



Civil Resolution Tribunal

Date Issued: July 12, 2021

File: SC-2021-001649

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *House Smart Home Improvements Ltd. v. O’Laughlin*, 2021 BCCRT 758

B E T W E E N :

HOUSE SMART HOME IMPROVEMENTS LTD.

APPLICANT

A N D :

WILLIAM O’LAUGHLIN and PATRICIA O’LAUGHLIN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about payment for window installation services.

2. The respondents, William O’Laughlin and Patricia O’Laughlin, hired the applicant, House Smart Home Improvements Ltd. (HSHI), to replace the windows in their home. HSHI says that the window installation has been completed under the contract, but there is an outstanding balance that the O’Laughlins have refused to pay. HSHI claims \$868.08 for the alleged outstanding balance.
3. The O’Laughlins say that HSHI’s work has not been completed and it was deficient. They say they have already paid HSHI more than its work was worth. The O’Laughlins also argue that they should be compensated for harassment and stress from their dealings with HSHI. The O’Laughlins did not file a counterclaim.
4. HSHI is represented by its general manager, RS. The O’Laughlin’s are self-represented.

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. 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.
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. In its final reply submissions, HSHI said it would like to add an important photo to its evidence and asked how to submit it. HSHI did not further describe the photo, why it was important, or whether it was available during the time for submitting evidence. Given my findings below, I find further photographic evidence from HSHI is unlikely to be of assistance. Bearing in mind the CRT's mandate of proportionality, speed, and timely dispute resolution, I decided not to ask HSHI to provide the photo, and I based my decision on the evidence before me.

ISSUES

10. The issues in this dispute are:
 - a. Do the O'Laughlins owe HSHI the claimed \$868.08 for window installation?
 - b. Was HSHI's work deficient such that the O'Laughlins are entitled to a set-off of the outstanding balance?
 - c. Are the O'Laughlins entitled to compensation for harassment and stress?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant HSHI must prove its claims on a balance of probabilities. However, as discussed below, the party alleging deficiencies (here, the O'Laughlins) have the burden of proving them. I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to provide context for my decision.

12. The background facts are largely undisputed. In August 2019, the O’Laughlins hired HSHI to replace 5 windows in their home. The parties signed an August 7, 2019 Installation Agreement/Invoice for the work totaling \$8,305.50. The parties agree that in a September 5, 2019 email, they added 2 more windows to HSHI’s scope of work. The evidence shows the agreed cost for the 2 additional windows was \$3,062.58.
13. HSHI says that it installed the windows in the O’Laughlins’ home between September 24 and 26, 2019. It is undisputed that during the installation process, HSHI discovered the bathroom window had arrived with the incorrect flange style and had to be re-ordered. The evidence shows that HSHI had ordered the windows from a third-party provider, and HSHI re-ordered the bathroom window on September 25, 2019.
14. It is undisputed that HSHI had to re-order the bathroom window at least 4 times over the following year because the window repeatedly arrived with the incorrect flange style, and once arrived with the incorrect glass. It does not appear on the evidence before me that HSHI made errors in the ordering process, and I find the errors were likely made by the window provider.
15. Apart from the window provider’s errors in sending the incorrect bathroom window, the O’Laughlins say that HSHI incorrectly measured the space and the window is too small. It is undisputed that the O’Laughlins planned to finish the bathroom’s interior themselves once the window was installed. HSHI says it downsized the window on purpose, at the O’Laughlins’ request, because they were going to finish the interior of the bathroom wall and sill with tiles. HSHI says a smaller window was necessary to accommodate tiling. In May 2020, HSHI installed the bathroom window, though it had the incorrect glass. HSHI says it was at this time that the O’Laughlins changed their mind about tiling the bathroom interior and complained that the window was too small.
16. HSHI says that on June 9, 2020, RS went to the job site and discussed the bathroom window issue with Ms. O’Laughlin. HSHI says RS offered Ms. O’Laughlin a \$400 discount to account for a “filler strip” that would now be needed to fill the gap that had been intended for the tiles, among other issues with the installation process. RS says Ms. O’Laughlin accepted the discount offer to keep the window size “as is”.

17. HSHI provided a February 13, 2020 invoice, which set out the combined total of \$11,368.08 for all 7 windows. The invoice shows a paid \$2,000 deposit with the \$9,368.08 balance owed upon completion. There is a handwritten notation at the bottom that states “less \$400”, and 2 signatures below the notation. There is no date to indicate when the notation or signatures were added to the invoice.
18. The O’Laughlins do not specifically address in their submissions whether Ms. O’Laughlin agreed to a \$400 discount and signed the invoice to indicate her agreement on June 9, 2020. In a Statement of Facts that the parties prepared for this dispute, the O’Laughlins disagreed that HSHI provided a \$400 discount to “address the deficiencies for the bathroom window”. I infer that the O’Laughlins disagree with the stated reason for the \$400 discount, not the fact that HSHI provided it.
19. On balance, I find that the parties agreed in June 2020 to reduce the overall price for the window installation by \$400. Further, I find it is more likely than not that the discount was meant as compensation for both the delay in receiving the correct window and the window being smaller than the O’Laughlins decided they wanted. There is no evidence before me that the O’Laughlins complained about the window size between June and October 2020, even though the window was already installed (albeit with the incorrect glass). If the O’Laughlins did not agree to the window size when Ms. O’Laughlin accepted the discount in June 2020, I would have expected them to request the window be re-ordered, but there is no evidence that they did so.
20. HSHI says that as of September 30, 2020, the correct glass was installed in the bathroom window, and HSHI had fixed other identified deficiencies. HSHI says it tried to collect the remaining balance for the job in-person on November 26, 2020, but the O’Laughlins were not home. HSHI says that despite further attempts to collect the final balance, the O’Laughlins have refused to pay.

