



# Civil Resolution Tribunal

Date Issued: May 31, 2021

File: SC-2020-009021

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Erhardt v. 0985581 B.C. Ltd. dba East Kootenay Exterior*,  
2021 BCCRT 586

B E T W E E N :

LEAH ERHARDT and BRANDON ERHARDT

**APPLICANTS**

A N D :

0985581 B.C. LTD. dba EAST KOOTENAY EXTERIOR

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about roof repairs. The applicants, Leah Erhardt and Brandon Erhardt, hired the respondent, 0985581 B.C. Ltd. dba East Kootenay Exterior (EKE), to repair their roof. The Erhardts say EKE's work was deficient and caused

mould and moisture damage in their home. They claim reimbursement of \$2,758.91 for the cost of remediating the mould.

2. EKE says the Erhardts' roof had preexisting problems before its repair work. It says its work was compliant with the relevant building codes and it does not owe the Erhardts anything.
3. The Erhardts are self-represented and EKE is represented by its owner, Paul Erickson.

## **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. 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 whether EKE's roof repair work was deficient and whether it is required to reimburse the Erhardts \$2,758.91 for the cost of remediating mould in their home.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, as the applicants the Erhardts must prove their claims on a balance of probabilities. This means I must find it is more likely than not that their position is correct. I have considered all of the parties' evidence and submissions but refer only to what I find necessary to explain my decision. For the following reasons, I dismiss the Erhardts' claims.
10. In 2017 the Erhardts hired EKE to replace their roof after it was damaged in a hailstorm. The Erhardts say EKE improperly covered their bathroom vent during its repairs which forced air into the attic causing mould and moisture damage. The Erhardts say a home inspector discovered this damage in 2020 when they were trying to sell their house. The 2020 inspection report says the main bathroom exhaust vent discharged into the attic which was "not desirable" and needed to be corrected to vent to the building's exterior to minimize further condensation and mould growth on the underside of the roof sheathing.
11. In October 2020, the Erhardts hired New Dawn Restorations (New Dawn) to remediate the mould. New Dawn's October 23, 2020 site report says the mould appeared to be caused by warm moist air leaking into the attic through the bathroom vent which terminated in the attic, and through the attic hatch, which was missing a seal. New Dawn sealed the attic hatch and repaired the bathroom vent so that it now vents to the house's exterior.

12. EKE says staining under plywood is a very common issue and is often not mould. It says neither the home inspector nor New Dawn tested for mould. I agree that neither of the reports indicate that mould tests were conducted. The Erhardts say New Dawn is a licensed mould remediation company employing qualified experts with professional training and equipment. However, the report's author did not state their qualifications in the report, nor is there any explanation of New Dawn's area of expertise, so I find the report does not qualify as expert evidence under CRT rule 8.3. That said, I place significantly more weight on the New Dawn report than on EKE's assertions without having conducted a site visit. Whether or not there was mould in the Erhardts' attic, I accept on the evidence before me that there was moisture damage requiring remediation.
13. The Erhardts paid New Dawn \$2,758.91 to remediate the damage in their home, and that is the amount they claim in this dispute.

**Was EKE's work deficient, and if so, are the Erhardts entitled to reimbursement of \$2,758.91?**

14. When the Erhardts hired EKE to repair their roof in 2017 they formed a contract. I find it was an implied term of such a contract that the work was to be performed in a 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. Pacifica Coast Floor Covering Inc.*, 2018 BCPC 236). I also find it was an implied term that the work would comply with all relevant building codes.
15. I find that whether EKE's roofing work was deficient 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). The Erhardts did not submit any expert evidence from a roofer about the appropriate standard for roof repairs.
16. EKE's October 26, 2017 invoice for the roof work says it removed and disposed of the hail-damaged roof and gutter and installed new shingles and a new 5-inch

gutter. The Erhardts say the scope of EKE's work included replacing the roof vents, though that is not indicated on the invoice. They say that instead of replacing the existing roof vent for the bathroom fan, EKE improperly covered the vent hole by laying water repellant roof materials over the opening. They say the covering was not supportive enough and not done to building code standards, and that EKE should have covered the vent hole with sheeting or reinforcement. They say EKE intended to reinstall the vent cap after installing the shingles but forgot to do so. However, the Erhardts submitted no evidence to support any of these allegations.

17. EKE says that generally when it replaces a roof, if it finds empty vent holes with nothing connected to them it covers them over. It says this is common practice because roof, bathroom and attic codes and vent placements change over the years. EKE did not specifically say whether it covered the Erhardt's bathroom vent hole in 2017.
18. EKE also says when it started the work, the roof deck was soft and in such poor condition that its workers could not walk on it, and one of its workers fell through the roof. The parties made submissions about that incident, but I find its details are not relevant to this dispute. EKE says it does not know if the bathroom fan was there at the time it did the work, but says the problem would have been there long before the roof was replaced, which is why the roof decking was so soft. EKE also says the existing roof sheeting was soft and unstable, so it had to install new sheeting.
19. The Erhardts deny there was any preexisting problem with their roof. They say EKE never informed them about the soft roof decking, and the invoice does not mention anything about mould, rot, or costs for replacing sheeting. They say EKE's recollection of the work is unreliable. EKE says it replaced the sheeting for free, which is why it is not on the invoice.
20. On balance, I find the Erhardts have not established that EKE covered the vent hole, or if it did, that it did so using incorrect materials, or in breach of any building code. Aside from EKE's 2017 invoice, there is no documentary evidence of the nature of the work EKE did, or the standard to which it should have been

completed. While the 2020 home inspection and New Dawn reports say the covered bathroom vent caused the moisture damage, they did not determine when or how the vent was covered. I find the Erhardts have not established that EKE's work was deficient or in breach of the parties' contract.

21. Even if the Erhardts could establish that EKE's work was deficient, I find they have not established that such deficient work caused the damage in their home. They submitted a 2015 home inspection report which says the attic ventilation appeared serviceable, but there is a handwritten note stating that much of the attic was not accessible and the inspector had a minimal view due to the low slope of the roof. There is also no documentary evidence of the state of the bathroom vent or moisture in the attic immediately before EKE's repair work in 2017. New Dawn's report also clearly identified the unsealed attic hatch as an additional source of the moisture damage, and the Erhardts do not allege that inspecting or repairing the hatch was within EKE's scope of work in 2017. Given my conclusions above, I dismiss the Erhardts' claim.
22. 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 the Erhardts were unsuccessful, I find they are not entitled to reimbursement of their CRT fees. They did not claim any dispute-related expenses.

## **ORDER**

23. I dismiss the Erhardts' claims and this dispute.

---

Sarah Orr, Tribunal Member