



# Civil Resolution Tribunal

Date Issued: October 7, 2022

File: SC-2022-002614

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *King v. Lucier dba WC Concrete*, 2022 BCCRT 1107

BETWEEN:

VERA JOAN KING

**APPLICANT**

AND:

DAN LUCIER (Doing Business As WC CONCRETE)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about allegedly shoddy concrete work. The applicant, Vera Joan King, hired the respondent, Dan Lucier doing business as WC Concrete, to remove and replace a sidewalk and outdoor stairs at her home with aggregate concrete. The applicant says the respondent's work was "inferior and unsightly" and needs to be replaced. She claims \$5,000.

2. The respondent says the work was done according to the contract and the applicant was happy when it was completed. He also says the applicant still owes \$600 for the work. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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 "she 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.
6. Section 42 of the CRTA says that 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 to what extent, if any, the applicant is entitled to \$5,000 for allegedly defective concrete work.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision. I note the respondent did not provide any evidence or substantive submissions other than in his Dispute Response, despite the opportunity to do so.
10. In September 2020, the applicant hired the respondent to supply and install an exposed aggregate sidewalk and outdoor stairs at the applicant’s home for a total of \$6,800. The applicant says the respondent left her home a mess with “concrete and chemical residue” on her siding and fence and that the concrete work is “unsightly”. She says these issues “will be very costly” to fix and have “significantly devalued” her property.
11. The respondent denies any issue with the work. He says he satisfied the contract and there are no warranties for the concrete work. As noted, the respondent also says the applicant still owes \$600. As the respondent did not file a counterclaim, I find he asks the \$600 be set-off against any amount I find is owing to the applicant. However, given my conclusions below, I do not need to further address the requested set-off.
12. When a customer alleges that a contractor’s work was below a reasonably competent standard, the customer (here, the applicant) must prove the deficiencies (see:

*Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Generally, expert evidence is required to prove a professional's work was below a reasonable standard (see: *Bergen v. Guliker*, 2015 BCCA 283). The two exceptions to this are when the deficiency is not technical in nature, or where the work is obviously substandard (see: *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).

13. The applicant submitted various photos which she says shows poor workmanship, overspray, and "terrible finish" in the concrete work. Although the applicant alleges these photos show the respondent's work fell below a reasonable standard, I cannot agree. I find the photos show some uneven aesthetic distribution of the aggregate, but I cannot conclude it is obviously deficient work. I also cannot see any overspray in the photos provided. I find expert evidence is required to establish the alleged deficiencies, and none has been provided. I find the applicant has not proven on a balance of probabilities that the respondent's work was substandard. I also find the applicant has failed to provide any evidence of the cost of any alleged repairs, or the alleged "devaluing" of her home. As a result, I dismiss the applicant's claim.
14. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As the applicant was not successful, I dismiss her claim for reimbursement of tribunal fees. No dispute-related expenses were claimed.

## **ORDER**

15. I order the applicant's claims, and this dispute, dismissed.

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Andrea Ritchie, Vice Chair