



# Civil Resolution Tribunal

Date Issued: September 1, 2021

File: SC-2021-003388

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Window Viper Glass & Gutter Cleaning Service Inc. v. Elliott*,  
2021 BCCRT 956

B E T W E E N :

THE WINDOW VIPER GLASS & GUTTER CLEANING SERVICE INC.

**APPLICANT**

A N D :

GORDON ELLIOTT

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Roy Ho

### INTRODUCTION

1. This dispute is about payment for window cleaning services. The applicant, The Window Viper Glass & Gutter Cleaning Service Inc., says the respondent, Gordon Elliott, owes \$1,029 for window cleaning services.

2. The respondent does not deny that he owes the applicant money for its services. However, he says that the applicant overcharged him for the services and some of its work was deficient, so he should not have to pay the full amount. He says the bill should not exceed \$500.
3. The applicant is represented by a business contact. The respondent is self-represented.
4. For the reasons that follow, I find that the respondent must pay the applicant \$1,029 for window cleaning services.

## **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. 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 through written submissions.
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.

## **ISSUE**

9. The issue in this dispute is whether the respondent owes the applicant a debt for unpaid window cleaning services, and if so, how much?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant must prove its 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 to provide context for my decision. I note the respondent did not provide any evidence despite having the opportunity to do so.
11. The applicant says that the respondent agreed to pay its quoted price, which was a fixed price rather than an hourly rate. The respondent disagrees and says that because the applicant used the word "estimate" and not "quote", the price was not fixed. He says that his wife spoke with the applicant who allegedly quoted his wife an hourly rate. So, the respondent says he expected the applicant would review its costs and time with him once the work had been completed. Therefore, he should only pay for the approximate 4 hours the applicant spent on the window cleaning services.
12. However, the parties are advised in the CRT process of the importance of providing evidence to support their position. As noted, the respondent chose not to provide any evidence in this dispute. The courts have said that an adverse inference can be drawn against a party where, without sufficient explanation, they fail to produce evidence or call a witness expected to provide supporting evidence (see *Port Coquitlam Building Supplies Ltd. v. 494743 B.C. Ltd.*, 2018 BCSC 2146). In this matter, I would expect

the respondent to provide a statement from his wife to support his assertion that the applicant quoted an hourly rate. Since the respondent has provided no evidence, and since his wife's statement would likely be readily available to him, I find it is appropriate to draw an adverse inference against the respondent and find the applicant did not offer an hourly rate to the respondent's wife.

13. In any event, I find nothing turns on whether the price provided by the applicant was a quote or an estimate. I say this because I find that ultimately the parties agreed that the applicant would complete the window cleaning service for the fixed price of \$1,029. I find this is the case because there is no quote, estimate, or other document before me showing that the parties agreed to an hourly rate for the work. The only pricing evidence I have before me is a March 9, 2021 "estimate" for \$1,029 including GST, and an email from the respondent accepting this price. My further reasons follow.
14. The estimate itemized window cleaning services for: "Interior Windows" at \$275, "Windows" at \$275, 25 "Skylights" for \$10 each at \$250, and "Glass Railings" at \$180, totalling the \$1,029 claimed. Other than these items, there is nothing in the estimate to indicate or suggest anything about time or an hourly rate. I also find that the round figures quoted support a fixed price rather than an hourly rate. This is particularly the case where the applicant priced each of the 25 skylight windows at \$10 each. I find that if the parties had agreed to a time-based contract it would not have been necessary to price each skylight windows at \$10 each. Based on this estimate, which the respondent undisputedly accepted, I find the parties entered into a fixed fee contract.
15. I have considered whether the respondent is entitled to a set off given that he alleges the applicant's work was deficient. He says the applicant left dirty rivulets behind on the skylight windowpanes. Where a party asserts a deficiency in a contractor's work, as the respondent does here, the burden of proof is on the party asserting the deficiency (see *Lunch v Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). However, the respondent has provided no evidence of the

applicant's alleged deficient work, such as a photo. For this reason, I find that the respondent is not entitled to a set-off.

16. In summary, I find that the parties agreed to a fixed-fee contract for window cleaning services and the respondent is not entitled to a set-off on this service. I find that the respondent must pay the applicant \$1,029 for unpaid window cleaning services.
17. The *Court Order Interest Act* applies to the CRT. The applicant submitted in evidence the respondent's outstanding invoice showing a due date of April 16, 2021. So, I find the applicant is entitled to pre-judgment interest on the \$1,029 from April 16, 2021, the invoice due date, to the date of this decision. This equals \$1.76.
18. 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 applicant is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

## **ORDERS**

19. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,155.76, broken down as follows:
  - a. \$1,029 as debt for unpaid window cleaning services,
  - b. \$1.76 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
20. The applicant is entitled to post-judgment interest, as applicable.
21. 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.

22. 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.

---

Roy Ho, Tribunal Member