



# Civil Resolution Tribunal

Date Issued: April 21, 2023

File: SC-2022-005142  
and SC-CC-2022-008727

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cooper v. Marshall*, 2023 BCCRT 329

B E T W E E N :

JAMES WILLIAM COOPER

**APPLICANT**

A N D :

CHRISTOPHER JOHN MARSHALL

**RESPONDENT**

A N D :

JAMES WILLIAM COOPER

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## **INTRODUCTION**

1. These 2 linked disputes are about home renovation work. I find they collectively consist of a claim and a counterclaim. So, I have issued a single decision for both disputes.
2. The respondent (and counterclaim applicant), Christopher John Marshall, hired the applicant (and counterclaim respondent), James William Cooper, as his renovation contractor. Mr. Cooper undisputedly stopped working on the project before it was complete. In Dispute SC-2022-005142, Mr. Cooper says Mr. Marshall failed to pay his final invoice, and he claims \$3,991.29.
3. Mr. Marshall says that Mr. Cooper's work was substandard and that it cost more than \$10,000 to fix Mr. Cooper's deficient work, so he should not have to pay the claimed \$3,991.29 invoice. In Dispute SC-2022-008727, Mr. Marshall counterclaims \$5,000, the Civil Resolution Tribunal (CRT) small claims monetary limit, for the cost to remedy Mr. Cooper's allegedly deficient work and for other alleged contract breaches.
4. Mr. Cooper denies that his work fell below a reasonable standard or that he breached the parties' contract.
5. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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. It must also recognize any relationships between the dispute 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 parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I 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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
10. I find that between the \$3,991.29 withheld payment and the \$5,000 counterclaim, Mr. Marshall is effectively claiming \$8,991.29 in damages for Mr. Cooper's alleged contract breaches. This exceeds the CRT's \$5,000 small claims monetary limit. I find that by pursuing his counterclaim, Mr. Marshall has abandoned his claim to any amount over \$5,000. Given my conclusion below, nothing turns on this.

## **ISSUES**

11. The issues in this dispute are:
  - a. Is Mr. Cooper entitled to payment of the claimed \$3,991.29 for renovation work?
  - b. Was Mr. Cooper's work deficient, and if so, what compensation is appropriate?
  - c. Did Mr. Cooper otherwise breach the parties' contract?

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Mr. Cooper must prove his claims on a balance of probabilities (meaning “more likely than not”). Mr. Marshall must prove his counterclaim to the same standard. I have read all the parties’ submissions and evidence but refer only to what I find is necessary to provide context for my decision.
13. I accept Mr. Cooper’s assertion that on April 6, 2022, Mr. Marshall verbally agreed to the contract terms set out in Mr. Cooper’s April 3, 2022 email titled “Renovation Agreement” because Mr. Marshall does not dispute it. The project was for “substantial renovations” to Mr. Marshall’s new home.
14. The contract required Mr. Marshall to pay Mr. Cooper a \$15,000 deposit before work commenced to cover preliminary work, permitting, project planning, and profit. It also stated that Mr. Cooper’s rate for site labour was \$80 per hour, and that billing for sub-trades, contracted labour, materials and equipment rentals would be charged back to Mr. Marshall at Mr. Cooper’s cost plus 10%. I discuss other relevant terms below as necessary.
15. It is unclear when the renovation work started, though I find it was likely in about May 2022. Mr. Marshall undisputedly paid the \$15,000 deposit. It is also undisputed that Mr. Cooper issued at least 2 invoices after work began, which Mr. Marshall also paid. Those invoices are not before me.
16. In July 2022, Mr. Marshall told Mr. Cooper he wanted to move into the basement suite. I accept that Mr. Cooper agreed the kitchen would be functional and the garage would be cleared by July 25. On July 22, Mr. Marshall texted Mr. Cooper that he was disappointed the garage was still a mess, there was substantial garbage left on the driveway, and the downstairs kitchen was not functional. Mr. Cooper responded that Mr. Marshall’s reaction was “over the top”. Mr. Cooper offered to step aside and bill Mr. Marshall for work already completed, to which Mr. Marshall agreed. I find therefore that the contract ended by agreement on July 24, 2022.

17. Mr. Cooper provided Mr. Marshall with his final invoice dated July 25, 2022 for the claimed \$3,991.29. It was broken down as: \$2,380 for labour, \$1,281.29 for materials, \$150 for SW to remove the garbage on Mr. Marshall's driveway, and \$180 for Mr. Cooper's 10% fee on a painting sub-contractor's \$1,800 invoice.
18. Mr. Marshall does not dispute any of the charges on Mr. Cooper's July 25 invoice. Rather, it is Mr. Marshall's position that Mr. Cooper's July 25 invoice was "negated" by the cost to fix his allegedly negligent and careless work. As there is no dispute, I accept that Mr. Cooper performed the labour and was entitled to bill Mr. Marshall for the materials and other charges set out on the invoice. Therefore, I find Mr. Cooper is entitled to payment of his July 25 invoice for the claimed \$3,991.29, subject to any deductions for deficiencies or damages for other contract breaches, discussed below.

