



Civil Resolution Tribunal

Date Issued: October 7, 2022

File: SC-2022-001345

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Harrison v. Van Den Berg*, 2022 BCCRT 1103

B E T W E E N :

RICHARD RANDOLPH HARRISON and WILLIAM DEVON REED

APPLICANTS

A N D :

STEFAN VAN DEN BERG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about payment for renovation work. The applicants, Richard Randolph Harrison and William Devon Reed, are contractors. The applicants performed work for the respondent, Stefan Van Den Berg, but say they have not been paid in full. The applicants claim \$1,485 for their unpaid work.

2. The respondent does not dispute that the applicants performed various work for him. However, he says some of the applicants' work was deficient, and other work was done without his instruction. He says the cost to repair the applicants' deficient work is more than what he owes the applicants. The respondent did not file a counterclaim.
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. 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. In some respects, both parties in this dispute call into question the credibility, or truthfulness, of the other. 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.

6. 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.
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 the respondent must pay the applicants \$1,485 for their work.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
10. It is undisputed that the applicants were contractors the respondent hired for various construction projects, including home renovation work between September 23 and October 15, 2021.
11. On October 15, 2021, one of the applicants, Mr. Reed, sent a text to the respondent summarizing his hours worked at two different rates. He listed 55.5 hours of general labour at \$25 per hour and 28.5 hours of electrical work at \$45 per hour, for a total of \$2,670.
12. On October 17, 2021 the other applicant, Mr. Harrison, sent an email to the respondent for 46.6 hours labour at \$25 per hour. The email included photos of materials receipts that totaled \$50.41. In the email, Mr. Harrison said 2 hours of labour (\$50) was charged to account for the \$50.41 in materials. The 46.5 hours labour, including the 2 hours for materials totaled \$1,165.

13. Together, the amounts claimed by the applicants for work performed for the respondent collectively totaled \$3,835.
14. The applicants' original application to the CRT claimed a total of \$3,835. The respondent paid the applicants \$2,350 on February 24, 2022 for a portion of their work, after the Dispute Notice for this CRT dispute was issued. The applicants then amended the Dispute Notice to reduce their claim to \$1,485, to reflect the \$2,350 payment. None of the parties explained how the \$2,350 payment was allocated between the applicants, or said which portion of the outstanding balance claimed was for Mr. Harrison's work and Mr. Reed's work, respectively. However, both the applicants kept their names on the amended Dispute Notice. So, I infer the applicants claim jointly for the outstanding amount.
15. The respondent does not dispute the rates charged, hours worked, or materials purchased by the applicants. However, as noted, the respondent says that some of the work was performed without his instruction, including the installation of bead board cladding in the kitchen, and ceiling and plumbing hatch patches. The applicants dispute this. They say the respondent specifically instructed them to patch the ceiling and plumbing hatch. They also say the bead board was installed behind where the cabinets would be installed in the kitchen because doing so was cheaper and faster than cutting and installing it around the cabinets once installed.
16. I find the respondent's submissions on this alleged unapproved work unpersuasive because although the respondent says he hired the applicants for specific work, he did not detail their scope of work or describe its limits. In addition, the applicants say the respondent left them to manage the renovation because the respondent lived in another town. The respondent did not dispute this. I prefer the applicants' submissions about this portion of their work. I find it is more consistent with the evidence as a whole, and in particular photographs submitted by the respondent that suggest the applicants were involved with various aspects of the home renovation work. Given the above, I find the respondent likely instructed the applicants to perform the plumbing hatch and ceiling patch work and gave them discretion over how to

install the kitchen bead board. Therefore, I find they are entitled to payment for this portion of their work.

17. The respondent also says some of the applicants' work was deficient. The respondent says the amount spent rectifying the applicants' work far exceeds the amount he owes them. However, the respondent did not file a counterclaim. So, I find the respondent claims that the amount owing should be set-off against the alleged deficiencies. Apart for the work discussed above, which I have already found the applicants are entitled to payment for, the remainder of the work performed by the applicants is not disputed. Therefore, I find the applicants are entitled to payment of \$1,485 for the unpaid portion of their work, subject to any proven set-off.
18. Because the respondent is the party alleging the set-off, the burden to prove the set-off shifts to him. See: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61 and *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124. Further, I find whether the applicants' work was deficient is a technical matter, beyond ordinary experience. So, I find the respondent must prove the alleged deficiencies with expert evidence. See *Bergen v. Guliker*, 2015 BCCA 283.
19. The respondent did not submit any expert evidence about the applicants' work. Instead, the respondent submitted his own annotated photos of the renovation work, showing what he says are various deficiencies in the applicants' work, and the costs to repair the alleged deficiencies. The respondent did not submit evidence from any contractor, such as quotes or invoices to show that the alleged deficiencies were fixed. I find I cannot conclude the applicants' work was deficient based on this evidence alone, as I find nothing obviously deficient. So, I find the respondent has not proved he is entitled to any set-off for deficiencies.
20. Given all the above, I find the applicants are entitled to payment of the claimed \$1,485 for the unpaid portion of their work.
21. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the \$1,485 from November 17, 2021, 30 days after the date of

the applicants provided their hours worked to the respondent, to the date of this decision, which I find reasonable in the circumstances. This equals \$20.21.

22. 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. I find the applicants are entitled to reimbursement of \$175 in CRT fees. The applicants also claim \$12.27 as a dispute-related expense for sending registered mail to the respondent, which I find is reasonable and is proven by a receipt in evidence. I find the applicants are also entitled to reimbursement of \$12.27 for this dispute-related expense.

ORDERS

23. Within 30 days of the date of this order, I order the respondent to pay the applicants a total of \$1,692.48, broken down as follows:
- a. \$1,485 in debt,
 - b. \$20.21 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$187.27, for \$175 in CRT fees and \$12.27 in dispute-related expenses.
24. The applicants are entitled to post-judgment interest, as applicable.
25. 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.

Leah Volkens, Tribunal Member