



Civil Resolution Tribunal

Date Issued: August 16, 2021

File: SC-2020-009554

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kendall v. Specialty Electrical Contracting Inc.*, 2021 BCCRT 895

BETWEEN:

ADRIENNE KENDALL

APPLICANT

AND:

SPECIALTY ELECTRICAL CONTRACTING INC.

RESPONDENT

AND:

ADRIENNE KENDALL

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about electrical work on a house. The applicant (and respondent by counterclaim), Adrienne Kendall, entered into a contract with the respondent (and applicant by counterclaim), Specialty Electrical Contracting Inc. (Specialty), to perform electrical work on a house she was building. Ms. Kendall says that Specialty did not complete its work according to the contract's terms, and left deficiencies in the work it did complete. Ms. Kendall says that she needed to hire someone else to finish the work, and asks for an order that Specialty pay her \$4,472.65 in damages.
2. Specialty says that Ms. Kendall did not allow it to finish the project or address any remaining deficiencies. Specialty denies that it is responsible for any of Ms. Kendall's damages. By counterclaim, Specialty says that Ms. Kendall did not comply with their agreement and did not pay its invoice for the contract's final payment. It asks for an order that Ms. Kendall pay it \$4,472.00, plus contractual interest of 10% per month.
3. Ms. Kendall is self-represented. Specialty is represented by its owner, Shawn Van Beek.
4. Ms. Kendall initially began her dispute against Mr. Van Beek as an individual instead of Specialty, which is his corporation. Although the parties later agreed to substitute Specialty as the applicant, the Dispute Notice was not amended. The style of cause reflects the agreed-upon change.

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.

ISSUES

9. The issues in this dispute are:
 - a. Whether either party breached the contract,
 - b. Whether Ms. Kendall is entitled to \$4,472.65 in damages,
 - c. Whether Specialty is entitled to a payment of \$4,472.00 under the contract, and
 - d. Whether Specialty is entitled to contractual interest.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, an applicant (whether in a claim or counterclaim) must prove their 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 and necessary to provide context for my decision. In particular, I will not address the

parties' allegations about poor behaviour except to the extent that they are relevant to the issues before me.

11. Specialty provided an estimate for electrical work on Ms. Kendall's building project. After some discussions and revisions, that estimate formed the basis of an undated contract signed by both parties. The contract contemplated the payment of a deposit before the project's start, then specified percentages at the time of the service inspection, rough-in inspection, and final inspection. The contract also stated that additional work would be billed at \$65 per hour, plus materials. The contract did not include a break-down of the anticipated cost labour and materials for each aspect of the project.
12. It appears that there were some difficulties in the project due to inspection issues, miscommunications, the timing of material deliveries, and the availability of other contractors. Specialty says, and Ms. Kendall denies, that there were multiple changes to the agreed-upon scope of work and the placement of particular items.
13. Towards the end of its work on the project, Specialty submitted a declaration for the final inspection. The October 26, 2020 response from Technical Safety BC was that "your inspection has been assessed and at this time no further actions are required". There is no dispute that some work remained to be completed at this point, but the parties disagree about the extent of the outstanding work.
14. On November 7, 2020, Specialty sent Ms. Kendall an invoice detailing the payments that had been made under the contract to date and the outstanding amount of \$3,710.10 plus tax, for a total of \$4,472.65. The invoice stated that the final inspection had passed, and asked for payment "ASAP". There is no dispute that Ms. Kendall did not pay this invoice when she received it.
15. Although Ms. Kendall had paid the initial deposit and previous invoices, Specialty says that Ms. Kendall had made comments about finances that caused it some concern that it might not get paid in a timely manner. On December 3, 2020, Specialty sent Ms. Kendall a text message saying it had "materials and undercabinet lighting

sorted out” and was waiting for payment so it could come and complete the job. Ms. Kendall replied that final payment was due at “final completion” and asked if Specialty was wanting to change the contract. Specialty replied on December 4, 2020 that if Ms. Kendall could “prove that you have the money”, it would finish the work with “no change in contract”. According to the messages, Specialty’s view was that there were “the two smallest things” remaining to be completed, and that it needed “money from you to prove that you will even pay your bill” after the job was completed. The parties did not come to an agreement about payment. Ms. Kendall then told Specialty “U don’t want to honor your contract I’ll have it finished by someone else” (reproduced as written).

