Civil Resolution Tribunal

Date Issued: May 10, 2023

File: SC-2022-005435

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Child v. Denis*, 2023 BCCRT 386

BETWEEN:

BENJAMIN TROY CHILD and ELYSIA SUM

APPLICANTS

AND:

JOSEPHINE DENIS

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a bathroom renovation. The respondent, Josephine Denis, hired "Ben's Plumbing, Gas & Renovations" (BPGR) to complete a tub and shower installation in their bathroom. The applicants, Benjamin Troy Child and Elysia Sum, do business on Facebook as BPGR.

2. The applicants say they started the respondent's renovation but were suddenly locked out of the applicant's home when the renovation was nearly complete. The applicants seek $4,373.40 for labour and materials.

3. The respondent says they did not hire the named applicants, and in any event says the applicants performed shoddy renovation work. The respondent denies owing the applicants the claimed amount.

4. Mr. Child represents both applicants. The respondent is self-represented.

JURISDICTION AND PROCEDURE

5. 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.

6. 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. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the other. 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 in the interests of justice.

7. 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.

8. 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.

Late information

9. CRT staff informed me the respondent asked to submit "additional information" after the dispute was sent for adjudication, after evidence and submissions had been exchanged. Apart from sending the request, the respondent did not explain what the additional information was, provide a copy of it, or explain why they did not provide the information earlier. The applicants were not advised of the request.

10. Given the late stage of the request and the lengthy submissions and evidence the respondent already provided, I find it would be disproportionate at this late stage in the proceeding to pause this dispute to arrange for the respondent to provide this possible evidence, which would also require an opportunity for the applicants to respond. I find that doing so would unreasonably delay this proceeding, bearing in mind the CRT's mandate that includes speed and efficiency.

ISSUE

11. The issue in this dispute is whether the respondent must pay the applicants the claimed $4,373.40 for bathroom renovation work.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicants must prove their 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.

13. It is undisputed that in July 2022, the respondent posted on Facebook seeking recommendations for a plumber to assist with their bathroom renovation. The respondent then messaged BPGR through Facebook messenger. The applicants say

they work together and do business as BPGR. There is no indication BPGR is an incorporated company, but rather the applicants run the business as individuals working together. So, although the respondent says they did not hire the applicants personally, I find that they did.

14. In the Facebook messages, the respondent advised they needed a new tub and shower tower installed, as well as surround walls. The parties agreed that the respondent would pay $240 for the first hour and $140 for each subsequent hour for labour. This rate included labour for both applicants together.

15. The applicants started work on July 26, 2022. On that day, the parties discovered the new tub the respondent had on site was cracked, so the parties undisputedly agreed the applicants would source and install a new tub for the respondent, which they did. Additionally, part way through the workday, Mr. Child advised the respondent the applicants would need more time, or they could bring in a third worker for an additional $40 per hour to help with the work. Although at one point in their submissions the respondent says the third worker was a “surprise” to them, they also discuss the conversation they had with Mr. Child and agree that they approved the third worker for $40 per hour.

16. After work on July 26, the parties arranged for the applicants to return on August 1, 2022 to finish the work. Facebook messages show Mr. Child confirmed with the respondent that all 3 workers would attend. The applicants say they left for lunch, to do a supply run as they needed more silicone, and to let the shower surround walls’ adhesive cure so they could complete the finishing touches. When they returned, they found they were locked out of the respondents’ home.

17. The respondent says while the applicants were gone, they looked at the work and were unhappy with the results. The respondent says the wall surrounds were not siliconed, some floor linoleum had been cut back, and the shower caddies had not been cut. As a result, the respondent decided they no longer wanted the applicants to perform work in their house and locked them out.

