



Civil Resolution Tribunal

Date Issued: November 28, 2023

File: SC-2023-000088

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hooper v. Osso*, 2023 BCCRT 1028

BETWEEN:

KENNETH JEROME HOOPER

APPLICANT

AND:

ELIZABETH OSSO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about a home renovation. In late 2022, the applicant, Kenneth Jerome Hooper, renovated a laundry room and bedroom in the respondent Elizabeth Osso's home. Mr. Hooper says Ms. Osso has not fully paid them for their work. In the Dispute Notice Mr. Hooper claims \$1,700 for unpaid work, but in their submissions, they expressly reduce the amount of their claim to \$700.

2. Ms. Osso says Mr. Hooper did not complete the work, and some of their work was deficient. She says she does not owe Mr. Hooper anything.
3. Both parties are 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. 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.
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 Mr. Hooper is entitled to \$700 for their repair and renovation work.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding Mr. Hooper must prove their claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
10. On November 19, 2022, the parties signed a \$19,000 contract for Mr. Hooper to renovate and repair a laundry room and bedroom ceiling in Ms. Osso's home between November 21 and December 16, 2022. The contract required Ms. Osso to pay a \$6,000 deposit at the start of the project, another \$6,000 "as the job progresses", another \$6,000 "as the job progresses further", and the final \$1,000 upon completion. As of December 19, 2022, Ms. Osso had paid Mr. Hooper \$18,000. None of this is disputed.
11. On December 16, 2022 the parties did a walk-through of Mr. Hooper's work. Mr. Hooper says by that time they had completed all the work under the contract except for installing the washer and dryer and installing a small part of the flooring. They say they were unable to complete this work because they were missing some parts and materials. Mr. Hooper says Ms. Osso was happy with the work and approved everything, and they agreed Mr. Hooper would return after the holidays to complete the flooring.
12. Ms. Osso says she was disappointed with the December 16, 2022 walk-through but did not say anything to Mr. Hooper because she was already resigned to the fact that they would not complete the project to a reasonable standard. She says this is because she had previously raised her concerns about the work with Mr. Hooper, and they had dismissed her. She provided no evidence to support this allegation.
13. On January 2, 2023, Ms. Osso emailed Mr. Hooper notifying them of numerous alleged deficiencies with the work and stating that she no longer required Mr. Hooper's services. She said she would retain "the final 5% balance" of the contract to remediate the deficiencies. Although the math is not exact, I find the \$1,000 unpaid balance of the contract is the amount Ms. Osso held back.

14. Mr. Hooper says that even though Ms. Osso owes them \$1,000 under the contract, they are only claiming \$700 in this dispute. Mr. Hooper says this \$300 reduction is to account for Ms. Osso installing the washer and dryer herself. Ms. Osso does not dispute Mr. Hooper's valuation of this work. So, I am satisfied that the \$300 discount from the \$1,000 contract balance sufficiently compensates Ms. Osso for the washer and dryer installation. I turn to whether Mr. Hooper is entitled to \$700 for the remaining balance of the contract.
15. An owner may terminate a construction contract if the contractor breaches the contract so substantially that it amounts to the contractor's repudiation of the contract (see *Lind v. Storey*, 2021 BCPC 2 at paragraph 94). While there is an implied warranty in all contracts for work and labour that the work will be performed in a good and professional manner, merely bad or defective work is not enough to entitle an owner to terminate a contract (see *Lind* at paragraph 83 and 94).
16. For the following reasons, I find Ms. Osso has not proven that any of Mr. Hooper's alleged deficiencies or incomplete work were serious enough to amount to repudiation of the contract.
17. Generally, when someone alleges that a professional's conduct fell below a reasonable standard, they must provide expert evidence about the standard of care in that industry unless the alleged breaches are obvious or non-technical. (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112). Ms. Osso submitted an April 8, 2023 estimate she received from a construction company setting out the work she says was required to remediate Mr. Hooper's deficient work. I find this estimate does not meet the requirements of expert evidence in CRT rule 8.3. I also find it does not say that any of Mr. Hooper's work was deficient in any event. Since Ms. Osso did not provide expert evidence, I find she must prove that the alleged deficiencies in Mr. Hooper's work were obvious or non-technical. I address each alleged deficiency below.
18. Ms. Osso says Mr. Hooper failed to install access panels for the water lines as the parties originally discussed, and failed to install any access panel for the gas lines.

Mr. Hooper denies this and says the access is in the ceiling, which they told Ms. Osso and she agreed to. The contract says only that Mr. Hooper was required to add access panels “where required”. Ms. Osso has failed to explain what she says the parties discussed about the access panels, or how Mr. Hooper breached the contract in this regard. I find these alleged deficiencies are unproven.

