



Civil Resolution Tribunal

Date Issued: January 7, 2022

File: SC-2021-005087

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Briggs v. Gacic (dba Elma Painting Co.)*, 2022 BCCRT 14

B E T W E E N :

SHIRLEY BRIGGS

APPLICANT

A N D :

LORIS GACIC (Doing Business As ELMA PAINTING CO.)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Laylí Antinuk

INTRODUCTION

1. This dispute is about an allegedly poor paint job.
2. The applicant, Shirley Briggs, says the respondent, Loris Gacic (dba Elma Painting Co.), did a poor job of painting her home's interior. Ms. Briggs says parts of her home now need repair and repainting. She asks me to order Mr. Gacic to refund her \$700.

3. Mr. Gacic says he corrected all deficiencies Ms. Briggs identified and that she was “very pleased” by the time he finished his work.
4. Each party is self-represented.
5. As explained below, I allow Ms. Briggs’ claim and order Mr. Gacic to pay her a \$700 refund.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims 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 the parties that will likely continue after the CRT process has ended.
7. The CRT has the discretion to decide the hearing format. A hearing can occur by writing, telephone, videoconferencing, email, or a combination of these. I have decided that a written hearing is appropriate in this case. I find I am properly able to assess and weigh the evidence and submissions before me. Keeping in mind the CRT’s mandate, which includes proportionality and speedy dispute resolution, I see no reason for an oral hearing.
8. The CRT can accept any evidence that it considers relevant, necessary and appropriate, even if the evidence would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Where permitted under CRTA section 118, the CRT may order a party to pay money, or to do or stop doing something. The CRT may also make an order that includes any terms or conditions the CRT considers appropriate.

10. Mr. Gacic did not provide any submissions for this dispute despite receiving a 3-week extension to do so. He provided only 1 piece of late evidence, an audio recording of a voicemail message from Ms. Briggs. Ms. Briggs objects to the late evidence and says I should not accept it.
11. Keeping the CRT's mandate for a flexible process in mind, I have decided to accept the late evidence because I find it relevant to this dispute. Additionally, Ms. Briggs had the opportunity to review and make submissions about it. So, I find that it would not be procedurally unfair to accept the late evidence. However, I place no weight on the evidence. This is because, without an explanation from Mr. Gacic, it is not clear to me how the evidence supports his position. More on this below.

ISSUE

12. The issue is to what extent, if any, Mr. Gacic must refund Ms. Briggs \$700 for an allegedly poor paint job.

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, Ms. Briggs must prove her claims on a balance of probabilities. This means she must prove it is more likely than not that Mr. Gacic did a poor paint job in her home, entitling her to a \$700 refund.
14. I have reviewed all the parties' evidence and arguments. However, I will refer only to what I consider necessary to explain my decision. As noted, Mr. Gacic did not provide any submissions despite having the opportunity to do so.
15. The parties agree that Ms. Briggs hired Mr. Gacic to complete interior paint work in her home in the spring of 2021. Based on the March 7, 2021 Interior Project Quotation (quote) in evidence, I find that the parties agreed Mr. Gacic would remove some wallpaper, paint several areas in Ms. Briggs' home, and supply the necessary materials. The quote says all the work will be completed in a "good workmanlike manner." The quote contains an itemized cost list for various tasks and materials. It

says Mr. Gacic already received a \$100 deposit and would subtract \$200 from the itemized cost list because he would do “one coat only.” The quote says the total cost for the work is \$1,180.

16. Based on my calculations, I find that the total cost on the quote is incorrect. The itemized work costs are listed at \$150 + \$480 + \$200 + \$200 + \$180, which totals \$1,210. Subtracting \$200 for the single coat of paint, I find that the total cost should have been calculated to \$1,010. It is undisputed that Ms. Briggs ultimately paid Mr. Gacic a total of \$1,200 (\$100 as a deposit, then \$1,100 when Mr. Gacic demanded it). However, given that Ms. Briggs only claims a \$700 refund, nothing turns on this \$90 discrepancy.
17. As noted, Ms. Briggs says Mr. Gacic did a poor paint job. In his Dispute Response filed at the outset of this proceeding, Mr. Gacic says he corrected all deficiencies Ms. Briggs pointed out to him and that Ms. Briggs was “very pleased” with his work. For the following reasons, I disagree.
18. Ms. Briggs submitted many photos showing various aspects of Mr. Gacic’s paint job. Ms. Briggs says the photos were taken on April 20 and May 7, 2021. As noted, the quote is dated March 7, 2021. Neither party has said exactly when Mr. Gacic completed the work or when Ms. Briggs paid him for it. However, Ms. Briggs says she became aware of her claim against Mr. Gacic in March 2021. Additionally, in his Dispute Response, Mr. Gacic says he provided the quote on his first visit to Ms. Briggs’ home and, once she accepted the quote, he “started to work.” I take this to mean he began working very soon after March 7, 2021. He also says he corrected deficiencies on the same day Ms. Briggs paid him, then again five days later when she called him to complain about more deficiencies. Taking all this into account, I infer that Mr. Gacic completed the job and received payment within the month of March 2021. So, I find that the photos were taken **after** Mr. Gacic performed all the deficiency corrections.
19. Based on the photos Ms. Briggs submitted, I find that Mr. Gacic’s paint job was unsightly and unsuccessful. The photos show paint drips, bubbles and cracks, debris

in the paint, paint where it should not be, areas where the painting is not finished and improper preparation for painting. For example, I find it obvious from the photos that Mr. Gacic did not sand several areas where he should have prior to painting, did not tape before painting, missed spots that should have been painted, painted other spots that should not have been painted, and dripped paint onto the floor and radiator.

