



Civil Resolution Tribunal

Date Issued: July 6, 2022

File: SC-2021-009230

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Perk v. Savard*, 2022 BCCRT 775

BETWEEN:

TANYA PERK and RONALD PERK

APPLICANTS

AND:

FREDERIK SAVARD

RESPONDENT

AND:

TANYA PERK and RONALD PERK

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about bathroom renovations. The applicants and respondents by counterclaim, Tanya Perk and Ronald Perk, hired the respondent and applicant by counterclaim, Frederik Savard, for the work. They say the renovations were substandard. They claim \$4,916.79 for an incorrectly installed vanity cabinet and tower, \$380 for electrician fees, \$59.01 for disposing of garbage left behind, \$14.97 for purchasing grout to fix errors, \$599 for an improperly installed shower kit, and \$350 for time spent on additional mudding, sanding, and waste cleanup. In total, these claims equal \$7,897.75. I discuss my jurisdiction over these claims below.
2. Mr. Savard disagrees. He says the Perks ordered the wrong vanity cabinet and tower but nonetheless instructed him to install them. He also says the Perks denied him the opportunity to fix the other deficiencies they identified. Mr. Savard also counterclaims for \$2,000 as the amount still owing for work done. The Perks disagree that Mr. Savard is entitled to any further payment because of the alleged deficiencies.
3. Ms. Perk represents the Perks. Mr. Savard represents himself.
4. For the reasons that follow, I find Mr. Savard has proven his counterclaim, but reduce it to account for deficiencies proven by the Perks.

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. Some of the evidence in this dispute amounts to a “they 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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT’s process and found that oral hearings are not necessarily required where credibility is an issue.

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.

The CRT’s Small Claims Monetary Limit

9. I find from the parties’ submissions that the Perks’ claims are for damages for breach of contract. CRTA section 118(1) and the *Tribunal Small Claims Regulation* say that the CRT has jurisdiction to resolve a claim if it is less than or equal to \$5,000. CRTA section 1 says that a claim “includes any matter that may be resolved by the tribunal”. The CRTA does not define a “claim” further.
10. As noted in *Premium Restoration Ltd. v. Mazdine*, 2022 BCCRT 411, citing *De Bayer v. Yang*, 2019 BCCRT 298, a CRT member determined that an applicant may bring multiple claims against the same defendant that total more than the CRT’s monetary limit, as long as the claims are sufficiently distinct and are different and separate

claims. In breach of contract disputes such as the one before me, the key consideration is whether multiple claims arise from the same breach of contract. CRT decisions are not binding but I find the above-cited decisions persuasive.

11. The Perks classified the following claims as claims for dispute-related expenses: electrician fees, garbage disposal fees, grout, the shower kit, and time spent on correcting deficiencies. I asked the parties to comment on whether these claims were instead part of the Perks' main substantive claim. The Perks said they were separate but did not explain why.
12. Ultimately, I find they are not claims for dispute-related expenses. I find they are essentially claims about the alleged deficiencies in Mr. Savard's work from November 2021. They predate this dispute, which was started on December 9, 2021. I find that they all arise from the same breach of contract. So, I find the Perks' substantive claim totals \$7,897.75. In submissions the Perks also agreed to abandon any claim they might have above \$5,000 to fit within the CRT's small claims monetary limit. So, I find I have jurisdiction to decide this dispute.

ISSUE

13. The issue in this dispute is whether Mr. Savard's work was deficient, and if so, what remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the Perks and Mr. Savard must prove their respective claims and counterclaims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and arguments that I find relevant to provide context for my decision.
15. I begin with the undisputed background. On September 28, 2021, the Perks spent \$4,916.79 at a hardware store for a vanity, matching linen tower, and a mirror to be used in bathroom renovations.

16. The Perks then hired Mr. Savard to install the items and complete other bathroom renovations. The parties did not document their agreement in a formal contract. However, Mr. Savard provided an undated partial copy of an estimate for \$9,618.66. The Perks then paid a \$7,000 deposit. Mr. Savard began work in November 2021. Mr. Savard issued a final invoice on November 26, 2021 for \$9,469.71. As noted above, he counterclaims for \$2,000, though arithmetic suggests more is owing.
17. The Perks were dissatisfied with the work and outlined their complaints in a December 1, 2021 letter to Mr. Savard. They alleged that numerous deficiencies remained outstanding, and I discuss these below. They also said Mr. Savard failed to remove garbage and left it in the Perks' carport.
18. In response to the letter, Mr. Savard texted that he disagreed the work was deficient. He did not deny being responsible for removing waste from the carport. He said he was unable to do so because his wallet was stolen. I infer from the text message that he means this prevented him from driving his vehicle and trailer to the Perks' residence for waste removal.