19. Ms. Osso also says Mr. Hooper failed to install sufficient insulation in the ceiling near the dryer outlet, which made the floor cold. Mr. Hooper denies this. I find the photos Ms. Osso submitted do not establish that Mr. Hooper’s insulation installation was deficient or in breach of the contract.
20. Ms. Osso says Mr. Hooper’s painting was incomplete and patchy, which Mr. Hooper denies. Mr. Hooper says Ms. Osso insisted they use the paint she supplied, which they say was old. Mr. Hooper says they told Ms. Osso she should buy new paint, but she insisted they use the old paint she already had. I note the contract does not expressly include painting in Mr. Hooper’s scope of work. In her submissions Ms. Osso says painting was included in the contract, but she provided no details about the scope of the required painting work. Ms. Osso submitted several photos that I find show some areas with minorly unfinished paint work. However, having found Ms. Osso has not proven the scope of Mr. Hooper’s painting work in the contract, I cannot determine from the photos whether the unfinished areas fell within the scope of that work. Even if they did, I find these areas all appear to be minor deficiencies. I find Ms. Osso has failed to prove that Mr. Hooper’s painting was deficient or substandard.
21. Ms. Osso says Mr. Hooper failed to complete the trim to a reasonable standard, and she submitted a photo which I find shows some unfinished wall trim. However, the contract says only that Mr. Hooper was required to install trim, and it does not specify the scope of that work. I find there is insufficient evidence that the area shown in the photo was within Mr. Hooper’s scope of work. Even if it was, I find this is a minor deficiency. I find this alleged deficiency is unproven.
22. In a description of a photo Ms. Osso submitted she says she was unable to install a countertop because of Mr. Hooper’s deficient work. I find it is unclear from this

description what work in the photo Mr. Hooper completed or how it was deficient. Ms. Osso also says Mr. Hooper failed to install a dryer rack that was included in the scope of work, which Mr. Hooper denies. The dryer rack is not included in the written contract and Ms. Osso provided no evidence that Mr. Hooper agreed to install it. I find these alleged deficiencies are unproven.

23. Ms. Osso says Mr. Hooper failed to complete the flooring to a reasonable standard, which Mr. Hooper denies. She submitted several photos of the flooring which I find show some missing tiles and unfinished edges. However, I find the parties undisputedly agreed that Mr. Hooper would return in 2023 to complete the flooring. By terminating the contract on January 2, 2023, I find Ms. Osso deprived Mr. Hooper of the opportunity to complete the flooring. More on this below.
24. Ms. Osso says Mr. Hooper failed to install a light switch and an electrical outlet as originally discussed, and as set out in the contract. She says she had to hire an electrician to complete this work. However, the contract says only that Mr. Hooper's work included all "electrical required". I find Ms. Osso has not proven that Mr. Hooper agreed to install the light switch or extra outlet as she alleges, or that his failure to do so was a breach of the contract. She did submit a photo showing an electrical outlet that I find appears unfinished. However, I find this is only a minor deficiency which I address further below.
25. Ms. Osso says the drywall and ceiling tile finishes are sloppy around the areas where the pipes are exposed. She submitted some photos of the exposed pipes which I find show some obvious jagged edges on the drywall. I find this appears to be a minor deficiency, which I address further below.
26. In summary, while I have found some minor deficiencies with an electrical outlet and drywall edges, I find Ms. Osso has not shown that Mr. Hooper committed any substantial breach of the parties' contract amounting to repudiation. This means Ms. Osso was not entitled to terminate the contract. So, I find it was Ms. Osso who repudiated the contract when she terminated it in her January 2, 2023 email. I find

Mr. Hooper accepted Ms. Osso's repudiation of the contract, and so Mr. Hooper is entitled to seek damages for the repudiation.

27. Contractors like Mr. Hooper are generally entitled to be paid for their work once it is substantially complete. Deficiencies are common in construction work of all kinds. When there are deficiencies or work is incomplete, contractors are generally entitled to a reasonable opportunity to address any outstanding issues. If the owner does not give the contractor that opportunity, they are generally not entitled to claim damages for having the work fixed or completed by another contractor. See *Lind v. Storey*, 2021 BCPC 2, at paragraph 91. While Ms. Osso does not claim damages in this dispute, she expressly withheld the \$1,000 contract balance to pay someone else to remediate the alleged deficiencies with Mr. Hooper's work. So, I find the principle in *Lind* applies here.
28. Ms. Osso undisputedly paid Mr. Osso \$18,000 of the \$19,000 contract amount. Based on this and the other evidence before me, I am satisfied that Mr. Hooper's work was substantially complete on December 16, 2022. The parties undisputedly agreed that Mr. Hooper would return in 2023 to complete the flooring, and I have found the other proven deficiencies with the drywall edges and electrical outlet were minor. Mr. Hooper says they always complete their work to their customers' satisfaction, and it was not their decision to stop the work before they completed it. I find Mr. Hooper was deprived of the opportunity to complete the contract. On the evidence before me, I find Mr. Osso is entitled to \$700 in damages, which is the payment they would have received had the parties completed the contract.
29. The *Court Order Interest Act* applies to the CRT. Mr. Hooper is entitled to pre-judgment interest on the \$700 owing, calculated from January 2, 2023, which is the day Ms. Osso terminated the contract, to the date of this decision. This equals \$29.70.
30. 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 Mr. Hooper was successful, I find they are entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

31. Within 14 days of the date of this order, I order Ms. Osso to pay Mr. Hooper a total of \$854.70, broken down as follows:
 - a. \$700 in damages under the contract,
 - b. \$29.70 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
32. Mr. Hooper is entitled to post-judgment interest, as applicable.
33. 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.

Sarah Orr, Tribunal Member