***Was Mr. Cooper's work deficient?***

19. When a contractor's work is deficient, the customer may counterclaim for damages, as Mr. Marshall has done here. I find Mr. Marshall bears the burden of proving any alleged deficiencies. See *Balfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 at paragraph 16, and *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287.
20. In general, expert evidence is required to prove a professional's work was deficient or that it fell below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry. However, expert evidence may not be necessary when the work is obviously substandard or the deficiency relates to something non-technical. See *Absolute Industries*, and *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196.
21. I find that expert evidence is generally required to prove Mr. Marshall's claims about deficient carpentry and framing matters.
22. Mr. Marshall provided a written statement from Bowen De Marco, who he hired to help complete his renovation project. Mr. De Marco stated he fixed several aspects of Mr. Cooper's work, including: framing for walls and door installations, the backyard fence, sliding door installations, and kitchen door frame damage. Mr. De Marco also

stated there was a “shocking” amount of material over-supply, which he said can indicate an attempt to defraud the customer.

23. Mr. Cooper objects to Mr. De Marco’s statement being admitted as expert evidence. He argues Mr. De Marco is “without credentials” and has limited experience. He also says the statement is not objective or substantiated by evidence and is emotionally charged. I generally agree with Mr. Cooper. My reasons follow.
24. I find that Mr. De Marco did not set out his qualifications or experience as required under CRT rule 8.3. He indicated he was the owner of Blue + Grey Property Services and included a “PMP” designation after his name, which I infer refers to a project management professional. However, I find that is insufficient to establish he has the necessary qualifications to provide expert evidence in construction matters such as framing, fence construction, and sliding door installation.
25. Even if I had accepted that he was qualified to provide expert evidence in this dispute, I find he was vague in his description of what he says was wrong with Mr. Cooper’s work. I also find many passages in his statement suggest he was not a neutral witness but was advocating for Mr. Marshall. For all these reasons, I place no weight on Mr. De Marco’s evidence.
26. Mr. Marshall also provided a statement from Vance Gushulak, who he also hired to help complete his renovation project. Mr. Gushulak stated he is a renovation contractor with a red seal qualification in carpentry and experience with redoing and fixing substandard carpentry work. Noting that Mr. Cooper did not object to his qualifications, I find Mr. Gushulak is qualified under the CRT’s rules to provide expert evidence on carpentry matters in this dispute.
27. Mr. Gushulak stated that numerous tasks were only half finished, which I find is not unexpected given Mr. Cooper’s relatively abrupt departure from the project. As Mr. Cooper’s work was billed on an hourly basis, I find incomplete work on its own does not amount to a deficiency.

28. Mr. Gushulak also stated the exterior sliding doors for the kitchen and bedroom were not installed correctly and had to be reinstalled, the interior rough opening for French doors in the vestibule was incorrect to fit a common door size, and downstairs and upstairs walls and windows were installed “very crooked”, which required tapering and cutting baseboard trim and window liner.
29. However, for each of those issues, I find Mr. Gushulak provided insufficient details or explanation about what Mr. Cooper did incorrectly or what Mr. Gushulak did to fix the issues. I find the photos in evidence do not show any obvious deficiencies, bearing in mind that Mr. Cooper admittedly had not completed the specific tasks before the parties chose to end their contract. As just one example, Mr. Cooper had only “roughed in” the French doors, so I find the fact that they required trimming does not necessarily mean Mr. Cooper’s work was deficient.
30. Further, Mr. Gushulak’s invoice is not before me, and he did not break down how long he spent on each alleged deficiency. While he estimated his total time spent on the project was 16 hours, I find that included his time to complete work that Mr. Cooper had not billed for. So, even if I had found any of Mr. Cooper’s above-referenced work was substandard, I find Mr. Marshall’s damages unproven. For these reasons, I find I must dismiss Mr. Marshall’s counterclaim as it relates to the sliding door installation, and framing for the French door, walls, and windows.
31. Mr. Marshall also alleges Mr. Cooper’s work was deficient in other ways, discussed below.

### Hardware

32. Mr. Marshall says Mr. Cooper failed to organize and keep the tracks for bifold doors that were going to be reused, though he says his new contractor was able to source some new ones. While he says he paid his new contractor for these tracks, he provided no evidence from that contractor about this allegation or of the tracks’ cost. So, I dismiss this part of Mr. Marshall’s counterclaim.

