



Civil Resolution Tribunal

Date Issued: March 7, 2024

File: SC-2023-006355

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Phillips v. Morin*, 2024 BCCRT 226

BETWEEN:

DALE EDWARD PHILLIPS

APPLICANT

AND:

BARBARA MORIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about painting services.
2. Barbara Morin hired Dale Edward Phillips to paint her home's interior for \$2,200. Mr. Phillips says he was within 2 hours of finishing the painting work when Mrs. Morin

terminated the parties' contract. Mr. Phillips seeks payment of \$2,200 owing under the parties' contract for his painting services.

3. Mrs. Morin says Mr. Phillips delayed the painting work, and the work was deficient. She says she was entitled to terminate the contract and does not owe him anything. She also says she lost one month's rental income as a result of Mr. Phillips' irresponsible actions. Mrs. Morin did not file a counterclaim.
4. The parties are each 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.
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.

ISSUES

9. The issue in this dispute is whether Mr. Phillips is entitled to \$2,200 for painting services.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Phillips must prove his claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision. Apart from the Dispute Notice, Mr. Phillips did not provide submissions, despite being provided the opportunity to do so. He says the documentary evidence he submitted is sufficient.
11. Mrs. Morin undisputedly hired Mr. Phillips to paint her home's interior for \$2,200. I find the terms of the parties' contract are set out in a January 6, 2023 email between them. Mr. Phillips quoted \$2,200 to paint all walls, doors, ceilings and trim, with two coats where necessary, and filling and colour blocking where necessary. The email said the estimated start date was January 9, 2023, and the work was to be completed by January 13, 2023. Payment was due upon completion.
12. Based on Mrs. Morin's undisputed timeline in evidence, I find Mr. Phillips attended at Mrs. Morin's home 3 days between January 9 and January 16, 2023, and then returned for further painting work on Sunday January 22, 2023. On Mrs. Morin's own evidence, she terminated Mr. Phillips' services that day, before he had an opportunity to complete the painting work.
13. Mr. Phillips says he asked to finish the work, but Mrs. Morin refused. Mrs. Morin does not dispute this.

Is Mr. Phillips entitled to \$2,200 for the painting services?

14. As noted, Mr. Phillips claims payment of \$2,200 owing under the parties' contract for his painting services.

15. Mr. Phillips says he finished the whole house except the living room, a window and the doors. Mr. Phillips says he was within 2 hours of finishing the painting work when Mrs. Morin asked him to leave. Mrs. Morin disputes this and says there was more work left incomplete at that time. However, she provided no documentary or other evidence to show the extent of the alleged incomplete work, which I would have expected her to do in the circumstances. As Mrs. Morin asked Mr. Phillips to leave, I find Mr. Phillips would be unable to obtain such evidence himself. When a party fails to provide relevant evidence, the CRT may make an adverse inference against them. An adverse inference is when the CRT assumes that the party did not provide the evidence because it would not help their claim. Here, I find that evidence of the completed work at the time Mrs. Morin terminated the parties' contract is clearly relevant. As Mrs. Morin did not submit photographs or other evidence to show alleged incomplete work, I find an adverse inference is appropriate. Therefore, I find Mr. Phillips had likely substantially completed the painting work when Mrs. Morin terminated the contract.
16. As a general principle, a contractor is entitled to full payment upon substantial completion of the work. See *Belfor (Canada) Inc. v Drescher*, 2021 BCSC 2403. An owner has the right to end a contract where the contractor has breached the contract in such a substantial or fundamental way that it amounts to a "repudiation" or rejection of the contract. Work that is poor quality or defective does not generally entitle an owner to terminate a contract unless it is so poor that it amounts, in substance, to a repudiation of the contract. See *Lind v. Storey*, 2021 BCPC 2. Absent a repudiation, the owner's only remedy is damages for the deficiencies, which the owner bears the burden of proving. See *Absolute Industries Ltd. v. Harris*, 2014 BCCA 287.
17. Although she does not use these words, I find Mrs. Morin argues she was entitled to cancel the contract because Mr. Phillips' delayed completing the painting work, and the work was deficient and unprofessional. Here, I find Mr. Phillips did not repudiate the contract the parties' contract, so Mrs. Moring was not entitled to cancel it.