Do the O’Laughlins owe HSHI for window installation under the contract?

21. I find the evidence shows HSHI installed 7 windows according to the parties’ contract, including the bathroom window. Contrary to the O’Laughlins’ submissions, I do not

consider their allegation that the bathroom window is too small, means that HSHI did not complete the job. Rather, I find that is more appropriately considered an alleged deficiency. Apart from any of the alleged deficiencies, I find HSHI completed the installation job, and HSHI was entitled to be paid according to the parties' contract.

22. As noted, the February 13, 2020 invoice shows a \$9,368.08 balance owed upon completion, less the \$400 discount, which equals \$8,968.08 owing. The O'Laughlins do not dispute the agreed total price. Yet, HSHI claims only \$868.08 is outstanding. HSHI did not explain how it arrived at the claimed amount, though it says it took into account the \$400 discount. HSHI also did not provide evidence of any payment the O'Laughlins made, other than the initial \$2,000 deposit.

23. The O'Laughlins admit that there is an amount outstanding, but they do not specifically agree with the amount claimed. They argue that HSHI gave them a bill that showed a \$500 amount owing, but it is now demanding \$900. It is unclear whether this difference relates to the \$400 discount. Neither party provided a copy of an invoice showing the outstanding balance. HSHI also provided no documentary evidence to show its attempts to collect or confirm the amount it says the O'Laughlins owe.

24. Nevertheless, given that the O'Laughlins admit there is a balance owing to HSHI under the contract, and they concede that they were given a \$500 bill for the outstanding amount that they refuse to pay, I find that amount is proven. I find the O'Laughlins must pay HSHI \$500, less any allowable deductions for deficiencies, discussed below.

Alleged deficiencies

25. As noted, the O'Laughlins say they have not paid HSHI because the bathroom window is not the correct size and they say its installation was deficient. Specifically, the O'Laughlins say that the gap around the window is too large, even for tile, and HSHI improperly filled the space with foam. The O'Laughlins also say HSHI's work on the other windows it installed was substandard.

26. Where a contractor's work is deficient, the owner may seek to set off the cost of remedying the deficiencies against what is owed under the contract. The burden of proving a deficiency or damage is on the party asserting it, here the O'Laughlins: see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91.
27. I turn first to the allegations about HSHI's work on the 6 windows, other than the bathroom window. The O'Laughlins provided photographs which they say show HSHI's poor workmanship, which all appear related to HSHI's drywall work. HSHI argues that the photographs were taken during the installation process and do not show the final result of HSHI's drywall work. It is undisputed that HSHI returned on several occasions to correct reported deficiencies. On balance, I accept that the photographs in evidence do not show HSHI's final work product.
28. While the O'Laughlins do not dispute that HSHI fixed some deficiencies, they submit that they had to redo the drywall themselves around 2 of the windows. However, they did not provide any evidence in support of that submission. On balance, I find the O'Laughlins have not met their burden to prove that HSHI's work on the 6 windows other than the bathroom window, was deficient.
29. Turning to the bathroom window, I have already found above that the O'Laughlins agreed to a \$400 discount, at least in part as acceptance that the window size would remain "as is". Further, the window was already installed at that time, and there is no indication that the parties discussed or agreed that HSHI would change its installation other than to replace the glass. Therefore, I find that the discount also included compensation for the window's installation, and the O'Laughlins cannot now claim a further set-off for the smaller window and its alleged deficient installation.
30. However, even if I am wrong that the O'Laughlins agreed to accept the discount as a settlement for all the bathroom window deficiencies, I find the O'Laughlins have not proven HSHI's work was deficient.
31. In general, where an allegation of deficient work is based on a claim that the work fell below the required professional standard, and the subject matter is outside ordinary

knowledge, expert evidence is required to prove the deficiency. Other times, a breach of the standard may be so obvious that it does not require expert evidence: see *Bergen v. Guliker*, 2015 BCCA 283.

32. Here, I find expert evidence of the industry standard for window installation is required. I find the photographs of the window in evidence are insufficient to prove that the window was incorrectly measured for the opening, or that the space around the window was improperly filled with foam. In the absence of any expert evidence, I find the O’Laughlins have not proven HSHI’s work fell below the required standard, such that they would be entitled to any set-off.

Harassment and Stress

33. The O’Laughlins submit that HSHI harassed them by phoning them during the day, even though they had requested contact by text or email because Mr. O’Laughlin needed to sleep during the day. From the parties’ submissions, I infer that HSHI made the alleged phone calls in attempts to collect the outstanding balance under the contract. The O’Laughlins also say they suffered from stress due to the delay in completing the project and the rude, unprofessional way they were treated.
34. I find the O’Laughlins’ allegations are not sufficiently connected to HSHI’s claim for payment under the contract to warrant a set-off against the amount owing to HSHI. In the absence of a counterclaim, I find whether the O’Laughlins are entitled to damages for harassment and stress is not properly before me. That said, based on the evidence before me, I find the O’Laughlins’ allegations are not supported in the evidence and I do not accept them.

CRT FEES AND INTEREST

35. 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 find HSHI was largely successful, so I find it is entitled to

reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

36. The *Court Order Interest Act* applies to the CRT. HSHI is entitled to pre-judgment interest on the \$500 from September 30, 2020, the date the job was completed, to the date of this decision. This equals \$1.76.

ORDERS

37. Within 30 days of the date of this order, I order the O'Laughlins to pay HSHI a total of \$626.76, broken down as follows:

- a. \$500 in debt for its outstanding invoice,
- b. \$1.76 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

38. HSHI is entitled to post-judgment interest, as applicable.

39. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

40. 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.

Kristin Gardner, Tribunal Member