Civil Resolution Tribunal

Date Issued: October 26, 2023

File: SC-2023-000097

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rather Be Plumbing Ltd. v. Gagnon*, 2023 BCCRT 920

B E T W E E N :

RATHER BE PLUMBING LTD.

APPLICANT

A N D :

YANNICK GAGNON

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Nav Shukla

INTRODUCTION

1. This dispute is about plumbing services. The applicant, Rather Be Plumbing Ltd., did some plumbing work for the respondent, Yannick Gagnon, in December 2021. The respondent paid $909.95 towards the applicant's $1,909.95 invoice for the work but has failed to pay anything further. The applicant claims the remaining $1,000.

2. The respondent does not deny that $1,000 remains unpaid under the applicant's December 14, 2021 invoice. However, the respondent says that the applicant's work was deficient, so they held back payment while waiting for the applicant to readjust its invoice to account for the alleged deficiencies. The respondent says that $600 should be deducted from the outstanding $1,000.

3. The applicant is represented by its owner. The respondent is 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.

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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and that an oral hearing is not necessary.

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.

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 applicant is entitled to the claimed $1,000, or some other amount, for the unpaid plumbing work.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove its claims on a balance of probabilities (meaning "more likely than not"). I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision. I note the applicant did not provide any written reply argument, despite having the opportunity to do so.

10. The undisputed evidence shows as follows. In December 2021, the respondent hired the applicant to complete plumbing rough-in work for an ensuite bathroom in their home. A November 26, 2021 estimate in evidence shows the work was to include rough-in work on a toilet flange, a shower drain and valve, and a vanity drain and water lines. In the November 26 estimate, the applicant proposed to do the work on a time and materials basis at $98 an hour. The estimate noted that the respondent would complete all finishing work themself. The applicant completed the rough-in work on December 13 and 14, 2021. It then issued its $1,909.95 invoice on January 4, 2022.

11. On December 23, 2021, before the applicant issued its invoice, the respondent e-transferred the applicant $909.95 as partial payment for the plumbing work. The respondent says that the parties agreed that the applicant would receive payment in full after a "full inspection" was done. By "full inspection", I infer the respondent refers to a municipal inspection. The respondent also alleges that the applicant had agreed to book the inspection but failed to do so. The applicant says that its work was complete, so I infer that it argues that it was not responsible for booking the inspection. The applicant also denies that there was any agreement to delay payment until an inspection was done.

12. The respondent undisputedly scheduled the inspection to take place and the evidence shows the applicant's work passed the inspection on January 5, 2022. However, the respondent says that they have found at least 2 deficiencies in the applicant's work since then, which the respondent has fixed themself. As noted above, the respondent has undisputedly refused to pay the applicant the outstanding

$1,000 as the applicant has not made any deductions to the outstanding balance to account for the alleged deficiencies as requested by the respondent.

Did the applicant substantially complete the work?

13. I turn now to the applicable law. In general, contractors are entitled to be paid for their work once the work is substantially complete. If there are deficiencies with the contractor's work, the customer may claim for damages. The customer bears the burden to prove any alleged deficiencies (see *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 at paragraph 16 and *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287).

14. The respondent's only allegation relating to the applicant's work being incomplete is that they say the applicant failed to schedule an inspection for the rough-in work. I note that the applicant's November 26, 2021 estimate did not include anything about an inspection, and other than the respondent's assertions, there is no indication the parties had any specific agreement about the applicant being responsible for scheduling the inspection. Overall, I find the respondent has not established that the applicant breached the parties' contract by failing to schedule an inspection.

15. Since the respondent does not suggest the applicant's work was incomplete in other ways, I find that the applicant substantially completed the work under the parties' contract. So, I find the applicant is entitled to the claimed $1,000, subject to any proven deficiencies.

Was the applicant's work deficient?

16. Generally, expert evidence is required when a customer alleges that a professional's work fell below a reasonably competent standard because an ordinary person does not know the standards of a particular profession or industry, such as plumbing. The exceptions to this general rule are when the work is obviously substandard, or the deficiency relates to something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company,* 2019 BCSC 196 at paragraph 112).

17. The respondent alleges that on January 12, 2022, when they started drywalling the shower, they realized that the applicant had installed the pipes for the shower head half an inch off-center. The respondent says that since the shower is only 36 inches, the mistake was very visible.

18. The applicant says that its plumber did the rough-in work for the shower head based on the respondent's instructions and that the respondent agreed to the location. The respondent did not respond to this allegation in their written argument. However, given that the respondent alleges the applicant placed the shower head pipe incorrectly, I infer they allege the rough-in work was not done as agreed.