20. Ms. Briggs provided a signed, handwritten letter from Randy Myles, who she hired to assess Mr. Gacic's paint job and fix some of it. The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. I do not know Randy Myles' preferred pronouns or title. So, intending no disrespect, I will use the name Randy to refer to Randy Myles throughout this decision.
21. I accept Randy's evidence as expert opinion evidence and find Randy qualified to provide it. The letter includes Randy's business card which says Randy does "renovations of all kinds from start to finish." I accept that Randy is qualified to do renovation work and provide an expert opinion on Mr. Gacic's paint job. I note that by choosing not to provide submissions, Mr. Gacic does not dispute Randy's qualifications or counter Randy's evidence.
22. Randy's letter shows that he assessed Mr. Gacic's paint job both before and after Mr. Gacic "corrected" the deficiencies to his paint job. Upon first arriving to Ms. Briggs' home, Randy says, "I could clearly see many things were not prepped properly prior to painting." For example, Randy says the doorways had not been properly prepped and caulked, "leaving huge separation gaps."
23. After Mr. Gacic "corrected" the deficiencies, Ms. Briggs contacted Randy a second time because Randy says Ms. Briggs was "clearly distressed again over faulty workmanship." Randy returned to her home to assess Mr. Gacic's work once again. Randy says, "What I found upon arrival was this: again he [Mr. Gacic] did not prime properly." Based on this second assessment, Randy also says Mr. Gacic did not use painter's tape to separate colours. Randy also says Mr. Gacic ruined the door and window frames by painting over them when they did not need painting and were not part of the job. Randy says the only fix is to paint over all those areas. Randy also

notes that he discovered unfinished preparation work hidden behind the bedroom drapes, which Mr. Gacic had offered to rehang for Ms. Briggs. Additionally, in Randy's opinion, Mr. Gacic used an inexpensive paint that created "separation due to too much moisture and cracking when drying." Randy estimates it would cost \$950 to re-do the job properly.

24. I accept all Randy's evidence. I find it consistent with Ms. Briggs' photographic evidence and written submissions. Additionally, as noted, Mr. Gacic did not dispute Randy's evidence despite having the opportunity to do so.
25. Based on the photos and expert evidence before me, I find that Mr. Gacic failed to meet the requisite standard of care for painting Ms. Briggs' home. I find that he did not perform the work in a "good workmanlike manner" as promised. I note that Mr. Gacic himself admits that there were deficiencies in his work. He claims to have corrected all the deficiencies, but I find that the undisputed evidence clearly shows he did not. So, I find that Ms. Briggs is entitled to a refund.
26. It is undisputed that Ms. Briggs paid Mr. Gacic a total of \$1,200. She requests a \$700 refund to have a new painter come in and correct the poor paint job.
27. As noted, Randy estimates it will cost \$950 to fix Mr. Gacic's poor paint job. Ms. Briggs also provided a quote from a different painting company. That company estimates it will cost \$900 to fix the areas "of concern due to previous poor workmanship." Ms. Briggs explains the difference between her claimed \$700 refund and these two estimates saying, "Unfortunately when I initiated this claim I was unaware as to how much it will cost to have the deficiencies corrected."
28. I find that it would be procedurally unfair for me to order a refund that exceeds the amount Ms. Briggs requested in the Dispute Notice. So, I order Mr. Gacic to refund Ms. Briggs the claimed \$700.
29. As noted, Mr. Gacic submitted only 1 piece of evidence, a voicemail message from Ms. Briggs. In the message, Ms. Briggs asks Mr. Gacic to return to her home to rehang a closet door. I find the voicemail relevant because it relates to the paint job

Mr. Gacic performed in Ms. Briggs' home. However, it is not clear to me how the message supports Mr. Gacic's position that Ms. Briggs was "very pleased" with his work, and Mr. Gacic did not explain. Ms. Briggs does not say anything in the message to suggest she was happy with his work. I give no weight to this evidence.

30. The *Court Order Interest Act* applies to the CRT. I find that Ms. Briggs is entitled to pre-judgment interest on the \$700 refund from March 7, 2021, the quote date, to the date of this decision. This equals \$2.64. I choose the quote date because, as noted, nothing in the evidence shows what day Ms. Briggs paid Mr. Gacic the \$1,100. Nothing in the evidence indicates what days Mr. Gacic did work in Ms. Briggs' home either.
31. Under 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 to depart from the general rule in this case.
32. Ms. Briggs succeeded in this dispute and paid \$75 in CRT fees. So, I order Mr. Gacic to reimburse Ms. Briggs \$75 in CRT fees.
33. Ms. Briggs also claims \$79 as a dispute-related expense for the purchase of Microsoft Word (Word). She says she had to buy Word because she "was unable to fill out the CRT form without this program." She says she "would not have needed [Word] for any other reason." Ms. Briggs provided proof to show she paid \$79 for Word. I accept that Ms. Briggs purchased Word for this dispute and that she did not need Word for any other reason. However, the CRT allows applicants to apply for dispute resolution using paper forms completed in handwriting, so I do not agree that Ms. Briggs could not fill out CRT forms without Microsoft Word. So, I will not order Mr. Gacic to reimburse Ms. Briggs for the Word purchase.

ORDERS

34. Within 30 days of the date of this order, I order Mr. Gacic to pay Ms. Briggs a total of \$777.64, broken down as follows:

- a. \$700 as a refund for poor painting work,
- b. \$2.64 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$75 for reimbursement of CRT fees.

35. Ms. Briggs is entitled to post-judgment interest, as applicable.

36. Under CRTA section 48, 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.

37. Under CRTA section 58.1, the Provincial Court of British Columbia can enforce a validated copy of the CRT's order. 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 a Provincial Court of British Columbia order.

Laylí Antinuk, Tribunal Member