



# Civil Resolution Tribunal

Date Issued: July 30, 2021

File: SC-2021-001717

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nik's Concrete Finishing Ltd. v. Nicol*, 2021 BCCRT 837

BETWEEN:

NIK'S CONCRETE FINISHING LTD.

**APPLICANT**

AND:

REBECCA NICOL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about concrete patio construction. The applicant, Nik's Concrete Finishing Ltd. (Nik's), was hired by the respondent, Rebecca Nicol, to build a concrete patio at her home. Nik's claims \$787.50 in unpaid construction fees.

2. Ms. Nicol says she does not owe Nik's payment because she says its work was defective.
3. Nik's is represented by its owner, Nik Wiesselmann. Ms. Nicol is 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. Nicol owe Nik's \$787.50 in unpaid concrete work?
  - b. Was Nik's concrete work defective? If so, what amount, if any, does Ms. Nicol owe Nik's?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant Nik's must prove its claim 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.
10. Nik's sent Ms. Nicol a March 7, 2020 text offering to build a concrete patio for \$750 plus GST. It is undisputed that Ms. Nicol accepted this offer and hired Nik's. In doing so, I find that the parties entered a contract on these terms.
11. It is undisputed that Nik's performed the concrete work and sent Ms. Nicol a \$787.50 invoice. However, neither party provided a copy of the invoice or stated the invoice's date. Ms. Nicol says the invoice did not have remittance or contact information, which Nik's does not dispute. Ms. Nicol says she tried contacting Nik's by email and mail after she received the invoice but both were undeliverable. On January 18, 2021, the parties exchanged emails and Nik's requested payment by electronic transfer. Based on Ms. Nicol's undisputed submissions that she was initially unable to contact Nik's after she received the invoice, I find that Nik's invoice became due on January 18, 2021 when Nik's provided payment instructions.
12. Since it is undisputed that Ms. Nicol has not paid the invoice, subject to proving that Nik's work was defective as discussed below, I find that Ms. Nicol owes Nik's \$787.50 under the contract for unpaid work.

### ***Ms. Nicol's allegation that Nik's work was defective***

13. Where a party asserts a deficiency in a contractor's work as Ms. Nicol does here, the burden of proof is on the party asserting the deficiency (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at para 124). So, to the extent Ms. Nicol seeks to avoid paying the invoice balance based on a deficiency, she carries the burden of proof. Further, I find that expert evidence is required to determine the professional standard for the concrete work here because I find it is not a matter within ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283).
14. Ms. Nicol says the concrete cracked and she provided undated photographs that appear to show small cracks. However, it is unclear when the cracks developed. Ms. Nicol sent Nik's a December 3, 2020 email complaining about the grading and concrete splatters on her wall and window. However, the email did not mention any complaints about concrete cracks. Since Ms. Nicol did not complain about the cracks at that time, I find that, more likely than not, the cracks developed later. In the absence of further evidence, I find that Ms. Nicol has not proved that the development of cracks more than 9 months after completion proves that the work was defective. Further, Ms. Nicol did not provide any expert evidence showing that the cracks were caused by Nik's failure to properly pour the concrete.
15. Ms. Nicol also argues that the patio was not graded properly. Based on the photographs, I am satisfied that the concrete patio is not level in places. However, in the absence of expert evidence, I am unable to conclude that the patio's grading is improper or defective. I find this request for a set-off unproven.
16. Ms. Nicol also says that Nik's sprayed concrete on her wall and window while performing the work. However, she did not provide any photographs showing this alleged damage. In the absence of supporting evidence, I find that Ms. Nicol has not proved that this damage occurred. Further, Ms. Nicol did not provide any evidence about whether she was able to remove this alleged concrete from the siding and window or the costs involved to do so. I find this request for a set-off unproven.

17. For the above reasons, I find that Ms. Nicol has failed to prove that Nik's work was defective. So, I find that Ms. Nicol is not entitled to a set-off and she owes Nik's \$787.50 under the contract.

## **INTEREST, CRT FEES AND DISPUTE-RELATED EXPENSES**

18. The *Court Order Interest Act* (COIA) applies to the CRT. Nik's is entitled to pre-judgment interest on the \$787.50 from January 18, 2021, the date that Nik's provided invoice payment instructions, to the date of this decision. This equals \$1.88.

19. 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 Nik's was successful, I find that it is entitled to reimbursement of \$125 in CRT fees. Nik's did not request reimbursement of dispute-related expenses.

## **ORDERS**

20. Within 30 days of the date of this order, I order Ms. Nicol to pay Nik's a total of \$914.38, broken down as follows:

- a. \$787.50 as debt for unpaid work,
- b. \$1.88 in pre-judgment COIA interest, and
- c. \$125 in CRT fees.

21. Nik's is entitled to post-judgment interest, as applicable.

22. 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.

23. 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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Richard McAndrew, Tribunal Member