



# Civil Resolution Tribunal

Date Issued: June 27, 2024

File: SC-2023-004556

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *North Shore Home Services Ltd. v. Milani*, 2024 BCCRT 599

BETWEEN:

NORTH SHORE HOME SERVICES LTD.

**APPLICANT**

AND:

HAMID MILANI

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Deanna Rivers

## INTRODUCTION

1. This is a dispute about payment of an invoice.
2. The applicant, North Shore Home Services Ltd., says it provided gutter maintenance services and has not been paid. The applicant claims \$1,260.

3. The respondent, Hamid Milani, says they did not hire the applicant, and should not have to pay. They also say that the applicant damaged their wall.
4. The applicant is represented by Greg Virag, a company manager. The respondent 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. 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.

## **ISSUE**

8. The issues in this dispute are:
  - a. Does the respondent owe the applicant \$1,260, or another amount, for gutter repair?
  - b. If so, is the respondent entitled to any set off for damage?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant as the applicant must prove its 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.
10. The applicant says that the respondent asked it to repair their gutter and agreed to pay for it. However, after the gutter was repaired, the respondent refused to pay for it.
11. The respondent says that:
  - a. They only asked for an estimate and did not retain the applicant to do the work.
  - b. The applicant damaged the wall when repairing the gutter.

### ***Was there an agreement?***

12. It is undisputed that the parties did not have a written contract. I note that a contract does not need to be written to be enforceable. Verbal contracts are enforceable just like written contracts, but their terms are harder to prove. The applicant says they had an agreement. The respondent disagrees.
13. Where there is no written contract, the party trying to prove that a contract exists must prove that the parties agreed on the contract and its terms. There also must be an outward expression of their agreement, regardless of whether that expression is communicated in writing, verbally, by the parties' conduct, or some combination of these. See *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2009 BCSC 1303, at paragraphs 322 to 325.
14. I note that it is not what the parties believed or understood that is important to whether there was a contract, but what a reasonable person in the parties' situation would have believed and understood based on what the parties said and did. See *Crosse Estate (Re)*, 2012 BCSC 26, at paragraphs 27 to 33.

15. Applied to this dispute, this means that the applicant must prove that the parties agreed that the applicant would fix the gutter, and the amount the respondent would pay for fixing the gutter.
16. Mr. Virag submits that the respondent called the applicant and asked for a quote to fix the gutter on their home. The applicant sent a technician to assess the repair and called the respondent with a quote.
17. The applicant provided six phone call recordings that together confirm:
  - a. The respondent contacted the applicant about a gutter on his home that partially fell off, and needed repair or replacement, and cleaning.
  - b. Mr. Virag quoted an assessment fee of \$150, which would then be included in the final cost if the respondent hired the applicant.
  - c. The applicant sent the technician for the assessment.
  - d. The applicant gave a quote for the work.
  - e. The applicant sent a technician to repair, replace, and clean the gutter.
  - f. The respondent called after the gutter was fixed and protested that they had not agreed to have the repair done, and that they were still shopping for a better price.
18. The respondent provided three video clips that confirm the applicant's technician came to the respondent's home twice, and fixed the gutter. The respondent's spouse confronted the technician after the repair was complete asking who had instructed the technician to come to their home.
19. I find that the parties had an agreement for the applicant to complete the assessment, at a cost of \$150. The applicant has not proved that there was an agreement to complete the gutter repair, replacement, and cleaning.

***Unjust enrichment***

20. However, I also considered whether the applicant's claim for the gutter work resulted in what is known in law as unjust enrichment. The applicant may be entitled to compensation for unjust enrichment if it proves that the respondent was enriched, that the applicant suffered a corresponding deprivation or loss, and that there was no valid basis for the enrichment. See *Kerr v. Baranow*, 2011 SCC 10.
21. Here, I find the respondent was unjustly enriched. They received the benefit of a repaired and replaced gutter. The applicant has suffered a loss, as I find it had to, at a minimum, pay its employee for that time, pay for the material, and for fuel for its trucks. So, I find that the respondent was unjustly enriched when they had a repaired gutter without paying for that work, and there was no valid reason for that enrichment.
22. Since I have found the respondent was unjustly enriched by the applicant's work, I also find the applicant is entitled to payment for the work. The question is the value of the work. Unjust enrichment damages are often determined based on *quantum meruit*, meaning the value of the work done. See *Nouhi v. Pourtaghi*, 2022 BCSC 807, at paragraph 333.
23. Entitlement to damages is based on the value to the benefitting party, not the loss to the deprived party. In other words, it is the value to the respondent that is important, not the loss to the applicant.
24. The applicant's claim was for \$1,260, including the \$150 assessment fee. This means the work was valued by the applicant at \$1,110. The respondent says they received a quote for the work for \$500 but does not provide any evidence of the work quoted, or who gave that quote.
25. I have no other evidence with respect to the value of the work. On a judgment basis, I find the work valued at \$800.
26. So, I find the respondent owes the applicant \$800 for the work performed, plus \$150 for the assessment fee, for a total of \$950. This is subject to any set off for proven damage.

## **Set off**

27. The respondent alleges the applicant damaged their exterior wall while performing the gutter repairs. Since the respondent did not file a counterclaim, I find they are arguing they are 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, the respondent has the burden of proving it.
28. In support, the respondent provided 2 photographs which show:
- a. Damaged stucco on the house corner, with the white undersurface showing through, and
  - b. Damaged stucco near the vertical downspout on the house, with the stucco chipped off. This photo also shows other partly repaired damage to the stucco near the door.
29. The applicant made no submissions and provided no evidence about the wall damage, although they were given the opportunity to do so. The applicant says that it sent the respondent pictures of the work done at the jobsite but did not submit those as evidence.
30. When a party does not provide relevant evidence with no explanation, the CRT may make an adverse inference. An adverse inference is when the CRT assumes the party did not provide the relevant evidence because it would have damaged their case. I find an adverse inference is appropriate here.
31. I find that the respondent has proved that the applicant damaged the wall. They claim \$450 for this damage. The respondent did not provide any evidence to support this amount. On a judgment basis, I allow \$200 as set off based on the amount of the damage and the existing damage to the wall in the photograph.
32. In summary, I find that:

- a. The respondent owes the applicant \$150 for the assessment, and \$800 for the work done on his gutter, and
- b. The respondent is entitled to \$200 as a set off for damage to the wall.

33. The net result is that the respondent must pay the applicant \$750.

### ***Interest***

34. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on \$750 from March 3, 2023, the date the work was done, to the date of this decision. This equals \$48.81.

35. 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 the applicant was mostly successful, I find it is entitled to reimbursement of its CRT fees, or \$150. The respondent did not pay CRT fees. Neither party claimed dispute-related expenses.

### **ORDERS**

36. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$948.81, broken down as follows:

- a. \$750 in debt,
- b. \$48.81 in pre-judgment interest under the Court Order Interest Act, and
- c. \$150 for CRT fees.

37. The applicant is entitled to post-judgment interest, as applicable.

38. 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.

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Deanna Rivers, Tribunal Member