



# Civil Resolution Tribunal

Date Issued: October 2, 2019

File: SC-2019-003028

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Betz et al v. Brandolini et al*, 2019 BCCRT 1155

BETWEEN:

DESIREE BETZ and ANTHONY ALLEN

**APPLICANTS**

AND:

TARA BRANDOLINI and SCOTT SNEDDON

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about the building of a fence. The applicants, Desiree Betz and Anthony Allen, say that the respondents, Tara Brandolini and Scott Sneddon, failed to pay their share of a joint fence project.

2. The applicants seek \$138.75 for materials, \$670 for labour (\$600 for Mr. Allen and \$70 for Mr. Allen's sons), \$110 for new locks, and an order for the respondents to stop harassing them. The respondents deny owing the applicants any money and deny harassing them.
3. The applicants are represented by Ms. Betz. The respondents are self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal 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.
6. The tribunal 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. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted by section 118 of the CRTA:
  - a. Order a party to do or stop doing something;
  - b. Order a party to pay money;

- c. Order any other terms or conditions the tribunal considers appropriate.
8. As noted above, the applicants request an order that the respondents stop harassing them. This is an order for injunctive relief, and the tribunal does not have jurisdiction to grant such an order under section 118 of the CRTA. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. As a result, I refuse to resolve the applicants' claim for an order relating to alleged harassment.
9. It appears late evidence was filed by the applicants. As the respondents did not object to it and, in fact, responded to the evidence in their submissions, I find the tribunal's decision to accept the evidence was appropriate. However, given my conclusions below, nothing turns on this finding.

## **ISSUES**

10. The issue in this dispute are:
- a. Whether the applicants are entitled to \$138.75 for unpaid fence materials,
  - b. Whether the applicants are entitled to \$670 in labour costs, and
  - c. Whether the applicants are entitled to \$110 for new locks.

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicants bear the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. Ms. Betz and the respondents are neighbours and, prior to this dispute, good friends. Mr. Allen and Ms. Betz are in a relationship. It is undisputed that in early April 2019, the parties agreed to source materials and build a new fence around and

between the two properties. It is also undisputed that the parties agreed to share the cost of the materials equally.

***Are the applicants entitled to \$138.75 for unpaid fence materials?***

13. The materials were delivered on April 6, 2019 and totaled \$2,797.96, which Ms. Betz paid. On April 10, 2019, the respondents paid Ms. Betz \$1,261.25 for their share of the materials. The respondents say they deducted the remaining amount because there were leftover materials that were in the applicants' possession, for which they refused to pay. In an email on April 14, 2019, the respondents advised that if their portion of the remaining materials were given to them, the outstanding money would be paid.
14. It is undisputed that the respondents' portion of the remaining materials was subsequently delivered to them, but the invoice balance remains unpaid. In their submissions, the respondents acknowledge they owe the outstanding amount for materials. Therefore, I find the applicants are entitled to reimbursement of \$137.73, the difference between the amount already paid (\$1,261.25) and the respondents' half of the invoice (\$1,398.98). The applicants are also entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA), from April 6, 2019, which totals \$1.32.

***Are the applicants entitled to \$670 in labour costs?***

15. On April 6 and 7, 2019, the parties built the fence. The applicants say the respondents agreed to pay \$670 in labour costs because Mr. Allen performed most of the work. The applicants say the \$70 is for Mr. Allen's two teenage sons, who assisted with loading the old fence into a trailer and with building the fence, and \$600 was for Mr. Allen. The respondents say that after the fence was built, they wanted to "thank" Mr. Allen by compensating him somehow, but did not agree to the \$600 requested by the applicants. The respondents also say there was no agreement to compensate Mr. Allen's sons.