19. The respondent provided some photographs that I find show the pipes for the shower head were installed half an inch off-center. However, I find it unproven on the evidence before me that placing the shower head pipes half an inch off-center is a deficiency. It is not obvious to me from the pictures in evidence that the shower head would have been noticeably off-center once installed. There is also no expert evidence before me to prove that the applicant's rough-in work for the shower head pipes was done below a reasonably competent standard for a professional plumber. So, I find it unproven that this work was deficient.

20. The respondent also alleges that the applicant installed the diverter for the shower too deep, so that the finishing plate's screws were too short, and the valve was not long enough to attach to the handle. Emails in evidence show that the respondent told the applicant about this issue on November 20, 2022, 11 months after the applicant completed the rough-in work. The next day, the applicant emailed the respondent and said that the shower valve being too short is a common problem with renovations and that it would be happy to come out and add an extension kit to it once the respondent paid the outstanding balance. The same day, the respondent responded and said that they first wanted the applicant to agree on a reduction to the invoice for the alleged issue with the off-center shower head, revise its invoice accordingly, then fix the diverter issue before the respondent would pay anything further. In a November 22 email, the applicant noted that it had been hired for the

rough-in portion of the job that was completed and that the issue the respondent had now encountered was a finishing issue. The applicant nonetheless again offered to address the respondent's concerns after receiving payment in full. On November 30, the respondent reiterated that they would not make any payment until the applicant deducted amounts from its invoice for "fixing the shower head and diverter issues".

21. The respondent says that the applicant's plumbers installed the diverter without following the manufacturer's installation instructions based on wall thickness. The respondent's evidence includes what appears to be a copy of a manufacturer's instructions for installing a diverter. It is unclear if these are the instructions for the particular diverter at issue here. The submitted document is blurry and illegible in any event and provides no assistance here.

22. On the evidence before me, I am unable to find that the issue with the diverter was due to a deficiency in the applicant's rough-in work as opposed to a finishing issue as the applicant asserts. I find expert evidence is needed to establish whether the applicant's rough-in work installing the diverter was substandard, and there is none before me.

23. Even if there was expert evidence establishing that the applicant's diverter rough-in work was substandard, I would not have awarded the respondent a reduction to the $1,000 outstanding balance in any event. This is because a contractor is generally entitled to a reasonable opportunity to address deficiencies. If an owner does not give the contractor that opportunity, they are generally not entitled to claim damages for having the deficiencies fixed (see *Lind v. Storey*, 2021 BCPC 2). Based on the emails mentioned above, I find the respondent failed to give the applicant a reasonable opportunity to address the diverter issue by insisting that the applicant first reduce its invoice. I find this insistence was unreasonable, given that the applicant had already substantially completed the work, entitling it to payment in full, and since the applicant was willing to fix the diverter issue.

24. In conclusion, I find the respondent has failed to prove any deficiencies in the applicant's work. So, I find the respondent is not entitled to any reduction from the

$1,000 they owe the applicant for the plumbing work, and I order the respondent to pay this amount.

25. The applicant claims non-contractual interest under the *Court Order Interest Act* (COIA). I note the COIA does not apply if the parties have an agreement about interest. Here, both the applicant's November 26, 2021 estimate and the December 14, 2021 invoice noted that a 10% interest charge would apply after 30 days of non-payment, and increase by 10% every month. So, it appears the parties had an agreement about interest. I note a 10% interest charge equals 120% per year, which is higher than the 60% criminal interest rate set out in section 347 of the *Criminal Code.* As the parties appeared to have agreed to an initial 10% interest rate, which would increase by 10% each subsequent month, I find the parties' agreement about interest is illegal and thus unenforceable. As there is no enforceable agreement about interest, I find the applicant is entitled to pre-judgment interest under the COIA on the $1,000 from January 4, 2022, the date the applicant sent its invoice to the respondent, to the date of this decision. This equals $48.83.

26. 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. Since the applicant was successful, I find it is entitled to $125 for its paid CRT fees. The applicant did not claim any dispute-related expenses. The respondent claims $600 in dispute-related expenses for "materials and labour". I find this is not a claim for dispute-related expenses but rather for a set-off against the $1,000 outstanding balance for the alleged deficiencies, which I have already denied above. So, I order no reimbursement for dispute-related expenses.

ORDERS

27. Within 14 days of the date of this decision, I order the respondent to pay the applicant a total of $1,173.83 broken down as follows:

a. $1,000 in debt,

b. $48.83 in pre-judgment interest under the COIA, and

c. $125 in CRT fees.

28. The applicant is entitled to post-judgment interest, as applicable.

29. 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.

Nav Shukla, Tribunal Member