



# Civil Resolution Tribunal

Date of Original Decision: June 8, 2021  
Date of Amended Decision: June 9, 2021

File: SC-2020-009304

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Orendain v. Topman Plumbing & Heating Ltd.*, 2021 BCCRT 626

B E T W E E N :

NAPOLEON ORENDAIN

**APPLICANT**

A N D :

TOPMAN PLUMBING & HEATING LTD.

**RESPONDENT**

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## **AMENDED REASONS FOR DECISION<sup>i</sup>**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. This is a dispute about bathroom renovations. The applicant, Napoleon Orendain, hired the respondent, Topman Plumbing & Heating Ltd. (Topman), to renovate 3

bathrooms in his home. Mr. Orendain says that after paying a \$7,612.60 deposit, Topman started work on the first bathroom but did not complete it on schedule, so Mr. Orendain cancelled the contract. He says the parties agreed Topman would keep \$5,000 for the work completed and would refund Mr. Orendain the remaining \$2,612.60 and deliver to him the remaining accessories for the first bathroom. Mr. Orendain says Topman has failed to refund him or deliver the accessories. He claims a refund of \$2,612.60, plus \$767.72 for the cost of the bathroom accessories, and \$300 for labour to install them, for a total of \$3,680.32.

2. Topman agrees that it owes Mr. Orendain a refund of \$2,612.60, and says it has the bathroom accessories ready to deliver to him, though it disputes their value. It disputes Mr. Orendain's \$300 claim for labour. Topman says Mr. Orendain still has its tools which are valued at \$2,500, and its construction materials which are valued at \$1,600, all of which must be returned. Topman says it has no use for the construction materials so it must return them to its supplier who charges 5% of the cost as a return fee. It claims a \$300 set-off to cover this fee. Topman did not file a counterclaim.
3. Mr. Orendain is self-represented and Topman is represented by an employee or principal.

## **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.
8. In their submissions both parties refer to their communications during the facilitation stage of the CRT dispute resolution process, and Topman's only evidence appears to be an excerpt from a draft settlement agreement between the parties. Under rule 1.11, this information must not be disclosed during the CRT's adjudication process unless the parties agree to the disclosure. I asked the parties to confirm whether they agreed to waive the confidentiality of their settlement discussions, and whether they agreed that I could rely on the draft settlement agreement excerpt in my decision. Topman agreed to waive confidentiality and agreed that I could rely on the settlement agreement excerpt, but Mr. Orendain did not respond by the deadline provided. So, I have not considered those parts of the parties' submissions referring to settlement discussions. I have only considered the parts of the draft settlement agreement excerpt that Mr. Orendain agrees with, as explained below.

## **ISSUES**

9. The issues in this dispute are:
  - a. Is Topman required to pay Mr. Orendain \$3,680.32?

- b. Is Topman entitled to the return of its tools and construction materials and a set-off of \$300?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant, Mr. Orendain must prove his claims on a balance of probabilities. I have read all the parties' evidence and submissions, except for those referring to settlement discussions as explained above, but I refer only to what I find relevant to explain my decision.

### ***Is Topman is required to pay Mr. Orendain \$3,680.32?***

11. It is undisputed that in September 2020, the parties entered into an agreement for Topman to renovate 3 bathrooms in Mr. Orendain's home. Mr. Orendain paid a \$7,612.60 deposit. Topman undisputedly started work on one of the bathrooms and a laundry room, but by early November 2020 it had not completed all of the work the parties initially agreed to, so Mr. Orendain cancelled the contract.
12. On November 3, 2020, Topman sent Mr. Orendain a statement indicating that it would keep \$5,000 of the deposit for work already completed, and that it would refund Mr. Orendain the \$2,612.60 balance. It is undisputed that Topman has not refunded Mr. Orendain any amount. So, I order Topman to refund Mr. Orendain \$2,612.60.
13. In early November 2020 Topman also undisputedly agreed to deliver to Mr. Orendain various bathroom accessories but has not done so. Mr. Orendain says he spent \$767.72 to replace these accessories but Topman disputes the value of these items. Mr. Orendain provided no evidence to support the amount claimed even though I would expect him to have receipts for the purchases or some other proof of payment. Topman says that, at Mr. Orendain's request, in the original contract it agreed to provide accessories of "medium average" quality. However, I find the contract in evidence does not specify the accessories' quality.
14. It is undisputed that the accessories include a vanity, countertop with sink and faucet installed, mirror, fan, toilet bowl, and paint for the ceiling. Based on Topman's

acknowledgment that it was supposed to deliver these accessories to Mr. Orendain, and the type and number of the accessories, on a judgment basis I find the value of the bathroom accessories is \$600. I order Topman to pay Mr. Orendain \$600 for the value of the bathroom accessories.

