



# Civil Resolution Tribunal

Date Issued: December 20, 2023

File: SC-2023-006572

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Okanagan Handy Guy Handyman Ltd. v. Tien*, 2023 BCCRT 1120

B E T W E E N :

OKANAGAN HANDY GUY HANDYMAN LTD.

**APPLICANT**

A N D :

BRAD TIEN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Peter Mennie

## INTRODUCTION

1. This is a dispute about payment for a deck renovation.
2. The applicant, Okanagan Handy Guy Handyman Ltd. (Handy Guy), says the respondent, Brad Tien<sup>1</sup>, hired it to repair and resurface a deck. It says that Brad Tien refuses to pay the final invoice and claims \$5,000.

3. Brad Tien says Handy Guy did not apply the surface to the deck correctly so they should not have to pay. They say they will need to hire another contractor to refinish the deck.
4. Handy Guy is represented by a principal. Brad Tien 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.
6. 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.
7. 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.

## **ISSUE**

8. The issue in this dispute is what, if anything, Brad Tien owes Handy Guy.

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Handy Guy must prove its claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. It is undisputed that Brad Tien hired Handy Guy to rebuild their deck. Handy Guy provided Brad Tien with a quote for \$24,255 before the work started. Brad Tien accepted this and paid a \$16,000 deposit.
11. Handy Guy says that it removed the old deck, built a new one, and applied a new surface. It says that rain caused an uneven finish on the deck's surface which delayed completion of its work. It ordered new materials and refinished the deck. Handy Guy sent Brad Tien an invoice dated May 12, 2023 for \$8,255, however Brad Tien refused to pay. Handy Guy abandoned amounts over \$5,000 to bring its claim within the small claims jurisdiction at the CRT.
12. Brad Tien argues that they should not have to pay Handy Guy's invoice because its work was deficient. They say their deck's finish is uneven and that Handy Guy left paint marks and broken glass at the job site. They say the work should have been finished by May 14, 2023, however Handy Guy had to refinish the deck's surface multiple times. Handy Guy offered to return and refinish the deck again. In the first week of June, Brad Tien told Handy Guy not to return and began using the deck.
13. Brad Tien provided photos of their deck which show an uneven shine in the sunlight, shoe prints in the finish, and what appears to be a slightly uneven surface. Other photos show paint marks on their gate and stairs, paint chips left under their patio, and a missing bolt on their stair railing. Handy Guy says that most of these photos were taken before the final refinishing. However, Handy Guy does not deny that there were issues after the final refinishing.
14. Brad Tien relies on an email from Handy Guy they say is an admission that the deck surface needs to be redone. I do not read the email as an admission. In any event,

the email contains a settlement offer from Handy Guy and I find that it is protected by settlement privilege. Settlement privilege exists to encourage settlement by allowing people to make admissions during negotiations without fear that those admissions will later be used as evidence against them in a civil proceeding like a CRT dispute. So, I have not considered this email in this decision.

15. I turn to the applicable law and my analysis.
16. Contractors are entitled to payment upon substantial completion of a project. I find Handy Guy substantially completed its work, so it is entitled to payment of its invoice. This is subject to any set-off for deficiencies in Handy Guy's work, discussed below.
17. Although Handy Guy bears the burden of proving its claim, Brad Tien bears the burden of showing the work was deficient (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). Generally, expert evidence is required to prove whether a professional's work fell below a reasonably competent standard. Exceptions to this general rule are when the work is obviously substandard or the deficiencies relate to something non-technical (see *Schellenberg v. Wawanese Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).
18. I accept that Handy Guy's work was deficient in that there was a slightly uneven coat and shine on the finish, paint marks around the deck, footprints in the surface, and a missing bolt in the gate. However, Brad Tien did not provide any evidence about the cost of fixing these deficiencies. The only evidence before me on the cost to refinish the deck is Handy Guy's submission that it would cost \$2,500. Handy Guy already reduced its claim by more than this amount to fit within the CRT's small claims monetary limit. So, I find that Brad Tien has not proven that they are entitled to a set-off.
19. Even if Brad Tien established a set-off to reduce Handy Guy's \$5,000 claim, I find that Brad Tien did not give Handy Guy a reasonable opportunity to address these deficiencies. If a customer does not give a contractor a reasonable opportunity to address any deficiencies, they are generally not entitled to claim damages for having

the work fixed (see *Lind v. Storey*, 2021 BCPC 2 at paragraphs 89-91). Brad Tien admits that in the first week of June 2023, they told Handy Guy not to return to their property to do further work. I find that Brad Tien did not give Handy Guy a reasonable opportunity to address the deficiencies. So, I find that Brad Tien cannot claim a set-off for having the work fixed.

20. In summary, I find that Brad Tien has not proven they are entitled to a set-off and did not provide Handy Guy with a reasonable opportunity to address any deficiencies in its work. So, I order Brad Tien to pay Handy Guy \$5,000.
21. Handy Guy claims \$1,000 in interest because it has been carrying the outstanding amount on its credit card at 19.99% interest. However, the *Court Order Interest Act* applies to the CRT and sets out the applicable interest calculation. Handy Guy is entitled to pre-judgment interest on the \$5,000 from May 12, 2023, the date of the invoice to the date of this decision. This equals \$147.79.
22. 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 that Handy Guy is entitled to reimbursement of \$175 in CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

23. Within 30 days of the date of this order, I order Brad Tien to pay Handy Guy a total of \$5,322.79, broken down as follows:
  - a. \$5,000 as debt,
  - b. \$147.79 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
24. Handy Guy is entitled to post-judgment interest, as applicable.

25. 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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Peter Mennie, Tribunal Member

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<sup>1</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure the CRT respectfully addresses them throughout the process, including in published decisions. The respondent did not provide their title or pronouns so I will refer to them as Brad Tien and will use gender neutral pronouns for them throughout this decision, intending no disrespect.