16. The evidence indicates that on April 4, 2019, before the fence was built, Mr. Sneddon contacted Mr. Allen and stated that if Mr. Allen would help him with his fence, he and Mr. Allen could “work out \$\$” for Mr. Allen’s assistance. Mr. Allen responded saying he would show Mr. Sneddon how easy it is, would cut everything, and would “work out the spacers”. It is undisputed that no agreement was made at that point about any compensation.
17. On April 9, 2019, after the fence was built, Mr. Sneddon contacted Mr. Allen to thank him for his help building the fence. Mr. Sneddon asked, “can I pay you a full day’s work?”. Mr. Allen suggested \$600, and Mr. Sneddon did not respond. It appears this was the turning point in the parties’ relationship.
18. As there is no written contract in this case, the applicants must prove on a balance of probabilities that they had an agreement with the respondents for compensation for Mr. Allen’s, and his sons’, labour. I find the facts and evidence in this dispute do not support that conclusion.
19. To establish the existence of the agreement, there must be what is known in law as a “meeting of the minds” about the contract’s subject matter.
20. In this case, I find that the parties did not have a meeting of the minds about payment for labour. At best, the respondents made a gratuitous offer for compensation after the fact, but there was no agreement on amount. Accordingly, I am unable to find that the parties formed an agreement about compensation for Mr. Allen’s labour. I also find that there is insufficient evidence to establish the parties agreed on any payment to Mr. Allen’s sons. Further, Mr. Allen’s sons are not parties to this dispute, so I would not order payment to the applicants for the sons’ labour in any event.
21. I have also considered whether the applicants are entitled to compensation on the principle of *quantum meruit*, which means a reasonable sum of money paid for work done.

22. Although it is undisputed that Mr. Allen performed most of the labour in building the fence, I find the respondents assisted in other ways, including demolishing the existing shared fence, taking old fence materials to the dump, picking up extra supplies when needed, and picking up the applicants' children throughout the day. Based on the nature of the relationship between the parties, I find the value of Mr. Allen's labour is sufficiently off set by the errands performed by the respondents while Mr. Allen worked on the fence. Given all the above, I dismiss the applicants' claims for compensation for labour for building the fence.

***Are the applicants entitled to \$110 for new locks?***

23. The applicants request \$110, the cost of new locks on Ms. Betz's home, which they say were recommended by police. I note the invoice for the locks actually amounts to \$106.44. The respondents say new locks were unnecessary and deny they are responsible to pay for them.

24. As noted above, before this dispute the parties were good friends. Ms. Betz had a key to the respondents' home, and the respondents had a key to Ms. Betz's home. After the parties' relationship soured, Ms. Betz's keys were returned and unfortunate text messages were exchanged that resulted in Ms. Betz contacting the police. On April 16, 2019, the police advised Ms. Betz to change her locks, as she informed them the respondents still had her house key. However, the evidence indicates that Ms. Betz's house key was actually returned on April 9, 2019, a week before the police report.

25. Therefore, I find that the police advice to change the locks was based on incorrect information. In any event, I am satisfied Ms. Betz's keys had been returned to her and there was no need to replace her locks. I find the applicants have not proven there was any reasonable concern that the respondents made a copy of the keys or had any intention to enter Ms. Betz's property. As a result, I dismiss the applicants' claim for \$110 for new locks.

26. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicants were only partially unsuccessful, I find that they are entitled to reimbursement of half of their paid tribunal fees (\$62.50). Neither party claimed dispute-related expenses.

## **ORDERS**

27. Within 14 days of the date of this decision, I order the respondents to pay the applicants a total of \$208.55, broken down as follows:

- a. \$137.73 for unpaid fencing materials,
- b. \$1.32 in pre-judgment interest under the COIA, and
- c. \$62.50 in tribunal fees.

28. The applicants are also entitled to post-judgment interest under the COIA.

29. Under section 10 of the CRTA, I refuse to resolve the applicants' claim for an order that the respondents stop harassing them.

30. The applicants' remaining claims are dismissed.

31. Under section 48 of the CRTA, the tribunal will not provide the parties with the order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

32. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Andrea Ritchie, Vice Chair