18. The applicants generally agree with the respondent's description above but say their work was not complete. In particular, they say they had not placed the silicone yet because the adhesive was still curing and they would need to secure the wall edges first. Additionally, the applicants say the respondent agreed to cutting the linoleum back to install the tub, and the applicants purchased a trim for around the tub which would cover that, but never got a chance to install it. Further, the applicants say the shower caddy installation is the last step in the installation, and they were not given the opportunity to do so.

19. The applicants called the police after they were locked out of the respondent's home because the respondent undisputedly locked their tools inside and would not give them back. Once police arrived, the respondent allowed Ms. Sum to enter to retrieve the tools and take photos of the work, with a police escort.

20. Later that day the applicants sent the respondent an invoice for work completed to date. The applicants seek payment of $4,373.40 for their labour and materials as noted in that invoice. This includes 4 hours of labour for 2 people at $140, and 6 hours of labour for 3 people at $180 on July 26, as well as 9 hours of labour for 3 people at $180 for August 1. The labour totals $3,260. The applicants note they mistakenly did not invoice the agreed $240 for the first hour of work, and so only claim the $140 in this dispute. The applicants also seek $892.40 for the new tub ($612.91 plus 12% tax plus 30% mark-up), and $221 for supplies.

21. It is undisputed the bathroom renovation was nearly finished, though admittedly left incomplete. However, I find that does not matter as the parties agreed to payment on a time and materials basis. So, I find the respondent owes the applicants for the work they completed, which included plumbing rough-in, tub and drain installation, drywall installation with mudding and taping, installation of 3 shower wall surrounds, and some trim. The applicant's obligation to pay is subject to any proven set-off for alleged deficiencies or substandard work, as discussed below.

22. In particular, the respondent argues the applicants' work fell below a reasonable standard and that they overcharged. As the party alleging this, the respondent has the burden to prove it.

23. When an allegation involves subjects beyond common knowledge and experience, such as whether a professional's or trade's work was below a reasonable standard, the party making the allegation (here, the respondent) must generally provide expert evidence to prove it (see: *Bergen v. Guliker*, 2015 BCCA 283). The exceptions to this general 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).

24. As noted above, although the work was admittedly incomplete, I find that is due to the respondent's choice to lock the applicants out of the worksite. I find there is nothing obviously substandard with the work that was done, and the respondent provided no expert evidence to show the applicants' work fell below a reasonable standard. So, I find the respondent has not proven the work was substandard.

25. I turn to the respondent's allegation that the applicants overcharged. Given the submissions and evidence, I find the applicants' invoice for labour is reasonable based on the parties' agreement, discussed above. I find the respondent must pay the applicants $3,260 for labour.

26. The applicants submitted materials invoices totaling $1,104.61, including $686.46 for the new tub. Although the applicants say a 30% mark-up is a "common amount among contractors", there is no indication in the parties' correspondence that the respondent agreed to this amount. The respondent argues the applicants are charging "significantly higher" for the tub than they had agreed. On a judgment basis, I find 15% is a more reasonable mark-up. So, I find the applicants are entitled to payment of $789.42 for the bathtub. As for the other materials, the invoices total $418.15, but the applicants only claim $221 because they say they did not use some of the items included on the invoices. I accept the applicants' explanation, and I find the respondent must reimburse the applicants $221 for materials.

27. In summary, I find the respondent must pay the applicants a total of $4,270.42, which includes $3,260 for labour and $1,010.42 for materials.

28. The applicants are also entitled to pre-judgment interest on the $4,270.42 under the *Court Order Interest Act*. Calculated from August 1, 2022, the invoice date, this equals $98.11.

29. 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 applicants were successful, I find that they are entitled to reimbursement of $175 in paid tribunal fees. No dispute-related expenses were claimed.

ORDERS

30. Within 30 days of the date of this decision, I order the respondent to pay the applicants a total of $4,543.53, broken down as follows:

    a. $4,270.42 in debt,

    b. $98.11 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in tribunal fees.

31. The applicants are also entitled to post-judgment interest, as applicable.

32. 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.

Andrea Ritchie, Vice Chair