



# Civil Resolution Tribunal

Date Issued: March 9, 2022

File: SC-2021-006656

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McConnell v. Meise*, 2022 BCCRT 259

BETWEEN:

GARY MCCONNELL

**APPLICANT**

AND:

REILLY MEISE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a residential electrical job. The applicant, Gary McConnell, says he paid the respondent, Reilly Meise, \$5,800 to do electrical work on an hourly basis.

Mr. McConnell says Mr. Meise only did about \$1,000 worth of work. Mr. McConnell says Mr. Meise did not complete the job and overcharged him. Mr. McConnell claims a \$5,000 refund.

2. Mr. Meise denies he wasted time and says the job involved a significant amount of work that he says he appropriately billed at the agreed hourly rate. Mr. Meise says he owes nothing.
3. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. CRTA section 39 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

6. CRTA section 42 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.
7. 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**

8. The issue in this dispute is whether Mr. Meise overcharged Mr. McConnell for electrical work, and to what extent, if any, Mr. McConnell is entitled to the claimed \$5,000 refund.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Mr. McConnell must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ evidence and submissions but refer only to what I find relevant to provide context for my decision.
10. The parties had no written agreement and there are no emails or texts in evidence setting out the project’s scope or the agreed terms. However, it is undisputed that the parties agreed Mr. McConnell would pay Mr. Meise \$35 per hour for his electrical work on Mr. McConnell’s home construction project.
11. Mr. McConnell says he gave Mr. Meise \$1,600 cash to “get him started” for materials. Mr. Meise denies he ever received any cash. It is undisputed Mr. McConnell then paid Mr. Meise by cheque a total of \$4,200, between May 13 and August 13, 2020. Given my conclusion below that Mr. McConnell has not proved he is entitled to any refund, I find nothing turns on whether Mr. McConnell paid the \$1,600 in cash.

12. Mr. McConnell says Mr. Meise “scribbled out the memo” on the August 13, 2020 cheque, which Mr. McConnell says stated what the money was for. I cannot read what the crossed-out memo says, and Mr. McConnell does not say what he wrote. So, I find nothing turns on the cheque’s memo description.
13. In short, Mr. McConnell alleges Mr. Meise failed to complete the job, and that other aspects of Mr. McConnell’s project were delayed. He says Mr. Meise completed only about \$1,000 worth of work, despite Mr. McConnell allegedly paying him over \$5,000. However, there is no evidence before me Mr. Meise ever agreed to any particular timeline. Further, Mr. Meise was undisputedly paid by the hour. So, I find the only issue before me is whether Mr. McConnell is entitled to a refund based on his proving Mr. Meise’s work was substandard or that Mr. Meise wasted or unreasonably spent too much time on the work he billed for.
14. As the applicant and the party alleging deficiencies in Mr. Meise’s work, Mr. McConnell 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). I find this similarly applies to whether Mr. Meise’s billed work was completed in a reasonable time frame.
15. Mr. McConnell says 2 electricians saw what Mr. Meise had completed and advised it would have been 1.5 to 2 days’ work. Neither party says how many days Mr. Meise spent at the project. Mr. McConnell argues that at Mr. Meise’s \$35 per hour rate, that would be under \$600 for labour. However, Mr. McConnell submitted no written statement from any electrician.
16. Mr. McConnell says he has a small house, with a total of 1,080 square feet and a 300 square foot garage. I accept this as Mr. Meise does not dispute it. Mr. Meise however says that despite the small size, it still needed all the “normal” things according to the electrical code and set out a lengthy list of items required in the house. Mr. Meise also submitted photos of floor plans of a “similar house” that he says took 80 hours of labour. I find these floor plans unhelpful in determining whether Mr. McConnell’s

project likely required that much time. However, as noted, Mr. McConnell bears the burden of proof.

