



# Civil Resolution Tribunal

Date Issued: October 3, 2022

File: SC-2022-000772

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MacLennan v. Andrews*, 2022 BCCRT 1080

**B E T W E E N :**

GARY MACLENNAN (Doing Business As BLACK CREEK PROPERTY SERVICES)

**APPLICANT**

**A N D :**

DONALD SIDNEY ANDREWS

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. The respondent, Donald Sidney Andrews, hired the applicant, Gary MacLennan (dba Black Creek Property Services), to supply and install a new roof. Mr. MacLennan claims \$1,846.50 for what he says is his unpaid invoice balance.
2. Mr. Andrews says he paid for the roof though it was not completed. Mr. Andrews says the parties' agreement also required Hardie board siding, not the plywood that Mr. MacLennan installed. Mr. Andrews further says Mr. MacLennan claims for the cost of gutter repair that Mr. Andrews says was Mr. MacLennan's fault and responsibility. So, Mr. Andrews says he owes nothing further.
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). CRTA section 2 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. 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.
8. Mr. Andrews alleges Mr. MacLennan's submitted invoice is a fabrication and says it is an offence under CRTA section 92. Section 92 says a person who provides false or misleading evidence commits an offence and is liable on conviction to a fine of \$10,000, imprisonment up to 6 months, or both. The CRTA has no jurisdiction to impose any sanction under section 92 so I make no findings about it. I address the invoice below.

## **ISSUE**

9. The issue in this dispute is whether Mr. MacLennan is entitled to the claimed \$1,846.50 for roofing and gutter materials and installation.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Mr. MacLennan must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read the parties' submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Mr. MacLennan chose not to submit any final reply arguments, despite having the opportunity to do so.
11. Mr. MacLennan submitted a June 5, 2021 invoice (Invoice) that totals \$27,832 and its breakdown is:
  - a. 37 pieces of "metal roofing up to 5/12" at \$712 each, for a total of \$26,344.
  - b. 1 "custom roof flashing" for \$1,038.

- c. 3 “1/2” plywood roof replacement” at \$150 each, for a total of \$450.
12. The Invoice reflected Mr. Andrews’ \$18,107.05 deposit and a \$7,878.45 payment, leaving the \$1,846.50 claimed balance. The Invoice is the only documentary evidence Mr. MacLennan submitted. His written argument was also limited, saying only that “services were performed” (described in the Dispute Notice as “roofing and gutters”) and that Mr. Andrews had refused to pay.
  13. Mr. Andrews says Mr. MacLennan’s Invoice is a “false invoice”. Mr. Andrews argues Mr. MacLennan was contracted to supply Hardie board at a cost of \$475, not plywood. In support, Mr. Andrews relies on a March 15, 2021 estimate that included the Hardie board along with the metal roofing and custom roof flashing. Further, Mr. Andrews submitted a May 6, 2021 “original invoice” (Original Invoice), along with Mr. MacLennan’s May 8, 2021 email that enclosed it, which includes the Hardie board at \$475 and shows a \$9,749.95 balance owing. The Original Invoice does not mention plywood.
  14. The evidence and submissions are somewhat unclear about what work Mr. MacLennan actually performed. However, based on the email evidence, the estimate, and Original Invoice, I find the parties originally contracted for Hardie board, which Mr. MacLennan did not dispute. For reasons that are not explained, Mr. MacLennan did not install Hardie board and apparently installed plywood instead and chose to create his Invoice that billed the \$450 for plywood. There is no evidence before me that Mr. Andrews ever agreed to plywood installation. There is also no evidence before me that the plywood is of any value to Mr. Andrews. So, I find Mr. MacLennan is not entitled to the \$450 for plywood.
  15. From the parties’ emails, it appears the work was done between June and August 2021, even though the Original Invoice was dated in May and the Invoice in June. The evidence indicates Mr. MacLennan sought some advance payments, which Mr. Andrews provided.

16. On September 7, 2021, Mr. MacLennan emailed Mr. Andrews saying that a few flashing pieces were being remade to cover the fascia flashing further, but other than that “the roof is complete”.
17. The parties’ emails in evidence appear to include some discussion about gutter replacement, which I find was not contemplated in the original estimate, the Original Invoice, or even in the Invoice. Mr. Andrews submitted a May 2, 2022 email with a Lucas Davidson, who is the founder of Truline Gutters (Truline). There is a November 3, 2021 Truline invoice for \$1,396.50 in evidence, issued to Mr. Andrews, which I find charges for fascia gutters and related parts. Under the CRT’s rules, I accept Mr. Davidson is an expert in gutter installation, given his undisputed statement that he is a certified Red Seal carpenter and has operated his gutter business for 11 years.
18. In his email, Mr. Davidson wrote that on inspection of the “damaged gutters” after Mr. Andrews’ roof had been replaced, Mr. Davidson found the gutters’ front edge had been “hit, scraped and severely dented”. Mr. Davidson wrote the damage was beyond repair because one cannot “undent” damaged aluminum. I accept Mr. Davidson’s opinion that Mr. Andrews’ gutters were damaged beyond repair and required replacement at a cost of \$1,396.50.
19. I also accept Mr. Andrews’ submission that Mr. MacLennan damaged the gutters during his roofing work. I say this because the discovery of the damaged gutters was relatively soon after Mr. MacLennan’s roofing work and because I find that roofing work is the only plausible explanation for the damage. Further, Mr. MacLennan did not respond to the assertion that he damaged the gutters. I draw an adverse inference against him because I find if he had not negligently damaged the gutters he likely would have said so and would have submitted some evidence to that effect. There is no suggestion that damaged gutters were expected as part of Mr. MacLennan’s roofing work. I find it undisputed that Mr. MacLennan was negligent in damaging the gutters. So, I find he is responsible for their replacement.

20. In summary, I find Mr. MacLennan is responsible for the \$450 plywood charge and the \$1,396.50 in gutter replacement. This totals \$1,846.50, which is exactly the amount Mr. MacLennan claims in this dispute. While the Invoice does not expressly address gutters, I find that Mr. MacLennan has in this dispute sought to have Mr. Andrews pay for the plywood and gutter replacement. As noted, I find those items are Mr. MacLennan's responsibility. I dismiss Mr. MacLennan's claim.
21. 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. As Mr. MacLennan was unsuccessful, I dismiss his claim for reimbursement of paid CRT fees. Since Mr. Andrews was successful, I order Mr. MacLennan to reimburse Mr. Andrews \$25 for paid CRT fees. Neither party claimed dispute-related expenses.

## **ORDERS**

22. Within 21 days of this decision, I order Mr. MacLennan to pay Mr. Andrews \$25 as reimbursement for paid CRT fees.
23. Mr. Andrews is entitled to post-judgment interest, as applicable. I dismiss Mr. MacLennan's claims.
24. 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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Shelley Lopez, Vice Chair