15. Mr. Orendain also claims \$300 for labour to install the bathroom accessories but submitted no evidence to prove he has paid or will pay \$300 in labour charges to install these items. Topman says it never agreed to pay this amount. It says Mr. Orendain told him he would install the bathroom accessories himself, so there is no basis for his labour claim. However, I find Mr. Orendain has not proven the amount of his claim, so it is unnecessary for me to determine whether the parties agreed to any amount for labour. I dismiss this claim.
16. In summary, I order Topman to pay Mr. Orendain \$3,212.60 as a refund under the contract and for the cost of the bathroom accessories.

***Is Topman entitled to the return of its tools and construction materials and a set-off of \$300?***

17. It is undisputed that Mr. Orendain has some of Topman's tools and construction materials. Topman wants these items returned and claims \$300 for the cost of returning the construction materials to its supplier. Topman did not file a counterclaim, but I infer from its submissions that its claims are for a set-off against Mr. Orendain's claims.
18. A respondent's claim for a set-off must be so clearly connected to the applicant's claim that it would be unjust to allow the applicant to enforce payment without considering the respondent's claim. Unliquidated set-off claims can be considered in the same manner as liquidated set-off claims (see *Jamieson v. Loureiro*, 2010 BCCA 52 at paragraphs 34-35). Mr. Orendain undisputedly has Topman's tools and construction materials because of the renovation work he hired Topman to complete. In the circumstances, I find Topman's claim for a set-off is clearly connected to Mr. Orendain's claims such that it would be unfair not to consider it in this dispute.

19. Section 118 of the CRTA gives the CRT jurisdiction to resolve a claim for relief related to recovery of personal property, as long as the value of the personal property is \$5,000 or less. Topman values the tools at \$2,500 and the construction materials at \$1,600 and Mr. Orendain does not dispute this, so I find the value of the items is within the CRT's small claims jurisdiction. In the circumstances, I find Mr. Orendain must return the tools and construction materials to Topman as a set-off against the amount Topman owes Mr. Orendain. The details for this order are set out below.
20. As for Topman's \$300 claim for the cost of returning the construction materials, it provided no evidence that its supplier charges a 5% return fee. I would expect that if Topman's supplier had such a return policy Topman would have it in writing. I also note that 5% of \$1,600 is \$80, not \$300, and Topman has not explained this discrepancy. So, I find Topman is not entitled to a set-off for this alleged \$300 fee.
21. The *Court Order Interest Act* applies to the CRT. Mr. Orendain is entitled to pre-judgment interest on the \$3,212.60 owing, calculated from November 3, 2020, which is the date Topman agreed to the refund, to the date of this decision. This equals \$8.61.
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 Mr. Orendain was mostly successful, I find he is entitled to reimbursement of \$175 in CRT fees. He did not claim any dispute-related expenses.

## **ORDERS**

23. Within 30 days of the date of this order, I order Topman to pay Mr. Orendain a total of \$3,396.21, broken down as follows:
  - a. \$3,212.60 as a refund for the deposit and reimbursement for bathroom accessories,
  - b. \$8.61 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$175 in CRT fees.

24. Within 30 days of the date of this order, at a reasonable time and date mutually agreed to by the parties in writing in advance, I order Mr. Orendain to make Topman's construction materials and tools available for Topman to pick up at Mr. Orendain's address indicated in the Dispute Notice, unless the parties agree otherwise in writing. The tools and construction materials must be returned in a manner that does not violate any orders of the Chief Medical Officer of British Columbia or of Canada in light of the COVID-19 pandemic.
25. Mr. Orendain is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
26. 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.

27. 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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Sarah Orr, Tribunal Member

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<sup>i</sup> I have amended paragraphs 23a and 27 to correct typographical errors pursuant to section 64(a) of the CRTA