



# Civil Resolution Tribunal

Date Issued: September 1, 2022

File: SC-2022-002643

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lavoie v. Taylor*, 2022 BCCRT 983

Default decision – non-compliance

BETWEEN:

MELISSA NICOLE LAVOIE and PHILIPPE ROBERT LAVOIE

**APPLICANTS**

AND:

CONNOR TAYLOR

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the respondent, Connor Taylor, due to their non-compliance with the CRT's mandatory directions as required, as discussed below.

2. This dispute is about an incomplete deck rebuild project. The applicants, Melissa Nicole Lavoie and Philippe Robert Lavoie, say they paid the respondent a total of \$5,125 to replace their leaking deck. The applicants say the respondent did not complete the rebuild, did not order the requested decking materials and that the work he did was deficient or substandard. The applicants claim reimbursement of the \$3,125 they say they paid the respondent for the undelivered building materials.
3. In their Dispute Response, the respondent says they underquoted the job and was unable to complete the work due to life circumstances. The respondent says the applicants would only be entitled to reimbursement of \$1,500 of the money they paid the respondent, given the value of materials purchased and labour provided by the respondent.
4. Melissa Lavoie represents the applicants. The respondent is self-represented.

## **JURISDICTION AND PROCEDURE**

5. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for resolution and the CRT member may:
  - a. Hear the dispute in accordance with any applicable rules.
  - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.

6. The case manager has referred the respondent's non-compliance with the CRT's rules to me for a decision as to whether I ought to hear the dispute, refuse to resolve it, or dismiss it.
7. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
8. Where permitted under section 118 of the CRTA, the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
9. For the reasons that follow, I allow the applicants' claim.

## **ISSUES**

10. The issues are:
  - a. Is the respondent non-compliant with the CRTA and the CRT's rules?
  - b. If so, should I decide this dispute without the respondent's further participation, refuse to resolve it, or dismiss it?
  - c. If I decide to resolve this dispute, are the applicants entitled to their claimed damages?

## **EVIDENCE AND ANALYSIS**

### ***Non-compliance***

11. On August 17, 2022, I summarily decided to hear this dispute without the respondent's participation due to their non-compliance. That summary decision was

previously emailed to the parties by CRT staff. The details supporting that decision are set out below.

12. The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA and CRT rules 1.3(1), and 5.1 to 5.4, despite multiple attempts by the case manager to contact them with a request for a reply.
13. The respondent filed their Dispute Response on May 20, 2022, which included their email address and phone number to be used for this dispute. The case manager then made the following attempts at contact:
  - a. In a June 28, 2022 email to both parties, the case manager explained the CRT facilitation process. She reminded both parties they were expected to follow the directions and timelines the case manager set, to check their emails daily, and to respond to all email requests within 48 hours unless otherwise stated. The case manager asked both parties what time was best to speak by phone on July 5, 2022. She asked the parties to respond to the email by 4 pm on June 30, 2022.
  - b. In a July 5, 2022 email, the case manager asked the respondent what time they were available for a telephone call on July 7, 2022.
  - c. On July 7, 2022 the case manager telephoned the respondent and left a voicemail message with her phone number, asking the respondent to call back.
  - d. In a July 7, 2022 email, the case manager asked the respondent what time they were available for a telephone call on July 8, 2022.
  - e. On July 8, 2022 the case manager telephoned the respondent and left a voicemail message asking the respondent to confirm their availability for a telephone call on July 11 at 8 am. In an email of the same date the case manager asked the respondent the same question.

- f. On July 12, 2022 the case manager called the respondent and left a voicemail message. She also emailed the respondent. The case manager asked the respondent to confirm their availability for a telephone call on July 13 at 8 am or propose a different time. The case manager specifically told the respondent that she required a response.
- g. On July 29, 2022 the case manager again called the respondent but was unable to leave a voicemail message.
- h. In a July 29, 2022 email the case manager asked the respondent to confirm their availability for a telephone call on August 2, 2022 at 9 am. The case manager specifically told the respondent that she required a response.
- i. In a second email on July 29, 2022, the case manager referred to section 36 of the CRTA and warned the respondent that a tribunal member could find the respondent non-compliant if they did not respond. The case manager explained that meant a tribunal member could decide the dispute without the respondent's further participation. The case manager asked the respondent to provide a working phone number by 4 pm on August 1, 2022.
- j. On August 2, 2022 the case manager attempted to call the respondent, but there was no answer, and she was unable to leave a voicemail message.
- k. In an August 2, 2022 email the case manager again asked the respondent to provide a working phone number by 4 pm on August 4, 2022. She again referred to section 36 of the CRTA and warned the respondent they could be found non-compliant if they did not respond.
- l. In an August 5, 2022 email the case manager again asked the respondent to provide a working phone number by 4 pm on August 8, 2022. She again referred to section 36 of the CRTA and gave a final warning that the respondent he could be found non-compliant if they did not respond.

