



# Civil Resolution Tribunal

Date Issued: February 23, 2022

File: SC-2021-005569

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mogensen v. Bethune*, 2022 BCCRT 194

B E T W E E N :

DIANA MOGENSEN

**APPLICANT**

A N D :

ERIC BETHUNE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about handyman services. The applicant, Diana Mogensen, hired the respondent, Eric Bethune, to do some touch-up work to her home. Ms. Mogensen paid Mr. Bethune \$800 in advance, but says the work was incomplete and poorly done. She claims a full \$800 refund. Mr. Bethune denies that his work was substandard or incomplete, and says he owes nothing.

2. The parties are each self-represented in this dispute. Mr. Bethune says he is a retired lawyer.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT), which 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.
4. 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. Although the parties' submissions each call into question the credibility of the other party to some extent, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
5. 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.
6. 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.

7. Mr. Bethune submitted evidence after the deadline, specifically photos showing materials he purchased for sink repairs. Ms. Mogensen does not object to the photos and had an opportunity to respond to them, so I allow them as evidence.

## **ISSUES**

8. The issue in this dispute is whether Mr. Bethune's work met an acceptable quality standard, and if not, does he owe Ms. Mogensen an \$800 refund?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Ms. Mogensen must prove her claim on a balance of probabilities, meaning "more likely than not". I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
10. There is no written contract, invoice, or receipt for Mr. Bethune's work in evidence. However, it is undisputed that Ms. Mogensen agreed to pay Mr. Bethune \$800 for touch-up work that was expected to take 1 day. I find there was a verbal agreement between the parties for this work.
11. Mr. Bethune does not deny that the agreed work was correctly summarized in a text message from Ms. Mogensen, and included the following:
  - a. Repaint the front door, including the inside, outside, and door jam,
  - b. Caulk the kitchen sink and counter, and bathroom sink and bathtub,
  - c. Fix a chip in the bathroom sink,
  - d. Paint a hallway shelf and baseboards, and
  - e. Install a bathroom shelf.

12. At Mr. Bethune's request, Ms. Mogensen undisputedly paid him \$800 before he completed the single day of work. Ms. Mogensen says he worked for approximately 8 hours, while Mr. Bethune says he worked 11 to 12 hours. Ms. Mogensen says Mr. Bethune agreed to return and "complete and tweak" his work the following week. She says when she followed up the following week he asked for an additional \$275 payment first, which she refused. In contrast, Mr. Bethune says Ms. Mogensen was satisfied with his work when he left, and they had talked about doing additional work for an additional fee. He says Ms. Mogensen only expressed concerns about his work later, although it is undisputed that she complained about it within several days.
13. I find Mr. Bethune gave no express warranties about the quality of his work. However, I find it was an implied term of the parties' verbal agreement that the work would be of reasonable quality (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). As the applicant and the party alleging deficiencies in Mr. Bethune's work, Ms. Mogensen bears the burden of proving that he failed to perform the work in a reasonably good manner (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61).
14. Ms. Mogensen submitted several photos. I find they show bubbling and gaps in caulking on trim, baseboards, tile, and a sink, streaky and uneven baseboard paint, and a chipped grey repair patch on a white sink. The photos also show chipped paint on a door with a glass inset, and the door frame. I find these were obvious flaws.
15. I find that the causes of the caulk defects and paint chips are subjects beyond common knowledge and experience, and require expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124). Ms. Mogensen provided a report from Jordan Bell, who said he was a general contractor with 10 or more years of experience in building maintenance and general renovations. Mr. Bethune does not dispute Mr. Bell's qualifications. I find that under the CRT's rules, Mr. Bell is qualified by experience to give expert evidence on building maintenance and renovations. I accept Mr. Bell's report as expert evidence.