16. Ms. Kendall says that Specialty is “reneging on the contract by not completing the job”. However, she also says that she will not allow Specialty to come back to her property due to Mr. Van Beek’s allegedly rude behaviour. Ms. Kendall requests the payment of \$4,472.65 in damages so that she can have someone else come to finish the job.
17. Specialty says it is entitled to payment of its invoice as it “accomplished the electrical project and passed final inspection as per contract”.
18. Ms. Kendall’s position is that Specialty was trying to change the contract when it asked for payment before the job was completed. However, according to the parties’ contract, the final payment was required when the final inspection was completed, not when the work was finished. As noted, the final inspection was completed on October 26, 2020.
19. Contrary to Ms. Kendall’s submissions, I find that Specialty did not “void” the parties’ contract or engage in “bully tactics” when it asked for payment. While I do not doubt that Ms. Kendall found the situation to be unpleasant, the parties’ agreement remained in force.
20. Unless an agreement is terminated, the parties must fulfil their obligations under it. Termination by repudiation occurs when one party shows an intention to not be bound

by the agreement and the other party accepts the repudiation (see *Kuo v. Kuo*, 2017 BCCA 245 at paragraphs 39 to 40). I find that this is what occurred here. I find that Ms. Kendall's refusal to make the payment required by the parties' contract amounted to a breach of the agreement and demonstrated a clear intention to no longer be bound by its terms. Specialty was entitled to accept this repudiation.

21. The appropriate remedy for Ms. Kendall's breach and repudiation of the parties' contract is damages. Damages for breach of contract are intended to put a party in the position they would have been in had the contract been carried out as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 219 at paragraph 38).
22. Specialty's entitlement to its final payment under the parties' contract had crystallized prior to the breach and repudiation. I find that it is entitled to payment of its invoice. Although the invoice was for \$4,472.65, Specialty claimed only \$4,472.00, and I find it is entitled to that amount under the parties' contract.
23. However, this is not the end of the matter. I find that, by asking for the final payment under the contract to be "void", Ms. Kendall is asking for an equitable set-off against Specialty's claim for work that was not completed and for deficiencies. According to Ms. Kendall's submissions, addressing the incomplete work and deficiencies will cost "nearly" the amount of the outstanding invoice. Ms. Kendall says that the bathroom plugs did not work and several lights were not on dedicated switches as required. She also says that Specialty did not complete the generator hook-up, two exterior motion lights, a carbon monoxide detector, a pole switch, three dimmer switches, and an LED driver and light strip. In addition, Ms. Kendall says that pot lights, ceiling fans, and ceiling and wall mounted light fixtures were installed in the wrong locations, and moving them will require drywall and painting work.
24. Specialty did not address the specific allegations of incomplete work and deficiencies. It says that it was willing to complete the work and rectify any deficiencies once it was paid.

25. In *Bell v. Whyte*, 2020 BCCRT 84 at paragraph 18, another tribunal member found that it may be reasonable for a homeowner to hire a third party to fix deficiencies instead of giving the contractor an opportunity to address them if they have lost confidence in the contractor. Although this decision is not binding upon me, I agree with its reasoning. It is apparent from the exchange of text messages that the parties' relationship had deteriorated and that neither trusted the other. In these circumstances, I find that it was reasonable for Ms. Kendall to want a third party to perform the remaining work in her home.
26. When a contractor's work is deficient, a homeowner may seek to set off the cost of remedying the deficiencies against what the contractor is owed under the contract. The burden of proving a deficiency or damage is on the party asserting it (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91).
27. 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 (see *Bergen v. Guliker*, 2015 BCCA 283).
28. So, Ms. Kendall bears the burden of proving what work contemplated by the contract was left incomplete, what work was done in the wrong location, and what work was done in a sub-standard manner. I find that the latter requires supporting expert evidence. She also bears the burden of proving the value of the incomplete work and the cost of repairing any deficiencies.
29. Ms. Kendall provided an estimate from Bose Electrical Services Team Ltd. (Bose). Bose estimated that it would cost \$2,625.00 to fix unspecified deficiencies, fix unidentified items "to customers standard", move receptacles, pot lights and switches, add dimmers and under-cabinet lights, and rewire some switches. Bose did not provide a break-down of the specific costs for each item. Ms. Kendall also submitted a receipt from KR Kilney Electric (KR) for a \$60 charge to install thermostats and a \$463.93 charge to install a generator plug and dimmers. Although

Ms. Kendall suggests that she has spent additional amounts on electrical work in the home, there are no receipts to support that portion of the claim.