Was Mr. Savard's work deficient?

19. The Perks allege work deficiencies, so they bear the burden of proving that Mr. Savard's work was not done in a reasonably professional manner. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61. Expert evidence is normally required to assess the quality of a professional's work, unless a deficiency is non-technical and within an ordinary person's knowledge and experience, or if the work is obviously substandard. See *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124 and *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112.
20. The Perks did not provide any expert evidence. However, I find the following deficiencies were non-technical and obviously substandard:
 - a. There was a large, unsightly gap between the installed bathroom tiles and the hardwood flooring immediately outside the bathroom.

- b. A photo shows Mr. Savard installed the bathroom faucet and left it crooked.
 - c. Mr. Savard installed a toilet. A video shows that it wobbled when touched.
 - d. Photos show the vanity was installed incorrectly with the linen tower on the left side. Photos show the tower was meant to be on the right side, as it has unfinished areas on its rightmost area that I find would have been hidden if installed correctly. The Perks also provided a diagram of the ordered vanity and linen tower, showing that the tower should have been on the right. Mr. Savard says the Perks told him to install it on the left. However, I find it unlikely that the Perks would provide such instructions and Mr. Savard's submission is unsupported by any evidence.
 - e. Another photo shows the overhead bathroom vent cover was installed too low, leaving a gap.
 - f. Pictures show garbage left by Mr. Savard in the Perks' carport.
21. The Perks also allege that Mr. Savard overcharged for supplies, left mudding and sanding incomplete, and showed up late to work and left early. I find these allegations unproven by evidence.
22. Mr. Savard says he should have been given the opportunity to fix these problems. A contractor normally has a contractual right to have a reasonable opportunity to correct any deficiencies. However, an applicant may hire someone else to fix or redo work if the applicant has reasonably lost confidence in their hired contractor. See *Canadian Quality Stucco Ltd. v. Pangli*, 2022 BCPC 126 at paragraph 124 and the non-binding but persuasive decisions of *Alamolhoda v. Two Girls on A Roll Painting Ltd. et al*, 2019 BCCRT 1005 and *Bell v. Whyte*, 2020 BCCRT 84.
23. Here, I find that the Perks reasonably refused Mr. Savard further access given the volume and severity of the deficiencies demonstrated in the evidence. In particular, I find the incorrect installation of the vanity and linen tower were severe errors that

would be enough to cause a reasonable person to lose confidence in Mr. Savard's capabilities to remedy the errors.

24. This leaves the question of what remedies are appropriate for the Perks or Mr. Savard. I find the appropriate measure of damages would normally be the cost of fixing these errors and subtract this from the balance remaining under the final invoice of November 26, 2021. Mr. Savard says the latter amount is \$2,000, which I find is supported by both the estimate and final invoice.
25. The Perks provided a December 11, 2021 invoice for \$59.01 for garbage removal. The Perks paid \$380 to repair the non-flush mounting of a cover plate and reinstall the fan so the vent cover could be properly placed over the fan. This is shown in a December 29, 2021 invoice. So, I find the Perks are entitled to these amounts, which total \$439.01.
26. The difficulty is assessing damages for the bathroom tile gap, bathroom faucet, wobbly toilet, and incorrectly installed vanity. The applicants proved a breach but provided no evidence about the cost of correcting these errors. Instead, they claimed for the entire cost of replacing the vanity cabinet and tower and shower kit. I find this would be disproportionate to Mr. Savard's breach.
27. Given the above, I find I must proceed on a judgment basis. I award the Perks \$1,200 for the problems affecting the bathroom tile gap, bathroom faucet, wobbly toilet, and incorrectly installed vanity. From Mr. Savard's counterclaim of \$2,000 I reduce this by a total of \$1,639.01. In total, I award Mr. Savard \$360.99.
28. The *Court Order Interest Act* applies to the CRT. Mr. Savard is entitled to pre-judgment interest on the damages award of \$360.99, calculated from the dates of the final invoice of November 26, 2021. This equals \$0.99.
29. 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. While Mr. Savard proved his counterclaim, I have substantially reduced the amount

owing. He also paid no CRT fees and no parties claimed for any specific dispute-related expenses. Given these circumstances, I decline to order reimbursement for any parties.

ORDERS

30. Within 14 days of the date of this order, I order the Perks to pay Mr. Savard a total of \$361.98, broken down as follows:
 - a. \$360.99 as damages, and
 - b. \$0.99 in pre-judgment interest under the *Court Order Interest Act*.
31. Mr. Savard is entitled to post-judgment interest, as applicable.
32. I dismiss the Perks' remaining claims.
33. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

David Jiang, Tribunal Member