14. I find the case manager's attempted emails and telephone calls were directed to the email address and telephone number listed by the respondent on their Dispute Response.
15. The respondent failed to respond to the case manager's emails and voicemail messages. The case manager referred the matter of the respondent's non-compliance to me for a decision as to whether I should hear the dispute without the respondent's participation.

***Should the CRT hear the applicant's dispute without the respondent's participation?***

16. As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why they failed to communicate with the CRT as required. As noted, the case manager told the respondent at the beginning of the facilitation process that they must actively participate in the dispute resolution process and respond to the case manager's communications, including emails. I find the case manager made a reasonable number of contact attempts.
17. Given the multiple attempts, I find it is more likely than not that the respondent knew about the case manager's contact attempts and failed to respond. So, I find the respondent has failed to comply with sections 25 and 32 of the CRTA and the CRT rules.
18. Rule 1.4(2) states that if a party is non-compliant, the CRT may:
  - a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
  - b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
  - c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and

- d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.
19. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:
- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
  - b. The stage in the facilitation process at which the non-compliance occurs,
  - c. The nature and extent of the non-compliance,
  - d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
  - e. The effect of the non-compliance on the CRT's resources and mandate.
20. First, this dispute does not affect persons other than the named parties.
21. Second, the non-compliance here occurred at the very beginning of the facilitation process and before the respondent provided evidence or submissions. The respondent effectively abandoned the process after providing a response.
22. Third, given the case manager's attempts at contact and the respondent's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant.
23. Fourth, I see no prejudice to the applicants in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of their non-compliance. If I refused to proceed to hear the dispute, the applicants would be left without a remedy, which would be unfair to them.

24. Finally, the CRT's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the CRT to continue applying its resources on this dispute, such as by making further attempts to seek the respondent's participation.
25. In weighing all of the factors set out above, I find the applicants' claim should be heard without the respondent's further participation.

### ***Reimbursement for Building Supplies***

26. Having decided to hear the dispute without the respondent's further participation, I turn to the merits of the dispute.
27. Where a respondent filed a Dispute Response but then fails to comply with the CRT's directions, an adverse inference may be drawn against them. This means that if the respondent refuses to participate, it is generally reasonable to assume that the applicant's position is correct on the issue at hand. This is similar to where liability is assumed when a respondent has failed to provide any response to the dispute and is in default.
28. Having said that, I reviewed the Dispute Response, because it was filed before the respondent's non-compliance.
29. In their Dispute Notice, the applicants say they paid the respondent a total of \$5,125. I accept this as true as the respondent did not dispute it in their Dispute Response. As noted, the applicants claim reimbursement of \$3,125, which they say is the value of decking and glass railings the respondent failed to provide, despite the parties' agreement.
30. In their response, the respondent agrees that they were unable to complete the deck build project and so the applicants are entitled to some refund. However, the respondent says the applicants are only entitled to reimbursement of \$1,500,

considering the value of the labour and services the respondent provided, which I infer the respondent values at \$3,625.

31. In their Dispute Response, the respondent says they can provide receipts and expenses for the job, which exceeded their estimated quote. This is inconsistent with their argument that the applicants are entitled to a partial refund. In any event, as the respondent has stopped participating in the dispute process, they have not provided those receipts or any evidence of the value of the work provided. Given the respondent's non-compliance, I draw an adverse inference against them. In other words, I find it unlikely that the described receipts and expenses would show that the respondent provided materials and labour worth over \$3,625 to the applicants.
32. In the absence of any contradictory evidence, I accept the applicant's argument that the respondent failed to provide agreed upon building materials worth \$3,125. So, I find the respondent must refund the applicants that amount.

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

33. The applicants did not claim any CRT fees or dispute-related expenses.
34. In the Dispute Notice, the applicants said they "do not want to claim interest". So, given this waiver I make no order for interest under the *Court Order Interest Act*.

### **ORDERS**

35. Within 30 days of the date of this order, I order the respondent to pay the applicants a total of \$3,125 in debt.
36. The applicants are entitled to post-judgment interest, as applicable.

37. 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.

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Sherelle Goodwin, Tribunal Member