Delay

18. Mrs. Morin says Mr. Phillips' attendance was erratic. She says Mr. Phillips was supposed to complete the painting work by Friday January 13, 2023, but "dragged it out" until January 22, 2023, and only attended for 2.5 days during that time frame. Mrs. Morin argues that if she had left him to continue working on January 22, 2023, Mr. Phillips would have continued on the same erratic schedule.
19. Mr. Phillips acknowledges that he was supposed to complete the work within one week. However, he says the living room ceiling developed a leak, and was not "paintable" until fixed. Mrs. Morin does not dispute the living room ceiling required repair, but says it did not interfere with the painting because the drywaller attended in the evening. There is no evidence from the drywaller.
20. On January 8, 2023, Mrs. Morin emailed Mr. Phillips and said the living room ceiling did not need painting, and said she had a drywaller coming in the following day to begin fixing it. On January 17, 2023, Mrs. Morin emailed Mr. Phillips and said the living room ceiling was complete and was ready for him. She also asked when he would be back. Later the same day she again emailed and confirmed the living room ceiling needed to be painted. At that time, she also asked Mr. Phillips to spot paint the kitchen ceiling. She told Mr. Phillips she needed the house finished before the weekend, and asked if she could count on him to complete the job. Given the parties' emails, I find the delay in completing the painting services was likely a result of the living room ceiling repair.
21. Further, even if it was not, the delay was minimal. Ongoing delays can constitute a fundamental breach when the delays have the effect of creating a completely different situation from what the parties contemplated when they entered into the contract. See *Bridgesoft Systems Corp. v. R.*, 1998 CanLII 3950 (BC SC) (overturned on appeal on other grounds) at paragraph 114. However, I find that is not the situation here. I find Mr. Phillips did not fundamentally breach the parties' contract when he did not complete the painting work on January 13, 2023. So, I find Mrs. Morin was not entitled to cancel the contract on that basis. Next, I turn to the alleged deficiencies.

Deficiencies

22. Mrs. Morin also alleges Mr. Phillips' work was not professional. As noted, as the party alleging substandard work Mrs. Morin bears the burden to prove the alleged deficiencies.
23. 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 painting. 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.
24. Mrs. Morin provided three photographs of small wall sections that show what I infer are some small wall patches. Mrs. Morin says these photographs show Mr. Phillips' work was not professional. However, I find the photos do not show that Mr. Phillips' painting work was obviously deficient. I find expert evidence is required to determine whether Mr. Phillips's painting fell below the standard expected of a reasonably competent painter. Mrs. Morin says the drywaller contractor described the work as "amateur". However, there is no statement or other evidence from the drywaller, so I find this hearsay statement unhelpful. Mrs. Morin did not provide any expert or other evidence to prove that Mr. Phillips' painting work was deficient. Without more, I find Mrs. Morin has failed to prove the alleged deficiencies.
25. Even if Mrs. Morin had proved the above alleged deficiencies in Mr. Phillips' painting work, I find they would not be so fundamental that they went to the root of the contract. So, I find Mrs. Morin was not entitled to end the contract.
26. If an owner ends the contract in such circumstances, then the owner has repudiated the contract, and the contractor is generally entitled to damages to put it in the position it would have been in had the contract been performed. See *Jozsa v. Charlwood-Sebazco*, 2016 BCSC 78. I find that is the case here. Therefore, I find Mr. Phillips is

entitled to payment of the full \$2,200 contract price for the painting services as damages.

27. I note Mrs. Morin also alleges that she lost \$2,300 in rental income in February 2023 as a result of Mr. Phillips' actions. Mrs. Morin did not file a counterclaim, so I find she claims a set-off. However, I have already found Mrs. Morin repudiated the parties' contract on January 22, 2023, and Mr. Phillips was not responsible for the delay. It follows that I find Mr. Phillips is not responsible for any lost rent in February 2023, after Mrs. Morin did so.

Interest, CRT fees and expenses

28. The *Court Order Interest Act* applies to the CRT. Mr. Phillips is entitled to pre-judgment interest on the \$2,200 damages award from January 22, 2023, the date Mrs. Morin repudiated the contract, to the date of this decision. This equals \$118.81.

29. 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. As Mr. Phillips was successful, I find he is entitled to reimbursement of \$175 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

30. Within 30 days of the date of this order, I order Mrs. Morin to pay Mr. Phillips a total of \$2,493.81, broken down as follows:

- a. \$2,200 in damages,
- b. \$118.81 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

31. Mr. Phillips is entitled to post-judgment interest, as applicable.

32. This is a validated decision and order. 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.

Leah Volkers, Tribunal Member