16. In his report, Mr. Bell said he personally viewed Mr. Bethune's work at Ms. Mogensen's home, and that it did not meet industry standards. Specifically, Mr. Bell found the caulking around a sink, countertop, bathtub, and on the baseboards was not properly applied or sealed. He said that the front door re-painting was not completed properly, and that insufficient cleaning and preparation work caused the paint to peel prematurely. He also said a sufficient coat of paint was not evenly applied. Mr. Bethune submitted no expert evidence, so I find Mr. Bell's expert report is essentially uncontradicted. I find the report is persuasive evidence that the caulking and front door painting were not of reasonably good quality.
17. Mr. Bethune says he did not paint the front door shown in the photos, because the door he painted had a glass panel. However, I find the photos show a door with a glass panel. On balance, I find Mr. Bethune painted the front door and that work was not of reasonable quality, which broke the parties' verbal agreement.
18. Mr. Bethune says the chipped grey sink patch was an earlier repair and was not his work. He says that completely repairing the sink would have required professional re-glazing that he was not able to do, but he does not deny that he agreed to fix the chip in the sink patch. I find undisputed photos show there was a chip in the sink patch approximately 3 weeks after Mr. Bethune finished his work. On balance, I find Mr. Bethune either failed to repair the chip, or his repair lasted only about 3 weeks. In either case, I find Mr. Bethune's sink repairs were not of reasonable quality.
19. Mr. Bethune says Ms. Mogensen used the sinks before the caulk had fully cured, which resulted in caulk deficiencies. However, I find the evidence does not show that Mr. Bethune warned Ms. Mogensen not to use the sinks or any other items for any time period, or that the caulk required curing time. On balance, I find the evidence does not show that Ms. Mogensen caused or was responsible for any caulk deficiencies. I find Mr. Bethune's caulking work around the sinks and bathtub, and at least some of the caulk around the countertop and baseboards, was not of reasonable quality and breached the parties' agreement.

20. I find there is no evidence showing that the hallway shelf painting, or other trim painting not shown in photos, was defective. I also find there is no evidence showing that the bathroom shelf installation was defective. I find Ms. Mogensen has not met her burden of proving that Mr. Bethune's work in these areas was incomplete or not of reasonable quality.
21. As noted above, I find Ms. Mogensen has proven that some, but not all, of Mr. Bethune's work was not of reasonable quality. I find Ms. Mogensen is entitled to a refund for the work that broke the parties' agreement by failing to meet a reasonable quality standard. Not all of Mr. Bethune's work is shown in photos, so the extent of the defects is not entirely clear. Further, the evidence does not show how much time or effort he spent on each task. However, given the undisputed list of agreed tasks, I find it likely that 75% of Mr. Bethune's work was not of reasonable quality, as explained above. So, on a judgment basis, I find Ms. Mogensen is entitled to a \$600 refund for poor-quality caulking, front door and baseboard painting, and sink repairs.

### ***CRT Fees, Expenses, and Interest***

22. The *Court Order Interest Act* applies to the CRT. I find Ms. Mogensen is entitled to pre-judgment interest on the \$600 refund amount, reasonably calculated from the date she paid Mr. Bethune on or around July 3, 2021, until the date of this decision. This equals \$1.75.
23. Under section 49 of the CRTA, and the 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. Ms. Mogensen was partly successful in this dispute, so I find she is entitled to reimbursement of half the CRT fees she paid, which equals \$62.50. Mr. Bethune paid no CRT fees and claims no CRT dispute-related expenses.

24. Ms. Mogensen claims \$500 for the estimated cost of Mr. Bell's expert report, as a dispute-related expense. The CRT expert evidence form Ms. Mogensen used to request Mr. Bell's opinion instructed her to save and upload as evidence any invoices or payment receipts to claim as a dispute-related expense. CRT rule 8.3(4) also requires a party to provide a copy of an expert's invoice. However, Ms. Mogensen submitted no receipts, invoices, or other evidence showing the actual or likely cost of Mr. Bell's report, or that she paid or owes anything for it. I dismiss her \$500 expert evidence expense claim as unproven.
25. Ms. Mogensen also claims \$2,000 for a process server fee as a dispute-related expense, but submitted no evidence showing the actual or likely cost of that alleged fee. I dismiss the \$2,000 process server expense claim as unproven.

## **ORDERS**

26. Within 30 days of the date of this decision, I order Mr. Bethune to pay Ms. Mogensen a total of \$664.25, broken down as follows:
  - a. \$600 in damages for a repair refund,
  - b. \$1.75 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 in CRT fees.
27. I dismiss Ms. Mogensen's dispute-related expense claims.
28. 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.

29. 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.

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Chad McCarthy, Tribunal Member