



Civil Resolution Tribunal

Date Issued: August 4, 2021

File: SC-2021-000937

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dewey v. Drummond*, 2021 BCCRT 852

BETWEEN:

MICHAEL DEWEY

APPLICANT

AND:

PETER DRUMMOND

RESPONDENT

AND:

MICHAEL DEWEY

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a renovation job in 2 residential bathrooms. The applicant (and respondent by counterclaim), Michael Dewey, says the respondent (and applicant by counterclaim) Peter Drummond owes a \$3,957.50 balance for the renovation work Mr. Dewey did in Mr. Drummond's property between late May and July 2020.
2. Mr. Drummond says Mr. Dewey's work was defective, which Mr. Dewey denies. Mr. Drummond says Mr. Dewey has cost him \$23,619, including \$20,000 for projected repair and replacement costs, and \$1,119 for a saw he says Mr. Dewey made him buy. Mr. Drummond also claims \$2,500 in punitive damages. However, Mr. Drummond has limited his counterclaim to \$5,000, the small claims limit for the Civil Resolution Tribunal (CRT) and in proceeding with the counterclaim I find Mr. Drummond has abandoned the excess over \$5,000.
3. The parties are each self-represented. For the reasons that follow, I dismiss Mr. Dewey's claim and allow Mr. Drummond's counterclaim.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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 parties to a dispute that will likely continue after the dispute resolution 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court

recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

6. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
8. In his evidence, Mr. Dewey referenced a discussion he had with Mr. Drummond during the CRT's facilitation process. Disclosure of confidential facilitation discussions is prohibited under CRTA section 89 and CRT rule 1.11, unless both parties agree. There is no evidence of agreement and so I have not relied on Mr. Drummond's facilitation statements.

ISSUES

9. The issues in this dispute are to what extent, if any:
 - a. Was Mr. Dewey's work defective,
 - b. Is Mr. Dewey entitled to payment of the claimed \$3,957.50,
 - c. Is Mr. Drummond entitled to future repair costs,
 - d. Is Mr. Drummond entitled to reimbursement for the tile saw he bought, and
 - e. Is Mr. Drummond entitled to punitive damages.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, as the applicant Mr. Dewey has the burden of proving his claim, on a balance of probabilities (meaning “more likely than not”). Mr. Drummond has this same burden to prove his counterclaim. I have only referenced below what I find is necessary to give context to my decision.
11. The parties agree they did not have a written contract. While the parties refer to Mr. Dewey’s invoice and the parties’ emails, neither party submitted copies of these although Mr. Dewey submitted some excerpts. As discussed below, the evidence before me is limited in terms of what the parties’ agreement entailed.
12. That said, the evidence indicates Mr. Dewey began the renovation work in March 2020, which was to re-tile 2 bathrooms and install vanities and lights. At some point before July, Mr. Drummond had paid Mr. Dewey around \$7,400 for his work to date. The parties agree that in July 2020 Mr. Dewey refused to do any more work unless he was paid in full for his work between late May and July.
13. This dispute is over whether Mr. Dewey’s work was done to the industry standard (as he submits), or, whether it was incomplete and defective (as Mr. Drummond submits).
14. Neither party submitted copies of any emails or texts setting out their agreement or its cost. Mr. Drummond submitted excerpts from the parties’ later November 2020 text exchange, in which Mr. Drummond said he had paid Mr. Dewey \$7,400. At one point Mr. Dewey said the parties agreed Mr. Drummond would pay him \$40 per hour, which I accept since Mr. Drummond did not dispute it. Given Mr. Dewey elsewhere submits Mr. Drummond still owes about 40% of the job and claims \$3,947.50, I accept that Mr. Drummond had paid \$7,400.

