



# Civil Resolution Tribunal

Date Issued: June 24, 2024

File: SC-2023-005847

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ferguson v. Hyland*, 2024 BCCRT 590

BETWEEN:

MICHAEL JAMES FERGUSON

**APPLICANT**

AND:

HARVEY GEORGE HYLAND

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Deanna Rivers

## INTRODUCTION

1. This is a dispute about a bathroom renovation.
2. The applicant, Michael James Ferguson, says he was hired by the respondent, Harvey George Hyland, to renovate his bathroom. Mr. Ferguson says he provided services, as agreed, but has not been paid. He claims \$4,257.15.

3. Mr. Hyland says that Mr. Ferguson did not complete the project, and that his work was deficient.
4. Each party 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. In resolving disputes, the CRT must apply principles of law and fairness.
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.
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 court.
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.
9. In the Dispute Notice issued at the start of this proceeding, the applicant named the respondent as "George Highland". Based on the respondent's filed Dispute Response, his name is Harvey George Hyland. So, I have exercised my discretion under CRTA section 61 and have amended the respondent's name in the style of cause above.

## **ISSUE**

10. The issue in this dispute is what, if anything, Mr. Hyland must pay to Mr. Ferguson for the bathroom renovation.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Mr. Ferguson must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision.

12. The parties agree that Mr. Hyland hired Mr. Ferguson to renovate his bathroom. The quote provided by Mr. Ferguson to Mr. Hyland was for \$7,507.50. The quote included:

- Removing all fixtures, flooring, and majority of the drywall,
- Lifting frost wall to appropriate height,
- Mould remediation,
- Installing a fresh air intake and exhaust fan,
- Installing sealants and trim,
- Painting, and
- Installing and setting up a satellite dish.

The quote included a charge for fasteners, with a note that the customer will supply all other material.

13. The quote says "ESTIMATE" at the top and includes a note that it is an estimate for the services, and subject to change if work is added, removed, or changed, or materials are to be provided. Mr. Ferguson needed a deposit of \$4,504.50.

14. Mr. Hyland provided a photograph of the back of the quote. It is signed by Mike Ferguson, dated March 28, 2023, and says received \$4500. I find this is Mr. Hyland's deposit amount.
15. Mr. Ferguson submits subtrades were needed to complete the electrical and plumbing as he did not have the qualifications. He says that Mr. Hyland said he would find the trades but did not. Mr. Ferguson says to finish the job, he hired HH, a plumber and electrician. Mr. Hyland says the electrical and plumbing work was a part of the contract, but he had to hire and pay HH, and this should be deducted from the quoted amount.
16. I find that the plumbing and electrical work were not part of the quote, and Mr. Hyland was responsible for paying for the project's electrical and plumbing work separately. Mr. Ferguson was not qualified in those trades, and I find it is more likely than not that he needed a qualified subtrade.
17. The parties agree that during the renovation, there were changes to the project:
  - a. Mr. Hyland chose to get an on demand hot water system installed. Mr. Ferguson says this required extra work, and all the drywall to be removed rather than most of it.
  - b. Mr. Ferguson had to buy a custom exterior exhaust box for the bathroom fan.

As this work was not quoted, I find that this was in addition to the agreed work.

18. Mr. Hyland says he sourced the tankless water heater himself. He also supplied an invoice from HH to remove the old hot water tank and install hot water on demand. As Mr. Hyland was to supply all materials and plumbing was not included in the quote, I find it would be Mr. Hyland's responsibility to pay this in any event.
19. Mr. Hyland says he removed the subfloor himself. He says that Mr. Ferguson told him he would take \$500 from the final invoice for this work. Mr. Ferguson does not dispute this. I find that this was an agreed change to the quote.

20. In mid-May 2023, Mr. Ferguson invoiced Mr. Hyland for \$8,757.15, less the deposit of \$4,500, totalling \$4,257.15. Neither party provided a copy of the invoice. This is the amount of Mr. Ferguson's claim in this dispute. Mr. Ferguson says the difference between the quote and the invoice was for add-ons during the project. As Mr. Hyland did not dispute the amount of the invoice, I find that the final invoice was for \$4,257.15.
21. Generally, a contractor is entitled to full payment when the work they have been hired for is substantially complete. See *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2003, at paragraph 16. If there are deficiencies, the customer may counterclaim for damages.
22. Since Mr. Hyland did not file a counterclaim, I find he is arguing he is entitled to an equitable set off. A set off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the remaining balance. As the party alleging a set off, Mr. Hyland has the burden of proving it.

