



Civil Resolution Tribunal

Date Issued: August 23, 2021

File: SC-2021-000719

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Baral v. Harrison (dba Valley Roofing & Exteriors)*, 2021 BCCRT 924

BETWEEN:

PATRICIA BARAL and HOWARD BARAL

APPLICANTS

AND:

ANDREW HARRISON (Doing Business As VALLEY ROOFING &
EXTERIORS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a roofing contract.
2. The applicants, Patricia Baral and Howard Baral, hired the respondent, Andrew Harrison (dba Valley Roofing & Exteriors), to fix a leaking roof over the Barals' deck.

The Barals paid Mr. Harrison a \$3,500 deposit in advance and then another \$1,500 on the first day of work by e-transfer. The Barals say they then “fired” Mr. Harrison because he failed to comply with the agreed terms. They also say he charged them for work that was never required or done and dumped waste in their yard.

3. The Barals seek a refund of their \$5,000 deposit less \$650.44 for some roofing materials they kept. Their total claim is \$4,349.56.
4. Mr. Harrison says the Barals terminated the contract for “no apparent reason” and they are not entitled to any refund. Mr. Harrison says he planned to claim the remainder of the amount owing under the contract, but he never then filed a counterclaim.
5. The parties are self-represented.
6. For the reasons that follow, I find the Barals are entitled to the claimed \$4,349.56 refund.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

9. 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.
10. 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

11. The issues in this dispute are:
 - a. Did Mr. Harrison breach the parties' contract?
 - b. If so, to what extent, if any, are the Barals entitled to the claimed \$4,349.56 refund?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicants the Barals must prove their claims on a balance of probabilities (this means "more likely than not"). 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. Mr. Harrison did not submit any evidence despite being provided with a reasonable opportunity to do so.

Background Facts

13. The Barals' unrefuted evidence is that the parties agreed to a fixed price of \$8,275.00 less a 10% senior discount for labour, materials, and extended warranties for Mr. Harrison to replace a leaking roof over their deck.
14. As set out in the January 12, 2021 written "Roof Agreement", Mr. Harrison agreed to remove the existing roofing material, install a synthetic underlay and roofing

materials, plus install 3 gutter downpipes and elbows. The terms specified that Mr. Harrison would also cover all walkways and gardens, complete cleanup and disposal of all materials, and perform a magnetic sweep of the work area. The Barals agreed to pay a \$3,500 deposit once Mr. Harrison ordered the materials and to pay the remaining balance on job completion.

15. The Barals paid Mr. Harrison the \$3,500 deposit as shown in the submitted e-transfer receipt. On January 16, 2021, Mr. Harrison delivered some boxes of roofing shingles. It is undisputed that Mr. Harrison did not supply any of the other materials listed in the Roof Agreement.
16. On January 18, 2021, Mr. Harrison's worker started the job at about 8:00 am and removed some of the existing roofing materials. At 10:27 am Mr. Harrison texted Mrs. Baral photographs of the exposed roof that showed severely damaged underboards (sheathing) where the roof had been leaking. He told her the job would take an extra day and that they needed to have a discussion before he proceeded.
17. The Barals' unrefuted evidence is that Mr. Harrison told them it might cost \$3,000 to \$4,500 extra to repair the roof. The Barals asked Mr. Harrison to send a new written quote explaining the extra cost, which he undisputedly never sent.
18. I note the parties' Roof Agreement did not include any express language about how any unforeseen work would be assessed, approved or priced. However, as Mr. Harrison was hired to fix a leaking roof, I find Mr. Harrison should have reasonably expected there might be some water-damaged sheathing. He provided no explanation for "extra" costs in his submissions here.
19. As shown in the subsequent January 18, 2021 text messages, Mr. Harrison left the site and refused to perform any further work until the Barals paid him another \$1,500 deposit. As shown in the submitted photographs, Mr. Harrison left the site without cleaning it or tarping the exposed roof.
20. As it was January, the Barals texted Mr. Harrison that the exposed roof needed to be fixed before it rained and hoped "professionally you all won't leave us in a lurch". They

stated that they would get him the extra money but asked if he could get the one exposed side done that day.