### Tree removal

33. Mr. Marshall says Mr. Cooper removed a 15-foot evergreen tree in his backyard without consent. I find this is essentially a claim for trespass. While Mr. Cooper did not directly address this allegation, I find the photos in evidence show that a tree as Mr. Marshall described was cut down. However, even if I accept that Mr. Cooper removed the tree, I find Mr. Marshall is not entitled to compensation. I say this because Mr. Marshall acknowledges the tree was removed to provide access for building the perimeter fence. As Mr. Marshall undisputedly agreed to the fence construction, I find he gave his implied consent to remove the tree, so that Mr. Cooper could access the fence line. Therefore, I find there was no trespass.
34. In any event, I also find the photos do not support Mr. Marshall's submission that the removed tree reduced his privacy. He also provided no evidence of the alleged \$150 replacement cost for a "much smaller" tree, or that he replaced the tree at all. For all these reasons, I dismiss this aspect of Mr. Marshall's counterclaim.

### Laundry closet

35. Mr. Marshall alleges that Mr. Cooper incorrectly measured the laundry closet space and framed the closet too small to fit the already purchased stacked laundry unit. He says the appliance stuck out of the closet about 4 inches, so he says he had to buy a smaller unit, at an additional cost of \$509.
36. Mr. Cooper says Mr. Marshall failed to provide him with any professional plans for the downstairs suite, so he relied on Mr. Marshall to approve the layout based on tape he placed on the floor. Mr. Marshall does not dispute this. Mr. Cooper also says the laundry unit Mr. Marshall bought for the closet did not arrive until June 2022, after the framing was already completed. So, I infer it is Mr. Cooper's position that he is not responsible if the closet ended up too small for the laundry unit.
37. While Mr. Marshall says the laundry unit was being stored in the garage, I find he has provided insufficient evidence that Mr. Cooper was aware of the unit's dimensions



when he did the closet framing. The receipt for the laundry's purchase appears to be dated May 14, 2022, but there is no indication of when it was delivered.

38. Further, Mr. Marshall provided no evidence that he returned the laundry unit that he says was too large for the space, in exchange for a smaller more expensive unit. He provided only a July 28, 2022 invoice that appears to be for a 24-inch front-load washer and separate 24-inch dryer, not a new stackable unit. So, I find the evidence does not support his claimed damages. For these reasons, I dismiss this part of Mr. Marshall's counterclaim.

#### Downstairs suite not ready

39. As referenced above, Mr. Marshall says Mr. Cooper failed to have the downstairs suite ready for him and his wife to move in on July 25, 2022. He says Mr. Cooper failed to frame-in the suite's plumbing in the garage, so the plumber had to install temporary plumbing until the new contractor could complete the framing in the garage, and the plumber then returned to re-do permanent plumbing. Other than Mr. Marshall's own assertion about this, there is no supporting evidence from his new contractor or the plumber, and Mr. Marshall provided no evidence about the extra cost he allegedly incurred for additional plumbing. I find this claim unproven.
40. Mr. Marshall also says he was unable to move in as planned on July 25 because the kitchen was not ready. He says he, his wife, and 2 dogs had to rent an Airbnb for 4 days until the kitchen was functional, at a cost of \$500. However, Mr. Cooper says the plumber connected the downstairs kitchen sink on July 24, which Mr. Marshall does not specifically deny. Mr. Marshall did not say whether any other parts of the downstairs kitchen remained non-functional. Further, he provided no invoices or other evidence of the alleged alternate accommodation. So, I dismiss this claim.

#### Other alleged damage

41. Mr. Marshall also claims compensation for the following items he says Mr. Cooper damaged:

- a. Damage to the existing downstairs flooring from drywall mud and other construction substances, as well as gauging from a broken shop vac.
  - b. Damage to existing cabinetry, interior doors, closet doors, and exterior lights by negligently removing them and storing them outside.
  - c. Damage to 2 downspouts from leaning heavy objects against them.
  - d. Scratches on Mr. Marshall's new fireplace and damage to a fireplace tool.
  - e. Damage to a newly installed septic field berm, the yard's bark mulch, and landscaping fabric while building the perimeter fence.
  - f. Damage to a canvas car shed when moving it, so it later collapsed.
42. I find the photos Mr. Marshall provided are insufficient to establish that some of the alleged damage occurred. More significantly, I find in all cases he has not proven Mr. Cooper was responsible for the alleged damage, nor has he proven the value of his claim for any of the allegedly damaged items. For these reasons, I dismiss Mr. Marshall's counterclaims for all the above allegations of damage.
43. In summary, I find Mr. Marshall has not proven any of Mr. Cooper's work was deficient, such that he is entitled to a deduction in the amount owing.