Mr. Drummond’s \$5,000 counterclaim

15. I will address Mr. Drummond’s counterclaim first. Mr. Drummond alleges various deficiencies in Mr. Dewey’s renovation work. These include:

- a. Crooked and uneven tiles, use of broken tiles and with corners not lined up and no pattern matching,
- b. Cracked and incomplete grout work,
- c. Failure to tile niches properly,
- d. Insufficient caulking and excessive caulking in various areas,
- e. Excessive overhangs in some areas and exposed water proofing,
- f. Broken or chipped 30% of Mr. Drummond's purchased tiles,
- g. Shower base floor has permanent white residue,
- h. Improperly used tape to finish lighting job,
- i. Lights behind mirror and under vanity have strong yellow tint and are defective,
- j. Damaged vanity and failed to install it,
- k. Burnt out hallway light, and
- l. Failed to properly install a toilet.

16. Whether Mr. Dewey's work was deficient or not generally requires expert evidence, unless I find the assessment of it is within ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). The burden of proving deficiencies is on Mr. Drummond as he is the person alleging them (see *Lund v. Appleford*, 2017 BCPC 91).

17. First, contrary to Mr. Dewey's assertion, I find it likely that despite being in the home during Mr. Dewey's work Mr. Drummond was not aware of the deficiencies' scope until the project neared completion and the defects in the finished work would likely have become apparent. I find Mr. Drummond was entitled to hire a third party to inspect Mr. Dewey's work, which as discussed further below is what he did.

18. Next, in the parties' November 2020 text exchange, Mr. Drummond summarized the deficiencies, including unlevel shower tile, miscoloured grout, failure to miter corners, breaking lights, wobbly toilet, and improperly installed vanity. Mr. Dewey texted back that he cut his original bill in half "for that reason", which I find was an admission of the listed errors that he did not refute. Mr. Dewey argued in the text that silicone and regROUT will solve the problem, but in this dispute he submitted no expert evidence in support of that position. I do not accept Mr. Dewey's own opinion, as he is not neutral. Mr. Dewey concluded his text message that he apologized the job was not "perfect", and that he would "take the loss and learn from it". However, Mr. Dewey then started this CRT proceeding in February 2021.
19. Mr. Dewey submitted photos of his tiling work in the 2 bathrooms. I cannot see anything obviously defective, but they are blurred and not close-up and so I find they are not particularly helpful. I do not accept Mr. Dewey's unsupported assertion that the defects are due to the building's wall structure.
20. Next, Mr. Dewey agrees "one bathroom" needs to be re-done, but he says this is because Mr. Drummond's renovation was done without a required plumbing permit. I place no weight on this assertion either, since there is no evidence before me that the renovations required a permit or that Mr. Drummond would be required to re-do bathrooms in any event.
21. In contrast, Mr. Drummond submitted an April 27, 2021 letter, with attached photos mostly of the principal bathroom's shower, from Alisha Wosk who says they are a Red Seal Carpenter and have been in the trade for 7 years. Ms. Wosk said all the tile needs to be removed and re-done. I do not accept Ms. Wosk's opinion as expert evidence under the CRT's rules, since she says she is a Red Seal Carpenter, not a Red Seal Tilesetter. I do not accept Mr. Drummond's assertion tiling and waterproofing a bathroom amounts to "interior finishing" that falls within a carpenter's trade. There is no evidence before me Ms. Wosk is a qualified tilesetter.
22. However, I do accept Ms. Wosk's observations of the tiles having jagged and edges and chipped tiles, and tiles having holes at the shower pan joint, something I can

see in the close-up photos attached to her letter. I find it is within ordinary knowledge that tile installed in a residential bathroom should not have visibly jagged or chipped edges and that there should not be visible holes at the shower curb, which obviously could lead to water leaks.

23. Mr. Drummond also submitted an opinion from another Red Seal Carpenter, James Sommerfeld. Mr. Sommerfeld wrote he examined the 2 bathrooms and that both needed to be completely redone. However, like with Ms. Wosk, I do not accept this letter as expert opinion but accept Mr. Sommerfeld's observations of the defects that are obvious in the close-up photos attached to his opinion, namely uneven tile and grout, and misapplied caulking.
24. So, I find many aspects of Mr. Dewey's tiling work were defective, based on my conclusion those obvious defects fall within ordinary knowledge. This includes tiling a bathroom with jagged edged tiles, installing chipped and uneven tiles, and holes in the tile joint such that water could leak from the shower pan. For most of the other claimed deficiencies, Mr. Dewey does not address or deny the specific issues in his submissions, including damaging the vanity, breaking the lights, and failing to pattern match as requested. As noted above, in November 2020 Mr. Dewey did not deny the deficiencies and then argued their existence was why he had reduced his bill in half. However, as noted, Mr. Dewey did not submit any invoices in evidence.
25. Given the obvious defects in the tile work for both bathrooms, I find it likely the tile will need to be entirely removed, new tile purchased, and the renovation work redone. Given this conclusion, I do not need to address the grout darkening in any detail. I turn then to the appropriate remedy.

