



# Civil Resolution Tribunal

Date Issued: June 27, 2024

File: SC-2023-006574

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shaw v. Tidy*, 2024 BCCRT 610

B E T W E E N :

LINDA SHAW

**APPLICANT**

A N D :

LYNNE TIDY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr, Vice Chair

## INTRODUCTION

1. The respondent, Lynne Tidy, hired the applicant, Linda Shaw, to create a landscape design for the respondent's backyard. The applicant says the respondent has refused to pay her final bill after unreasonably demanding multiple revisions. The applicant claims \$1,375, the balance owing on her final invoice.

2. The respondent says that the parties' contract only required her to pay the balance when she approved the final drawings, which she never did. So, she says she should not have to pay the final invoice.
3. The parties are each self-represented.

## **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 says 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.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both sides to this dispute question the credibility, or truthfulness, of the other, specifically about what they each said in meetings and on the phone. However, it is not necessary for me to resolve those credibility issues because the disputed facts are not important to the outcome. There is no other compelling reason for an oral hearing, especially considering the CRT's mandate to provide proportional and speedy dispute resolution. So, I decided to hear this dispute through written submissions.
6. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
7. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
8. The applicant uploaded emails from the CRT's facilitation process containing settlement negotiations. CRT rule 1.11 says that settlement discussions must not be

disclosed to a tribunal member unless the parties agree. The respondent did not agree to the disclosure of these emails, so I have not considered them in making this decision.

## **ISSUE**

9. The issue in this dispute is whether the applicant is entitled to any further payment for her landscape design services.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant must prove her claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The respondent signed the applicant's contract on April 6, 2023. The contract says that the work will have two stages. First, the applicant would prepare and deliver concept drawings and provide recommendations for plantings. In the second stage, the applicant would deliver final drawings for the yard and provide specifics about the hardscape and softscape plan. The total cost was \$2,750. The contract said that the respondent had to pay 50% for the applicant to start work, with the remaining 50% due after delivery of the "final approved plan". The respondent paid the \$1,375 deposit on April 7, 2023. The respondent paid the first instalment as agreed. This dispute is about the final payment.
12. The parties met on April 26, 2023, to review the applicant's initial drawings. On May 4, 2023, the respondent emailed the applicant asking for changes to the concept. The parties met on May 19, where the applicant provided several drawings and a list of hardscape and softscape products. The drawings are marked "final". The respondent was not happy with them. She requested changes. The applicant provided revised drawings on May 23, which were also marked "final".

13. The applicant sent the respondent an invoice for the outstanding \$1,375 the next day. On May 26, the respondent emailed the applicant that she still had not approved the drawings. She told the applicant that she wanted revised plans that included different plants and measurements for various aspects of the plan.
14. The applicant responded acknowledging that the contract said that final payment was due on approval. However, she said this did not mean that the respondent could request endless changes. She said she would do minor revisions and complete the drawings at no further cost but required a progress payment of \$1,100 first.
15. The respondent responded by hiring a lawyer to write a demand letter to the applicant. After some negotiation between the lawyer and the applicant, on June 14, 2023, the lawyer emailed the applicant a proposed way forward. The proposal was a multi-step process for further revisions, approval, and payment. The first step was for the respondent to provide the applicant with a detailed description of her desired revisions by June 19. The applicant agreed to the proposal.
16. The lawyer wrote to the applicant on June 19. Instead of providing a list of revisions, the lawyer said that the respondent considered the contract repudiated, accepted that repudiation, and demanded a return of her deposit.
17. Repudiation occurs when a party indicates they no longer intend to be bound by a contract's terms. When one party repudiates a contract, the other party can accept the repudiation or affirm the contract. See *Tang v. Zhang*, 2013 BCCA 52.
18. The respondent essentially argues that the applicant repudiated the contract by demanding a progress payment. I agree that the contract does not provide for progress payments. Instead, the contract (which the applicant drafted) explicitly requires client approval before final payment. So, I agree with the respondent that the applicant had no contractual right to withhold further work unless the respondent made a progress payment, regardless of how the applicant felt about the respondent's demands.

19. However, I find it unnecessary to determine whether the applicant's demand was a repudiation. Even if it was, the respondent's conduct indicated that she did not accept the repudiation. Instead, through her lawyer, she agreed to a process where she would get revised drawings and pay the applicant in full. By doing so, she affirmed the contract, and the parties' agreement was binding. I find that by refusing to provide the applicant with instructions on how to revise the drawings, the respondent breached the parties' new agreement.
20. When a party breaches a contract, they must compensate the other party the amount it would take to put them in the same position as if the parties had fulfilled their obligations. Here, if the respondent had complied with the amended agreement, she would have eventually paid the applicant in full. However, the applicant also would have done more work, so I find that full payment would overcompensate her. I find that if the parties had acted reasonably, the amount of work left for the applicant to do would have been minimal in the context of the entire project. Taking this into account, I find that \$1,100 is fair compensation. I order the respondent to pay this amount.
21. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the from June 19, 2023, the date the respondent breached the parties' agreement, to the date of this decision. This equals \$57.29.
22. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicant was mostly successful, so she is entitled to reimbursement of \$125 in CRT fees. The applicant did not claim any dispute-related expenses. I dismiss the respondent's claim for reimbursement of her legal fees because she was not successful. The respondent did not pay any CRT fees.

## **ORDERS**

23. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$1,282.29, broken down as follows:

- a. \$1,100 in damages,
- b. \$57.29 in pre-judgment interest, and
- c. \$125 in CRT fees.

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

25. I dismiss the respondent's claim for reimbursement of her legal fees.

26. This is a validated decision and order. Under CRTA section 58.1, 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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Eric Regehr, Vice Chair