***Did Mr. Cooper otherwise breach the parties' contract?***

44. I find some of Mr. Marshall's counterclaims do not relate specifically to allegations of deficient work, but to allegations that Mr. Cooper otherwise breached their contract.
45. First, Mr. Marshall says the contract stated the initial \$15,000 deposit covered the permitting process, but he later learned Mr. Cooper's permit application was incorrect and incomplete. He says it cost him an additional \$145 fee to resubmit the application, plus unspecified time for his new contractor to draft revised plans. Mr. Cooper denies his permit application was wrong or incomplete. Rather, he says he cancelled the permit that was issued in his name once he was no longer involved with the project.

46. I find Mr. Marshall has not proven Mr. Cooper's permit application was incorrect. The regional district's September 1, 2022 email to Mr. Marshall says that it required an *updated* application form, *updated* scope of work and drawings, and an associated \$145 fee. I find this is consistent with Mr. Cooper having cancelled the initial permit after his involvement ended. So, I find Mr. Marshall has not proven Mr. Cooper breached the parties' contract by failing to obtain the necessary permits.
47. Next, Mr. Marshall says Mr. Cooper significantly over-purchased several materials. Specifically, he says Mr. Cooper bought exactly double the number of baseboards and fencing materials that were required. Mr. Cooper says he ordered the materials with a specific plan for them, and Mr. Marshall may not have carried out that plan. He also says he could have returned any excess materials to the suppliers for full credit.
48. While Mr. De Marco stated that Mr. Cooper had over-supplied fence posts and interior mouldings, there are no photos or other documentation to support Mr. Marshall's submission about the precise number of excess materials. Further, Mr. Marshall acknowledges in submissions that part of the perimeter fence was never completed. For that reason, I find it unproven that Mr. Cooper over-purchased any fencing materials. I also find Mr. De Marco's statement about over-supply of mouldings insufficient to prove Mr. Cooper would not have used them or refunded Mr. Marshall for any excess at the end of the project. For these reasons, I find Mr. Marshall has not proven Mr. Cooper improperly over-purchased materials.
49. Next, Mr. Marshall says that Mr. Cooper charged him for tools he needed for the renovation work, but then kept some of those tools. Mr. Cooper generally denies this and says he charged Mr. Marshall only for small items consumed during the work, such as drill bits, tape measures, and saw blades. Mr. Marshall provided no specific evidence about what tools Mr. Cooper improperly charged him for. So, I find this allegation unproven.
50. Finally, Mr. Marshall argues that Mr. Cooper breached their contract by hiring unlicensed and uninsured workers. Specifically, he says Mr. Cooper hired his wife for \$40 per hour with "no apparent experience, certification, or insurance", and that he

hired his uncertified and uninsured friend, KR, for \$50 per hour. Mr. Cooper admits his wife and KR helped with cleaning and removing construction debris. However, he says Mr. Marshall paid them both directly.

51. First, I find the parties' contract stated only that Mr. Cooper was licensed and insured, and it did not say all workers on site would be licensed, certified, and insured, as Mr. Marshall suggests. So, even if Mr. Cooper hired his wife and KR, and they were unlicensed or uninsured, which I find is not proven, I find Mr. Marshall has not shown Mr. Cooper breached their contract. Further, I find Mr. Marshall has not established that the rates he paid Mr. Cooper's wife and KR were unreasonable or that he suffered any other damages from their work. So, I dismiss this part of his counterclaim.
52. In summary, I find Mr. Marshall has not established Mr. Cooper breached the parties' contract such that he is entitled to any damages. Therefore, I order Mr. Marshall to pay Mr. Cooper the claimed \$3,991.29.

## **CRT FEES, EXPENSES, AND INTEREST**

53. The *Court Order Interest Act* applies to the CRT. I find Mr. Cooper is entitled to pre-judgment interest on the \$3,991.29 from July 25, 2022, the date of his invoice, to the date of this decision. This equals \$117.82.
54. 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 Mr. Cooper was successful, and so he is entitled to reimbursement of \$175 in paid CRT fees. He also claims \$400 for expert evidence. However, he provided no expert evidence in this dispute or documentation to support that claim, so I dismiss Mr. Cooper's claim for dispute-related expenses.
55. As Mr. Marshall was unsuccessful, I dismiss his claim for CRT fees. Mr. Marshall did not claim any dispute-related expenses.

## ORDERS

56. Within 14 days of the date of this order, I order Mr. Marshall to pay Mr. Cooper a total of \$4,284.11, broken down as follows:
- a. \$3,991.29 in debt,
  - b. \$117.82 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
57. Mr. Cooper is entitled to post-judgment interest, as applicable.
58. I dismiss Mr. Marshall's counterclaims.
59. 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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Kristin Gardner, Tribunal Member