Projected repair costs

26. Mr. Drummond says his projected repair costs for both bathrooms will be about \$20,000. As noted above, he limits his total CRT counterclaim to \$5,000.
27. Mr. Drummond submitted an Excel spreadsheet that I could not open, but re-submitted it at my request through CRT staff in a .pdf format. The document is a

letter from Advance 101 Tiling, which is a detailed \$10,500 quote to re-do the job, not including the cost of tile, tile installation, or associated electrical work. Mr. Dewey was given the .pdf copy, but chose not to provide submissions despite being given the opportunity to do so.

28. Mr. Drummond also submitted blurred copies of tile receipts from Fontile, a tile supplier. The dates appear to be in March and April 2020 when Mr. Dewey did the work, and the amounts total over \$5,000.
29. Mr. Dewey essentially argues that re-doing the 2 bathrooms could not cost \$20,000 since his own billing would have been around \$10,000 in total. There is some merit to this argument, but Mr. Dewey ignores the fact that the tiles Mr. Drummond bought and Mr. Dewey installed will have to be removed and there is no evidence before me they could be salvaged and re-used. Again, I note many of them were chipped, broken, and had jagged edges.
30. Mr. Drummond has already paid \$7,400 for Mr. Dewey's work, which I have found needs to be entirely re-done, plus Mr. Drummond will need to buy new tiles. So, I find it more likely than not that Mr. Drummond will need to spend \$12,000 to \$15,000 re-do the entire job, and so I find he is entitled to the \$5,000 claimed. I address Mr. Dewey's claim below.
31. Given I have awarded Mr. Drummond the maximum \$5,000, I do not need to address his claims for the saw and punitive damages in any detail. In short, I find the saw claim for \$1,119.10 is unproven because Mr. Drummond has the saw and it is unproven Mr. Dewey required him to buy it. I dismiss the saw claim.
32. Finally, case law is clear that punitive damages are to punish a morally culpable party and usually only in exceptional cases for malicious and outrageous acts. There is no such evidence here, and Mr. Drummond's punitive damages claim is based solely on the allegation Mr. Dewey failed to prove his qualifications for the job. Here, even if punitive damages were a separate claim that attracts its own \$5,000 limit, I find there is no evidence to support a punitive damages award.

Mr. Dewey's \$3,957.50 claim

33. I have concluded above that Mr. Dewey's work was so defective that it needs to be ripped out and re-done at a cost of over \$12,000, which includes Mr. Drummond having to buy new tiles. I find the weight of the evidence shows Mr. Dewey breached the parties' contract and his work had ultimately no value to Mr. Drummond. So, I dismiss Mr. Dewey's \$3,957.50 claim.

Conclusion, interest, and fees

34. The *Court Order Interest Act* (COIA) applies to the CRT. However, the evidence before me is that Mr. Drummond has not yet repaired the bathrooms, and so I find he has not yet sustained a loss. So, I order no pre-judgment interest.

35. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Dewey was unsuccessful and so I dismiss his claim for CRT fee reimbursement. Mr. Drummond was successful, and so I find Mr. Dewey must reimburse him \$125 in paid CRT fees. Neither party claimed dispute-related expenses, so I order none.

ORDERS

36. Within 30 days of this decision, I order Mr. Dewey to pay Mr. Drummond a total of \$5,125, broken down as a) \$5,000 in damages and b) \$125 in CRT fees.

37. Mr. Drummond is entitled to post-judgment interest, as applicable. I dismiss Mr. Dewey's claims.

38. 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.

39. 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.

Shelley Lopez, Vice Chair