21. Mr. Harrison texted the Barals they must pay the additional \$1,500, he would purchase the additional materials, and that he would come back to the site later that day.
22. The Barals paid Mr. Harrison the additional \$1,500 by e-transfer that afternoon for a total of deposit \$5,000. Mr. Harrison did not then return to either repair or tarp the exposed roof or clean the site. He also did not supply any further materials. This is undisputed.
23. The Barals say they became concerned when Mr. Harrison did not return or contact them after they sent the further payment. They contacted Colin Beamish of Accent Exteriors Roofing and Supply (Accent), for a second opinion on the cost to repair the sheathing. As shown in Mr. Beamish's February 16, 2021 statement he assessed the roof on January 19, 2021 and confirmed the sheathing needed to be replaced but most the cost would be the labour. Mr. Beamish quoted \$910.28 for labour, materials, and disposal fees.
24. On January 19, 2021, the Barals terminated the contract with Mr. Harrison and asked for a refund of their deposit less the cost of the delivered materials.
25. Mr. Harrison refused to refund any portion of the deposit. He removed several boxes of the new shingles from the Barals' property. Until the Barals called the RCMP, Mr. Harrison also attempted to dump a trailer-load of old shingles and debris from other sites onto the Barals' property. Mr. Harrison left without his trailer. These facts are not disputed.
26. Mr. Harrison says the Barals held his trailer "ransom" until the RCMP told him he could retrieve it. This is not supported by evidence. The evidence shows Mr. Harrison retrieved his trailer later on January 19, 2021 and that he dumped his full trailer on the Barals' property before he left with it. The Barals later hired Accent to finish the roofing work that included a \$425.23 fee to dispose of the dumped debris.

Did Mr. Harrison breach the parties' contract?

27. I find Mr. Harrison breached the contract by not covering the walkways and gardens as required and leaving the property littered with old roofing debris as shown in the photographs. I also find Mr. Harrison did not order or supply all the agreed materials despite the Barals paying the deposit.
28. I find Mr. Harrison had no reasonable justification to refuse to perform the repairs without an extra \$1,500 deposit considering he was paid to fix a leaky roof. As noted, he already had the agreed \$3,500 deposit. Further, I find Mr. Harrison knew or ought to have known the roof repair was urgent considering the rain. I find Mr. Harrison's failure to return and protect the exposed roof after the Barals paid him an extra \$1,500 breached the contract. I find it also showed that Mr. Harrison had little intention of carrying out the contract in good faith.
29. In the circumstances, I find the Barals were entitled to end the contract and claim damages for their losses sustained from Mr. Harrison's breach.

Are the Barals entitled to the claimed \$4,349.56 refund?

30. I agree with the Barals that the appropriate measure of damages is their deposit, less the value of the new roofing shingles left on their property. I find any value in Mr. Harrison removing the old shingles is reasonably off set by the extra cleanup costs.
31. Mr. Harrison asserts that he is entitled to compensation for \$2,500 in travel expenses. However, I find the parties had no agreement that the Barals would pay for Mr. Harrison's travel and in any event, there is no supporting evidence of these expenses.
32. Mr. Harrison provided no receipts or invoice for the price of the new shingles. I accept the value was \$650.44 as it is reasonably supported by a retail quote and there is no evidence to the contrary.
33. I find the Barals are entitled to the claimed refund of their \$5,000 deposit less \$650.44 for materials they kept. I find Mr. Harrison must pay the Barals a total of \$4,349.56 in damages.

34. The *Court Order Interest Act* applies to the CRT. The Barals are entitled to pre-judgment interest on the \$4,349.56 from January 18, 2021, the date of the contractual breach to the date of this decision. The interest equals \$11.69.
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 see no reason in this case not to follow that general rule. I find the Barals are entitled to reimbursement of their \$175 in CRT fees. The Barals claimed no dispute-related expenses.

ORDERS

36. Within 30 days of the date of this order, I order Mr. Harrison to pay the Barals a total of \$4,536.25, broken down as follows:
 - a. \$4,349.56 in damages,
 - b. \$11.69 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
37. The Barals are entitled to post-judgment interest, as applicable.
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.

Trisha Apland, Tribunal Member