



Civil Resolution Tribunal

Date Issued: January 11, 2024

File: SC-2023-003347

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Flowitt v. Fournier (dba Guy Fournier Concrete)*, 2024 BCCRT 28

B E T W E E N :

GREGORY FLOWITT

APPLICANT

A N D :

GUY FOURNIER (Doing Business As GUY FOURNIER CONCRETE)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Gregory Flowitt, hired the respondent, Guy Fournier (doing business as Guy Fournier Concrete), to provide 2 concrete slabs for a home. Each party is self-represented in this dispute.

2. The applicant says within 6 months the concrete slabs cracked, among other issues. He seeks \$2,864.40 to remove and dispose of the slabs and install new slabs.
3. The respondent says the applicant caused the cracks, or they are naturally occurring cracks that do not cause a serious issue. They say they weren't given the opportunity to fix the cracks.

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.
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 court.

ISSUES

7. The issues in this dispute are:
 - a. Are there defects in the concrete slabs?
 - b. Was the applicant required to give the respondent a reasonable opportunity to fix the defects, and if so, did he?

c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. Evidence in this dispute is limited. Neither party provided a copy of any written contract or gave details about the terms of any oral contract. The applicant provided a series of photos of the concrete slabs. The respondent did not provide any documentary evidence despite having the opportunity to do so.
10. It is undisputed that at some point, the applicant hired the respondent to pour 2 small concrete slabs for an existing house. One slab was at the front door (front slab) and one at the back door (back slab). I do not know what the price was, but the respondent does not dispute that the applicant paid in full.
11. The applicant says there are numerous issues with the slabs, and both need to be removed and replaced. The applicant does not say whether he claims the respondent was negligent or breached the parties' contract. Either way, the applicant bears the burden of proving that the work was deficient (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287). In general, expert evidence is required to prove a professional's work was deficient or that it fell below a reasonably competent standard. However, expert evidence may not be necessary where 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).
12. Here, I find the applicant's submissions and the photos are enough to establish that the respondent's work fell below the standard of a reasonably competent concrete finisher. My reasons follow.
13. Both slabs have large cracks that are easily visible from several feet away. The respondent says all concrete naturally cracks and unless there is separation, there is

no issue. That may or may not be accurate, but I find these cracks are significant and not superficial. I also find the front slab crack is already showing visible separation. It runs from under the front door to the side of the slab. It is prominent and unsightly.

14. The respondent also argues that the applicant's heat pump, which sits on the back slab, caused the back slab to crack. Photos show that the cracks do appear to run from under the heat pump outward. It is possible that weight or vibration from the heat pump caused or contributed to the cracks, although there is no supporting evidence of that. The respondent does not dispute being aware that the back slab would be required to support a heat pump.
15. The applicant says the cracks happened because the respondent did not do 2 things. First, the respondent undisputedly did not use steel reinforcing bars, or rebar. Second, the respondent undisputedly did not make contraction lines or joints. The applicant says the respondent assured him that rebar and joints were not necessary and the concrete would never crack. The respondent does not deny saying this but says they could have used rebar or put in joints if the applicant asked. The respondent also says rebar and joints were not necessary because the slab was not structural. I find I do not need to determine whether rebar and joints were necessary or whether the applicant asked for them. I say this because I find it is obvious that concrete slabs, put to their ordinary or expected use, should not show significant cracks within 6 months of installation. Since there is no suggestion that the applicant asked the respondent not to use rebar or cut joints, he was entitled to rely on the respondent's professional judgment about how to install the slabs.
16. The respondent does not suggest the cracks can be repaired. So, I find the cracks alone make the slabs deficient to the point that both slabs must be removed and replaced.
17. There are other deficiencies with the back slab. The applicant says the back slab was supposed to slope away from the home to drain water. Instead, photos show that water – either rainwater or heat pump water – pools on the slab. I find it is within an ordinary person's knowledge that water should not pool on a small concrete slab next

to a house, as the slab should be sloped to drain water away from the house. The respondent returned to cut a drainage channel in the slab, but the applicant says it clogs with dirt and does not work, which I accept, based on the photos. I also agree with the applicant that the drainage channel, which is cut from the middle of the slab to one end, is unsightly.

18. A contractor is generally entitled to a reasonable opportunity to address deficiencies before the customer can have someone else fix them and claim damages (see *Lind v. Storey*, 2021 BCPC 2, at paragraphs 89-91). The exception is where the deficiencies are so significant that they amounted to a fundamental breach of the parties' contract. I find that was the case here. As noted, there is no evidence the cracks can be fixed without removing the slabs and installing new ones. Further, when the respondent attempted to fix the back slab's drainage issue, their solution did not work and made the slab unattractive. The applicant also says when he contacted the respondent to sort things out they were extremely angry. The weight of the evidence indicates that the respondent was not willing or able to address the drainage issue or redo the slabs without cracks to a professional standard. So, I find the applicant is entitled to have someone else remove and replace the concrete slabs and recover damages from the respondent.
19. The last issue is damages, or what it will cost to remove and replace the slabs. The applicant did not provide an estimate or otherwise explain the basis of his \$2,864.40 claim. Neither party said how much the respondent charged the applicant for the initial work. There is really no evidence on which to base damages, other than the applicant's unsupported estimate. However, the respondent does not challenge the applicant's estimate. They do not suggest that \$2,864.40 is unreasonable, or that the work could be done for less. I do not find the amount unreasonable for removal and disposal of the defective slabs and installation of 2 new slabs that will not crack, which is what the applicant contracted for. I also find that making any reduction to the amount claimed would be without evidentiary basis and arbitrary. So, I find the applicant is entitled to \$2,864.40 in damages.

20. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$2,864.40 from November 20, 2022, which is when the applicant says he discovered the claim, to the date of this decision. This equals \$144.78.
21. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicant was successful, so I find he is entitled to reimbursement of \$125 in paid CRT fees. Neither party claims dispute-related expenses.

ORDERS

22. Within 21 days of the date of this order, I order the respondent to pay the applicant a total of \$3,134.18, broken down as follows:
- a. \$2,864.40 in damages,
 - b. \$144.78 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125.00 in CRT fees.
23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.

Micah Carmody, Tribunal Member