30. Neither Bose nor KR provided opinions as to the quality of Specialty's work or whether the work matched the specifications in the parties' contract. There are no other expert opinions in the evidence before me. Without expert evidence, I am unable to conclude that Specialty's work was substandard or determine the extent of deficiencies, if any, that it left in the work it completed.
31. Ms. Kendall provided a list of the items she says are not in the right spot and the plan showing what she says was the layout the parties agreed to. Specialty says that Ms. Kendall made a number of changes as the project progressed. Text messages in evidence shows that there were discussions about moving or changing some items. Specialty also says that Ms. Kendall approved the location of various items at the rough-in stage and during a walkthrough.
32. The plan provided by Ms. Kendall does show the proposed location of some lights and fans. However, there is no indication that this plan was incorporated into the parties' contract. Even if this plan represented the work that was to be performed, Ms. Kendall did not provide evidence of where the items were actually installed or respond to Specialty's comments about changes. Based on the evidence before me, I cannot determine whether any items were installed in the wrong location. In addition, the available evidence does not establish the repair costs (such as drywall and paint) that would result from moving switches or fixtures to different locations.
33. Similarly, based on the evidence before me, it is difficult to determine which items were left incomplete. Although there is a handwritten list, there are no photos or other evidence to show unfinished work. The available evidence does establish that some work contemplated by the contract was left undone.
34. KR's receipt shows a charge to install thermostats, but this was not included in the listed scope of work in the contract. I find that Ms. Kendall is not entitled to reimbursement for this \$60 charge. By contrast, the installation of a generator plug

and dimmer switches was included in the parties' contract. Therefore, I find that Ms. Kendall is entitled to reimbursement for the \$463.93 she paid to KR for these items.

35. Specialty admitted in the December 3, 2020 text message exchange with Ms. Kendall that it had the materials for the under-counter lighting and had not yet installed them. Under-counter lighting was included in Bose's estimate, but it did not break down the costs for labour or materials for this area. I find that this estimate does not establish the cost of this outstanding work. On a judgment basis, I find that Ms. Kendall is entitled to \$250 for labour and materials associated with the under-counter lighting.
36. I find that the remainder of the claimed items of unfinished work have not been proven.
37. Taken together, the \$463.93 paid to KR and the \$250 for under-counter lighting amount to \$713.93. Subtracted from Specialty's entitlement \$4,472, this equals \$3,758.07. I order Ms. Kendall to pay Specialty this amount.
38. Specialty also claims contractual interest at a monthly rate of 10%. Although the parties' contract provided a schedule for payments based on project milestones, it did not contain any clauses that address interest on late payments. I find that Specialty has not established that there was an agreement for contractual interest, at a rate of 10% or otherwise.
39. Although I dismiss Specialty's claim for contractual interest, the *Court Order Interest Act* applies to the CRT. I find that Specialty is entitled to pre-judgment interest from the November 7, 2020 invoice to the date of this decision. This equals \$13.08.
40. 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. Here, the parties' success was divided. I note that Ms. Kendall did not pay any CRT fees as she obtained a fee waiver. I find that Specialty is entitled to reimbursement for half of the \$125 it paid in CRT fees, or \$62.50. Neither party claimed dispute-related expenses.

ORDERS

41. Within 30 days of the date of this decision, I order Ms. Kendall to pay Specialty a total of \$3,833.65, broken down as follows:
 - a. \$3,758.07 in debt under their contract,
 - b. \$13.08 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
42. Specialty is entitled to post-judgment interest, as applicable.
43. The remainder of the parties' claims and counterclaims are dismissed.
44. 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.

45. 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.

Lynn Scrivener, Tribunal Member