



Civil Resolution Tribunal

Date Issued: June 10, 2021

File: SC-2021-000297

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Edlund v. Hill*, 2021 BCCRT 644

BETWEEN:

GLENNA EDLUND

APPLICANT

AND:

TOD HILL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about payment for incomplete renovation work. The applicant, Glenna Edlund, says she paid the respondent, Tod Hill, \$600 to complete various renovation

work around her property. Ms. Edlund says Mr. Hill never performed the work and agreed to refund her, but failed to do so. She seeks a refund of \$600.

2. Mr. Hill does not dispute receiving \$600 from Ms. Edlund but says the \$600 payment was a non-refundable deposit. Mr. Hill says he initially agreed to refund the \$600 to Ms. Edlund to prevent further alleged slander and harassment. Mr. Hill now says Ms. Edlund is not entitled a refund of deposit because it is non-refundable and because Ms. Edlund slandered him and his company name online. Mr. Hill has not filed a counterclaim.
3. Ms. Edlund and Mr. Hill are each 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.

Slander Allegation

8. In his Dispute Response, Mr. Hill says Ms. Edlund slandered him and his company's name online, which he says caused him to lose "a lot of work". I make no findings about these allegations because there is no counterclaim and because slander and defamation are outside the CRT's small claims jurisdiction, as expressly set out in section 119 of the CRTA.

Late Evidence

9. I was originally unable to open an item of Ms. Edlund's evidence. I requested this item and Ms. Edlund provided it in a readable format. The evidence consisted of a December 3, 2020 letter from Ms. Edlund to Mr. Hill requesting a refund of her \$600 payment. I find this late evidence is relevant to this dispute. Mr. Hill was provided with an opportunity to review and provide submissions on this late evidence, which he did. So, I find he is not prejudiced by the late evidence. Consistent with the CRT's mandate, which includes flexibility, I have allowed and considered this late evidence.

ISSUE

10. The issue in this dispute is whether Ms. Edlund is entitled to a refund of her \$600 payment for renovation work.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant, Ms. Edlund must prove her claims on a balance of probabilities. 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.

12. It is undisputed that Ms. Edlund had an agreement with Mr. Hill to perform renovation work at her property. It is also undisputed that Ms. Edlund paid \$600 for the renovation work but Mr. Hill did not complete any of it.
13. The parties dispute the nature of the \$600 payment. Ms. Edlund says the \$600 was full payment for the renovation work and says she is entitled to a refund because the work was not done. Mr. Hill disputes this. He says the \$600 payment was a 50% non-refundable deposit and Ms. Edlund is not entitled to a refund. Mr. Hill says he told Ms. Edlund that the deposit was non-refundable. Ms. Edlund denies this. Deposits are not “non-refundable” by default. Mr. Hill is the party alleging the deposit is non-refundable. So, the burden is on him to show the parties’ agreed the \$600 payment would be a non-refundable deposit. I find Mr. Hill has not done so. In any event, I find nothing turns on whether the \$600 payment was a non-refundable deposit. I say this because I find that Mr. Hill agreed to refund Ms. Edlund her \$600 payment, regardless of whether it was a non-refundable deposit or not. My reasons follow.

Did Mr. Hill agree to refund Ms. Edlund?

14. Ms. Edlund says Mr. Hill agreed to refund her the \$600 payment, but failed to do so. Mr. Hill says that he only agreed to refund Ms. Edlund to stop her from slandering his name and business. While I make no findings about Mr. Hill’s slander allegations, I have considered Mr. Hill’s allegation in determining whether Mr. Hill’s refund offer was conditional on Ms. Edlund’s online conduct. Here, there is no evidence that Mr. Hill communicated any conditions to Ms. Edlund when he offered to refund her. While Mr. Hill may have hoped the refund would prevent Ms. Edlund from posting online, I find that this was not a term of the refund offer.
15. It is undisputed that the work was initially postponed as a result of the COVID-19 pandemic in March 2020. In evidence are Facebook messenger conversations between the parties spanning from November 2019 to December 2020. In a March 2020 conversation, Ms. Edlund advised Mr. Hill that she wanted to postpone the renovation work “until things settle down and get back to normal” and requested Mr. Hill return her \$600 payment “for now”. Mr. Hill advised Ms. Edlund that he “used the

money to get food and fuel and things” and offered to provide her a receipt showing she paid \$600 “as a deposit for 2 days worth of work to be booked in as soon as we are able to do it”. Ms. Edlund again requested a refund of her \$600. In response, Mr. Hill said “the best I can do at the moment is return the 120 dollars I have on my for supplies and then figure out the rest” (reproduced as written). Ms. Edlund continued to request a full refund. From the available evidence, it appears the parties did not speak for several months and did not come an agreement about the renovation work or the requested refund.

16. In August 2020, Ms. Edlund asked when Mr. Hill could do the renovation work. The parties went back and forth about a new date for the renovation work but did not finalize a new date.
17. On October 19, 2020, Ms. Edlund followed up with Mr. Hill to ask what was happening with the renovation work. Mr. Hill told Ms. Edlund that he had been delayed with other work and said “I will just give you your money back”. Mr. Hill also said he was waiting for his home to sell in order to pay Ms. Edlund. However, I find Mr. Hill’s offer to refund Ms. Edlund was not contingent on him selling his home, as he alleges in his Dispute Response.
18. On December 3, 2020, Ms. Edlund sent a letter to Mr. Hill requesting a refund. Mr. Hill responded to Ms. Edlund on Facebook messenger and said “as soon as I can come up with your money I’ll get it to you”. I find Mr. Hill’s offer to refund \$600 to Ms. Edlund was unconditional.
19. Based on all the evidence, I find Mr. Hill failed to refund \$600 to Ms. Edlund as he agreed to do. So, I find that Ms. Edlund is entitled to \$600.
20. The *Court Order Interest Act* applies to the CRT. Ms. Edlund is entitled to pre-judgment interest on the \$600 refund from October 19, 2020, the date Mr. Hill agreed to the refund, to the date of this decision. This equals \$1.73.

21. 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. I find Ms. Edlund is entitled to reimbursement of \$125 in CRT fees. Ms. Edlund has not claimed any dispute-related expenses and so I award none.

ORDERS

22. Within 30 days of the date of this order, I order Mr. Hill to pay Ms. Edlund a total of \$726.73, broken down as follows:

- a. \$600 refund for the incomplete renovation work,
- b. \$1.73 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

23. Ms. Edlund is entitled to post-judgment interest, as applicable.

24. 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.

25. 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.

Leah Volkers, Tribunal Member