***Did Mr. Ferguson substantially complete the work?***

23. Mr. Hyland says Mr. Ferguson's work was not complete and was deficient. He says that on May 9 when he fired Mr. Ferguson:
  - a. The toilet, sink, shower, and fan were not installed,
  - b. The door and trim were not painted,
  - c. The drywall from the light switch move was not repaired,
  - d. The fresh air return was not installed,
  - e. The satellite dish was not installed,
  - f. The internet was not set up, and
  - g. The shower leaked.

24. Mr. Ferguson says that he did finish the project, cleaned up, and hauled away the garbage. However, I find this is not correct.
25. Mr. Hyland provided a video taken May 10, 2023. The video shows that the shower drain is not installed, and the toilet is not installed. Mr. Ferguson says that when the project was ready for the final install, Mr. Hyland would not allow the subtrades into the home. He also says that when he left the work not done from the renovation was the final electrical and plumbing install, both of which would be done by ticketed trades and that Mr. Hyland told him he would finish the final plumbing and electrical himself. Mr. Hyland says he had to hire HH to do the plumbing, and that the cost for HH should come off the quote. For the reasons set out above, I find that Mr. Hyland was responsible for this cost.
26. Mr. Ferguson further agrees he did not complete the satellite dish install or connection, or the fresh air intake. He says that had this been brought to his attention, he would have completed these. When he offered to return and complete these items, Mr. Hyland refused. Mr. Ferguson says he offered a reduction for this but does not give an amount.
27. As Mr. Hyland fired Mr. Ferguson, he made it impossible for Mr. Ferguson to complete any outstanding issues.
28. Mr. Ferguson is entitled to payment of his invoice of \$4,257.15, less an amount for the work set out in the quote that was not completed and for Mr. Hyland removing the subfloor. The work not completed is the satellite dish install and setup, and the fresh air return. Neither party has provided me with an amount for this, so on a judgment basis I find that this amount is equal to the difference between the quote and the final invoice, or \$1,249.65. I also deduct \$500 for Mr. Hyland removing the subfloor.
29. Mr. Ferguson is entitled to \$2,507.50. This is subject to any set-off for deficiencies.

***Deficiencies and Set-off***

30. Mr. Hyland says that the project took longer than it should have. There is no evidence of how long it should have taken, or of an agreed completion date. In any event, this is not a deficiency.
31. Mr. Hyland provided a photograph of an unpainted door and a hole in the drywall beside the electrical switch. As each photograph was dated April 3, 2023, I do not find they are evidence that these deficiencies remained at the end of the project in May 2023. Mr. Hyland provided an invoice from HH dated April 21, 2023, for the shower drain and valve work, installing the electricity to the fan, and relocating switches.
32. Mr. Ferguson says when told that the shower was leaking, he offered to fix it, but Mr. Hyland refused. Mr. Hyland does not dispute this.
33. There is a presumption in a construction contract that the contractor is entitled to have a reasonable opportunity to fix any deficiencies. See *Canadian Quality Stucco Ltd. v. Pangli*, 2022 BCPC 126 and *Lind v. Storey*, 2021 BCPC 2 at paragraphs 89-91.
34. Mr. Hyland did not provide evidence of deficiencies at the end of the project. Even if I found that Mr. Hyland proved there were deficiencies, he refused Mr. Ferguson's offer to fix any problems. So, I find that he did not give Mr. Ferguson a reasonable opportunity to fix the deficiencies. I find that Mr. Hyland is not entitled to a set off.

### ***Interest***

35. The *Court Order Interest Act* applies to the CRT. Mr. Ferguson is entitled to pre-judgment interest on the \$2,507.50 from May 28, 2023, the date he confirmed that Mr. Hyland received the invoice, to the date of this decision. This equals \$135.84.
36. 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. As each party was partially successful, I find Mr. Ferguson is entitled to

reimbursement of one-half of his CRT fees, or \$87.50. Mr. Hyland did not pay CRT fees. Neither party claimed dispute-related expenses.

## **ORDERS**

37. Within 30 days of the date of this order, I order Mr. Hyland to pay Mr. Ferguson a total of \$2,730.84, broken down as follows:

- a. \$2,507.50 in debt,
- b. \$135.84 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50, for CRT fees.

38. Mr. Ferguson is entitled to post-judgment interest, as applicable.

39. 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.

---

Deanna Rivers, Tribunal Member