howden did not dispute. I find Ms. Petersen’s supply cost estimate is more likely to be accurate than Mr. Howden’s

invoice since Ms. Petersen's estimate was itemized and undisputed. So, I find that the Ms. Petersen owes Mr. Howden a \$105 debt for unpaid supply costs.

Set-off

20. Ms. Petersen argues that Mr. Howden's invoice should be reduced because his work is allegedly defective. To receive a set-off for defective work, Ms. Petersen has the burden of proving the defects (see: *Lund v. Appleford*, 2017 BCPC 91).
21. Ms. Petersen says the front stoop and door painting is defective. She says the door has blemishes and the front stoop has bubbles and divots in the paint that need to be refinished. Ms. Petersen provided supporting photographs and Mr. Howden did not dispute these defects. Based on the photographs, and since it is not disputed, I find that Mr. Howden's stoop and door painting work was defective.
22. Ms. Petersen did not provide an estimate of the painting repair costs. On a judgment basis, I find that one-half day of labour, or 4 hours, is a reasonable estimate of the necessary repair time. At Mr. Howden's rate of \$50 per hour, I find that Ms. Petersen is entitled to a \$200 set-off for the defective painting.
23. Ms. Petersen also says that Mr. Howden's chair repairs are defective. Mr. Howden's tenant, JN sent Ms. Petersen an email on December 6, 2020 saying that one chair needs to be re-glued and another chair needs a new wooden plug because it cracked. Mr. Howden says he is not responsible for the chairs' condition after he completed the repairs. I find this argument persuasive since the chair defects were not reported by JN until more than 2 months after Mr. Howden sent his September 25, 2020 invoice. Further, Ms. Petersen has not provided sufficient evidence showing that the chair damage was the result Mr. Howden's services rather than subsequent use. So, I find that Ms. Petersen has failed to prove that she is entitled to an off-set for chair defects.
24. Ms. Petersen also says Mr. Howden did not install her door lockset properly and the lock was sticking. However, Ms. Petersen also says the lock later started working properly when the weather cooled. Based on this evidence, I am not satisfied that the

door lockset is defective and I find that Ms. Petersen is not entitled to any set-off for the lockset.

25. Ms. Petersen also says that Mr. Howden's water tap repair was defective. Although Mr. Howden denies repairing a water tap, his invoice says he repaired a faucet which I infer is the same device that Ms. Petersen is referring to. However, Ms. Petersen has not provided any description of this alleged defect, the cost to repair the alleged defect or how this defect relates to Mr. Howden's repairs. I find that Ms. Petersen has not proved that she is entitled to a set-off for the water tap.
26. Ms. Petersen also says that Mr. Howden's invoice should be reduced because he broke a window and damaged a window frame. Mr. Howden denies breaking the window, although he acknowledges it was old and did break. Although she does not say this, I find that Ms. Petersen essentially argues that Mr. Howden was negligent during his repairs.
27. To prove negligence, Ms. Petersen must show that Mr. Howden owed her a duty of care, Mr. Howden breached the standard of care, Ms. Petersen sustained damage, and the damage was caused by Mr. Howden's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
28. I accept that Mr. Howden owed Ms. Petersen a duty to avoid damaging her property while making the repairs. As noted, Mr. Howden says the window broke because simply because it was old. Mr. Howden is not automatically responsible for Ms. Petersen's window damage simply because it broke while he was there. To establish negligence Ms. Petersen must prove that Mr. Howden failed to exercise the type of care expected of a reasonably careful and prudent repair person in the circumstances. However, Ms. Petersen has not provided any evidence showing how the window broke or how Mr. Howden's conduct breached the standard of care. So, I find that Ms. Petersen has not proved that Mr. Howden was negligent and I find that Ms. Petersen is not entitled to a set-off for the window damage.

29. For the above reasons, I find that Mr. Howden is owed \$1,650 for unpaid labour and \$105 for parts and supplies. However, Ms. Petersen is entitled to a \$200 set-off for defective painting. So, Ms. Petersen owes Mr. Howden \$1,555 for unpaid labour and supplies. I also find that Mr. Howden is entitled to GST of \$77.75, based on section 182(1) of the federal *Excise Tax Act* and the CRT's non-binding but helpful analysis in *Super Save Disposal Inc. v. New Generation Concrete Ltd.* 2019 BCCRT 319. Therefore, I award Mr. Howden \$1,632.75.
30. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Howden is entitled to pre-judgment interest on the \$1,632.75 from September 25, 2020, the date of the invoice to the date of this decision. This equals \$4.38.
31. 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 Mr. Howden was generally successful in this dispute, I find that he entitled to reimbursement of \$125 in CRT fees. Mr. Howden did not claim reimbursement of dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order Ms. Petersen to pay Mr. Howden a total of \$1,762.13 broken down as follows:
- a. \$1,632.75 in debt for unpaid services,
 - b. \$4.38 in pre-judgment COIA interest, and
 - c. \$125 in CRT fees.
33. Mr. Howden is entitled to post-judgment interest, as applicable.
34. 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.

35. 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.

Richard McAndrew, Tribunal Member