17. Mr. McConnell says Mr. Meise completed the following: “most of the wire,” 4 breakers, 1 light, 2 plug-ins, plug outside for a hot tub, and a small breaker box in the garage. Mr. McConnell says this would be under \$1,000 at his cost for materials. However, again, Mr. McConnell submitted no evidence at all to support his assertion about the scope of Mr. Meise’s completed work or about the materials’ likely cost.
18. Ultimately, I find the applicable professional standard for an electrician’s work and the amount of time a particular electrical job should reasonably take are subjects beyond common knowledge and experience and require expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124). Without identifying particular evidence items, CRT staff tell parties to submit all relevant evidence, which includes any necessary expert evidence. Yet, Mr. McConnell submitted no expert evidence. I am not prepared to accept Mr. McConnell’s hearsay statement about what unnamed electricians told him about Mr. Meise’s work.
19. Next, Mr. McConnell says Mr. Meise never produced any materials receipts, despite Mr. Meise’s assurances he had receipts. However, there is no evidence before me Mr. McConnell ever asked Mr. Meise for copies of receipts before this CRT dispute started in September 2021, over a year after Mr. Meise’s work. Mr. Meise says that he keeps a stock of materials and does not buy materials specifically for a job. However, Mr. Meise submitted a copy of a January 20, 2022 quote from City Electric Supply listing various materials totalling \$3,004.26. Mr. Meise says this represents the materials he used on Mr. McConnell’s house. Mr. Meise also says he switched since Mr. McConnell’s job to an electrical rather than paper billing system and no longer has the hard copy receipts. Given the passage of time between Mr. McConnell’s job and when this CRT dispute started, I find this explanation reasonable.
20. Next, Mr. McConnell submitted an undated handwritten statement from JU, who said they worked as a painter for Mr. McConnell in late July 2020. JU wrote that on an

unspecified date they heard “the electrician” on a phone call for over 1.5 hours. JU wrote they mentioned it to Mr. McConnell who responded, “Ya he’s always on the phone.” Mr. Meise did not specifically address this in his submissions. On balance, I find it unproven that Mr. Meise billed Mr. McConnell for time he spent on his phone on matters unrelated to Mr. McConnell’s project. Even if Mr. Meise was on his phone, I find it unproven he was not able to complete the electrical work at the same time. There is also no explanation for why Mr. McConnell did not address Mr. Meise’s phone use with him if that was a concern for Mr. McConnell.

21. JU added that Mr. McConnell’s belongings present around the house did not hold up JU’s work, so JU did not believe their presence should have interfered with the electrical work as Mr. Meise says they did. JU wrote that all containers were organized to be out of the way. I place no weight on this statement because there is no evidence JU is qualified as an electrician or could address what Mr. Meise needed in terms of access for his work.
22. Next, Mr. McConnell appears to argue he should not have had to pay for Mr. Meise’s travel time getting to and from Mr. McConnell’s home. Mr. Meise says he told Mr. McConnell up front that he lived 45 minutes away and that Mr. McConnell would need to pay his travel time. I find it unproven that Mr. McConnell did not owe Mr. Meise for his travel time.
23. On balance, I find it unproven that Mr. Meise overbilled Mr. McConnell for anything, including materials, given the absence of any supporting evidence including expert evidence.
24. Mr. Meise says the parties’ agreement was for Mr. McConnell to pull the electrical permit as the homeowner and general contractor. Mr. McConnell argues he assumed Mr. Meise would pull the necessary permits. To that end, Mr. McConnell says he had no choice but to call the electrical inspector and that Mr. Meise was “written up” by the inspector. However, there is no evidence before me from any inspector and no evidence that Mr. Meise’s completed work had to be redone. So, I do not accept Mr. Meise’s electrical work was faulty based on Mr. McConnell’s unsupported assertion.

25. Given the above, I find it unproven Mr. Meise's work was either substandard or that he wasted time. It follows that I dismiss Mr. McConnell's refund claim.

26. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. McConnell was unsuccessful, so I dismiss his claim for CRT fee reimbursement and for dispute-related expenses. Mr. Meise did not pay fees and neither party claimed dispute-related expenses.

## **ORDER**

27. I dismiss Mr. McConnell's claims and this dispute.

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Shelley Lopez, Vice Chair