



# Civil Resolution Tribunal

Date Issued: November 16, 2022

File: SC-2021-008696

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Li v. Hassanzadeh*, 2022 BCCRT 1241

BETWEEN:

GONGMIN LI

**APPLICANT**

AND:

MEHRAN HASSANZADEH

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

### INTRODUCTION

1. The applicant, Gongmin Li, says that the respondent, Mehran Hassanzadeh, hired him to paint his house and do other minor work but has not been paid in full. The applicant says the respondent agreed to pay him \$6,000 for the painting services and \$300 for the other work, but so far has only paid him \$3,600. He claims the remaining \$2,700.

2. The respondent says that he did not hire the applicant to paint his house but that he hired a professional painter, through the applicant. However, the respondent says that after hiring the professional painter, he learned it was the applicant who was actually painting his house. The respondent says the applicant is not a professional painter, the work was repeatedly delayed and ultimately only 60 to 70% complete. The respondent further says there were many deficiencies in the painting work that the applicant refused to fix. Lastly, the respondent says that the applicant charged him \$300 for caulking work that should have been included in the original \$6,000 price.
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. Some of the evidence in this dispute amounts to a "he 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. 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 owes the applicant \$2,700 for the painting and caulking work.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
10. It is undisputed that there was no written contract between the parties for the painting work. However, the respondent does not deny that in March 2021, he agreed to pay \$6,000 for painting services. As mentioned above, the respondent says that he agreed to hire a professional painter and not the applicant. The applicant says he had told the respondent all along that he does painting work and that he would work with his son, who is a painter, to complete the job.
11. The evidence before me includes text messages the parties exchanged between March 2021 and November 2021. In these text messages, the respondent does not

refer to a professional painter or say anything to suggest that he expected someone other than the applicant to be doing the painting work. Instead, I find it more likely than not the respondent knew the applicant was doing the painting work. For example, on April 10, 2021, the respondent texted the applicant and said, “the repair on window and the place beside kitchen is done, you can paint it now” (reproduced as written). Further, on May 12, 2021, the respondent told the applicant that the garage’s drywall would be installed on Friday and that the applicant could start painting after that.

12. On balance, based on the evidence before me, I find the respondent agreed to pay the applicant \$6,000 for the painting work. In his submissions, the respondent says he never agreed to pay the applicant a separate \$300 for caulking work, which the respondent says is part of a painter’s job and should have been included in the \$6,000 price. As mentioned above, the burden is on the applicant to prove his claims. Here, I find the evidence does not prove that the respondent agreed to pay the applicant anything extra for the caulking work. I also find the applicant has failed to prove that the caulking work was not a part of the painting job. So, I find it more likely than not that the caulking work was included in the original \$6,000 price for the painting work. As a result, I dismiss the applicant’s \$300 claim for the caulking work.
13. The respondent undisputedly paid the applicant \$3,600 for the painting work. The applicant says the respondent is improperly withholding the remaining \$2,400 for the painting work due to alleged deficiencies.
14. The applicant says the respondent told him the work was complete, so he is entitled to the outstanding amount. The evidence shows that on October 1, 2021, the applicant asked the respondent to make the final \$2,700 payment (which included the \$300 for the caulking work). The respondent replied that he was at the house the day before, noticed some small touch ups were needed but that he could do them himself. He then said that the last thing he needed from the applicant was to clean up the paint on the floor, which the applicant agreed to do. The respondent says he

initially thought he could fill up the holes and cracks himself and touch up the walls, doors and baseboards but later realized the paint job was nowhere near complete.

15. The parties exchanged further text messages where the respondent repeatedly asked the applicant if he was done with the house. In one message, the applicant replied, “paint shop delays”. Then, on November 6, 2021, the applicant asked the respondent to pay the remaining \$2,700. After some further follow-ups, on November 13, 2021 the respondent asked the applicant what money he was asking about and said that he had already paid him all in cash. In his submissions, the respondent admits that he has not paid the \$2,700 but that he sent this message in order for the applicant to stop “hassling” and continuously calling him. The respondent says that by this time, he had already explained the deficiencies to the applicant and was focused on trying to fix the applicant’s incomplete paint job.
16. Based on the evidence before me, I find it more likely than not that after the respondent sent the October 1, 2021 text message saying he noticed some small touch ups that he could fix himself, he then noticed additional deficiencies and incomplete painting work that the applicant had originally agreed to do for the \$6,000 price. So, I do not find the respondent’s October 1, 2021 text message proves the applicant had substantively completed the painting work.
17. The applicant says that he fixed the deficiencies that the respondent pointed out to him after the October 1, 2021 text message exchange. However, the respondent says the applicant denied there were deficiencies and refused to fix many of them, leaving him no choice but to hire another painter to complete the work.
18. When a customer alleges that a contractor’s work was below a reasonably competent standard, the customer 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 rule 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).

19. The respondent submitted over 80 photographs which he says show extensive deficiencies throughout the home. I find the photographs show various areas throughout the house that required another coat of paint, missed areas, cracks and holes that were not filled in prior to painting, areas that were not properly sanded prior to painting, and areas with visible dried paint drips. I accept these are obvious deficiencies. Though the applicant says that he fixed all defects to the respondent's satisfaction, he does not address the deficiencies shown in these photographs. The metadata from these photographs shows they were taken after the applicant's final requests for payment in November 2021. So, I find these photographs prove the applicant did not fix all of the deficiencies.
20. On their own, the deficiencies are each relatively minor. However, I find the minor deficiencies are very numerous and appear to extend throughout the entire home. I find the totality of the minor deficiencies is significant.
21. The respondent submitted a \$5,313 quote from another painting contractor for remedying the applicant's deficiencies and to finish the incomplete painting work. I find the cost to fix the proven deficiencies and complete the painting work exceeds the amount the applicant claims in this dispute. So, I find the applicant is not entitled to the \$2,400 claimed for the painting work and dismiss his claims.
22. In his submissions, the respondent says that the applicant owes him \$100 for paint that he bought and another \$2,913 which I infer is for partial payment to a new painter to complete the job. The respondent did not file a counterclaim for these amounts, so I find he is asking for a setoff against any amount he owes to the applicant. Since I have dismissed the applicant's claim and there is nothing to set off against, I find it is unnecessary for me to decide this issue.
23. 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. Since the applicant was unsuccessful, I find he is not entitled to reimbursement of his paid CRT fees. I find the respondent is entitled to reimbursement for the \$50 in CRT

fees he paid to set aside a default judgment the applicant obtained against him and which was later cancelled. Neither party claims any dispute-related expenses.

## **ORDERS**

24. Within 14 days of this decision, I order the applicant, Gongmin Li, to pay the respondent, Mehran Hassanzadeh, \$50 for CRT fees.
25. The respondent is entitled to post-judgment interest, as applicable.
26. I dismiss the applicant's claims.
27. 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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Nav Shukla, Tribunal Member