



# Civil Resolution Tribunal

Date Issued: November 7, 2022

File: SC-2022-002209

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Manhas v. City of Nanaimo*, 2022 BCCRT 1217

BETWEEN:

MICHELLE MANHAS

**APPLICANT**

AND:

CITY OF NANAIMO

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

### INTRODUCTION

1. Michelle Manhas built a new home in the City of Nanaimo. As part of the permitting process, Nanaimo required a \$750 deposit, which Ms. Manhas paid. This dispute is about whether Nanaimo was entitled to withhold part of this deposit.

2. Nanaimo has statutory right of way in Ms. Manhas's backyard, where there are sanitary and storm pipes. There were 4 concrete service boxes for those pipes, which Nanaimo crews removed when Ms. Manhas levelled her yard. Nanaimo says that when it later returned to reinstall the service boxes, they were missing. Nanaimo charged Ms. Manhas \$442.60 in labour and materials for supplying and reinstalling the service boxes. It deducted this amount from the \$750 deposit, returning only \$306.40.
3. Ms. Manhas denies that the service boxes were missing. She says that she reinstalled them, not Nanaimo. She argues that Nanaimo had no basis to deduct anything from the deposit. She asks for an order for the outstanding \$442.60.
4. Nanaimo says that its bylaws authorized it to deduct the cost of supplying and reinstalling the service boxes. It asks me to dismiss her claim.
5. Ms. Manhas is represented by a family member. Nanaimo is represented by an employee.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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 sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this

dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.

8. 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.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

## **ISSUE**

10. The issue in this dispute is whether Nanaimo had legal authority to deduct its alleged labour and supply costs from Ms. Manhas's deposit.

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, Ms. Manhas as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
12. According to building permits and aerial photos in evidence, Ms. Manhas's property was vacant until 2016, when she started building a new home. As mentioned above, Nanaimo has a statutory right of way over the northeast corner of the property, which is in the backyard. Before construction, there were 4 service boxes in the statutory right of way, 2 each for sanitary and storm service.
13. A Nanaimo work crew raised the pipes to the new grade on July 3, 2019, to accommodate Ms. Manhas levelling the backyard. It is undisputed that Nanaimo removed the existing service boxes and left them on site.

14. On November 5, 2020, Ms. Manhas emailed Nanaimo asking for her \$750 deposit back. Nanaimo says that it inspected the property on December 3, 2020. A photo from that inspection shows that the service pipes were still sticking out of the ground. Nanaimo determined that Ms. Manhas needed to cut down the service pipes in the backyard and reinstall the service boxes before getting her deposit back.
15. The parties dispute what happened on the property in 2021. Nanaimo says that its crews attended the property in March 2021 and saw that the 4 service boxes were all missing. It says it installed 2 new service boxes at that time. Nanaimo says its crews went back in November 2021 with 2 more service boxes and installed them.
16. In contrast, Ms. Manhas says that she cut and boxed the pipes in July 2021, as Nanaimo requested. She denies that any service boxes were ever missing. As explained below, I find it unnecessary to determine what exactly happened.
17. In any event, Nanaimo charged Ms. Manhas \$442.60 in labour and materials for supplying and installing the service boxes. Nanaimo withheld this amount from the \$750 deposit and paid Ms. Manhas the \$306.40 residue on January 20, 2022.
18. Nanaimo relies on its Traffic and Highways Regulation Bylaw (bylaw) as its legal authority for deducting its alleged supply and labour costs from the deposit. Nanaimo says that it collected the \$750 deposit under section 34(1) of the bylaw, which requires permit holders like Ms. Manhas to provide a deposit if proposed work will involve excavation or bring heavy equipment via a highway. Under the bylaw, the deposit is to cover “the costs of repairing any damage likely to be done to the adjacent highway or public utilities located in or on the adjacent highway”. I find that Nanaimo’s submission that the \$750 deposit was to “ensure that construction does not cause any change or harm to City services and infrastructure” is incorrect. The bylaw authorizing Nanaimo to hold the deposit is explicitly limited to Nanaimo’s highways and any infrastructure on or under them.

19. Section 34(3)(a) requires Nanaimo to refund the deposit upon completion of the work if there has been “satisfactory adherence” to the bylaw. Again, I find that Nanaimo’s submission that the deposit will be refunded if there is “no harm or change” to any “City infrastructure” is incorrect, because the bylaw’s only requirements relate to highways.
20. Section 34(4)(a) says that if a permit holder “fails to clean up or repair the highway”, Nanaimo may do the work itself and deduct the cost from the deposit. Once again, I disagree with Nanaimo’s submission that it is entitled to withhold funds for the “cost of remedying damage or returning the infrastructure back to its original state”. Section 34(4) only refers to cleaning up and repairing highways.
21. The obvious problem with Nanaimo’s argument about section 34 of the bylaws is that the work in question had nothing to do with a highway. It did not take place on or adjacent to a highway. I find that section 34 of the bylaw sets out the only circumstances where Nanaimo could make deductions from Ms. Manhas’s \$750 deposit. Completing work on sanitary or storm pipes within a statutory right of way on private property is not one of them.
22. Nanaimo also relies on section 41 of the bylaws. That provision is about the return of a \$500 deposit that Nanaimo may collect under section 38. There is no suggestion that Nanaimo collected the \$750 deposit at issue in this dispute under section 38, so it is unclear why Nanaimo refers to this bylaw. In any event, section 38 refers to permits issued under section 33, which requires a permit holder to get specific permission from Nanaimo before doing certain types of work. I find that none of those circumstances apply here.
23. It is possible that another bylaw or the common law would allow Nanaimo to claim its supply and labour costs from Ms. Manhas, even though Nanaimo did not argue this. Even if that is the case, I find that the bylaw requires Nanaimo to return the entire deposit because Ms. Manhas undisputedly did not damage a highway. I order Nanaimo to refund the remaining \$442.60 to Ms. Manhas.

24. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Manhas claims interest from December 1, 2018. I find she is only entitled to interest from the date Nanaimo failed to provide her with a full refund of her deposit, which was January 20, 2022. This equals \$3.54.
25. 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 find Ms. Manhas is entitled to reimbursement of \$125 in CRT fees and \$13.12 for a title search, which I find reasonable.

## **ORDERS**

26. Within 30 days of the date of this order, I order Nanaimo to pay Ms. Manhas a total of \$583.26, broken down as follows:
- a. \$442.60 in debt,
  - b. \$3.54 in pre-judgment interest under the COIA, and
  - c. \$137.12 for \$125 in CRT fees and \$13.12 for dispute-related expenses.
27. Ms. Manhas is entitled to post-judgment interest, as applicable.
28. 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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Eric Regehr, Tribunal Member