



# Civil Resolution Tribunal

Date Issued: February 22, 2024

File: SC-2023-001236

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Carr v. Fitzpatrick*, 2024 BCCRT 173

B E T W E E N :

ESTHER CARR

**APPLICANT**

A N D :

CARL FITZPATRICK

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about reimbursement for roof repairs and interior damage.
2. The applicant, Esther Carr, says the respondent, Carl Fitzpatrick, breached the 5-year labour warranty they provided when they replaced her roof. The applicant says as a result of the breach, she incurred expenses to fix the roof and parts of her house

that sustained damage from a leak. She also says the respondent's work was substandard. The applicant claims \$2,305 for the cost to repair the roof, drywall and paint damaged ceilings, and hire a cleaning person.

3. The respondent acknowledges they provided a warranty for the roof, but says it was void because the applicant did not pay for their services. The respondent denies their work was substandard. I infer the respondent asks me to dismiss the applicant's claims.
4. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me, without an oral hearing.
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 issues in this dispute are:
  - a. Did the respondent breach the labour warranty?
  - b. Was the respondent's roof replacement deficient?
  - c. If the answer to either of these is yes, is the applicant entitled to her claimed damages, or to another amount?

## EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to information I find necessary to explain my decision. The respondent did not provide any documentary evidence, despite having the chance to do so.
11. The applicant hired the respondent in January 2019 to replace her roof for \$7,800, and the respondent provided a 5-year labour warranty. The parties did not have a written contract. The following year there was a leak in the applicant's mudroom, and the respondent patched the roof. In 2021, there was another leak that caused damage to the applicant's living room and mudroom. The respondent did not respond to the applicant's texts or calls to repair this leak or compensate her for the damage. The applicant eventually hired other contractors to repair the roof and the damaged interior. None of this is disputed.

### ***Warranty's validity and applicability***

12. A warranty may be either a representation about the existence of a present fact, or a promise to bear the risk of loss that flows from something that happens in the future (see *Gallen v. Butterley*, 1984 CanLII 752 (BC CA)). Here, the respondent promised to bear the risk of loss flowing from the roof failing within 5 years of installation by warranting their labour. The applicant says the respondent broke that promise.

13. Specifically, the applicant says the respondent breached the warranty by not fixing the roof, which caused her to incur additional expenses. For their part, the respondent says the applicant voided the warranty by not paying them for work they did on her home. I find the respondent essentially argues the applicant breached the parties' contract first by not paying for the roofing work.
14. The applicant submitted a January 22, 2019 invoice for the roof replacement that shows she paid a \$2,000 deposit, as well as a duplicate of a \$5,800 cheque made out to the respondent and also dated January 22, 2019. I find that together, these 2 documents show the applicant paid the respondent for the roofing work in full.
15. To the extent the respondent says the applicant did not pay for other work they previously performed on her house, they provided no evidence of this, like an invoice. Even if such unpaid work were proven, it would likely have no bearing on the respondent's warranty obligations under this roof replacement contract.
16. So, I find the respondent's assertion that the applicant did not pay for their services does not establish a legal basis for not satisfying the warranty. In other words, the respondent was obliged to fulfill their warranty obligations.
17. I turn to the warranty's conditions. As noted above, the 5-year warranty was for labour only. Otherwise, it did not contain any limitations. I find the applicant attempted to exercise her warranty rights when she contacted the respondent to repair her roof in 2020 and 2021. The respondent undisputedly did not respond when the applicant contacted them for repairs in 2021. So, I find the respondent breached the parties' contract by failing to repair the roof under the labour warranty when the applicant contacted them in 2021. I address the question of damages below.

### ***Alleged deficiencies***

18. The applicant also says the respondent's work was substandard. Where a customer alleges that a contractor's work fell below a reasonably competent standard, the customer must prove the deficiencies (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Generally, an allegation that a professional's work was

below a reasonably competent standard must be proven with expert evidence. This is because the standard expected of professionals in a particular industry is usually outside an ordinary person's common knowledge. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).

19. The applicant submitted photos of damage to her mudroom ceiling, a covered hole in her living room ceiling, and a relatively small hole in the roof next to the gutter. However, these photos are undated, so I cannot tell when they were taken. Even if they were taken after the roof replacement, I find the photos fall short of establishing it was obviously substandard, which the respondent disputes. So, I find that whether the respondent's work was deficient must be proven by expert evidence.
20. The applicant submitted an estimate from Paul Nestick to repair and make changes to the roof. There is no evidence of Paul Nestick's qualifications or their experience. In addition, the estimate does not say the respondent's work was substandard or that the changes, such as the addition of vents, were necessary for the roof replacement. So, I decline to accept the estimate as expert evidence under CRT Rule 8.3.
21. In these circumstances, I find the applicant has not proven the respondent's roof replacement was substandard.

### ***Damages***

22. Based on the respondent's failure to satisfy the labour warranty, I find the applicant is entitled to damages. Damages for breach of contract are generally meant to put the innocent party in the same position as if the contract had been performed as agreed (see *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319).
23. Here, I find the best estimate of those damages is the labour expense to repair the roof when the applicant contacted the respondent again in 2021, and any interior repair expenses flowing from the roof leak. This is because if the respondent had

satisfied the warranty and repaired the roof as they were obliged to, the applicant would not have suffered the interior damage.

24. As noted above, the applicant submitted an estimate for roof repairs and changes. The estimate's total was \$1,350. It did not include a breakdown of labour and materials, or indicate the cost of installing new air vents, which I find does not fall under the labour warranty. On a judgment basis, I deduct \$100 for the cost of the new air vents. I allocate 2/3 of the remaining \$1,250 to labour expenses (\$833.33) and 1/3 to materials expenses (\$416.67). Including GST, I find the applicant is entitled to damages of \$875 for the roof repairs.
25. As for the interior repair expenses, the applicant submitted a \$655 estimate to fix the drywall hole in her living room ceiling, and to paint both that ceiling and the mudroom ceiling. With GST, the total estimated interior repair expense is \$687.75. I find the applicant is also entitled to this amount.
26. The applicant did not provide any evidence of cleaning expenses, so I find that part of her claim unproven.

## **INTEREST, FEES, AND EXPENSES**

27. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$875 from October 2, 2022, the date of the roof repair estimate, and on the \$687.75 from October 6, 2022, the date of the interior repair estimate, to the date of this decision. This equals \$91.78.
28. 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. Since the applicant was largely successful, I find she is entitled to reimbursement of \$125 for paid CRT fees. The applicant submitted a postage receipt for \$10.39 that includes a handwritten note "& \$50 fee". However, the applicant did not explain what the receipt was for, or specifically claim dispute-related expenses, so I award none.

## ORDERS

29. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,779.53, broken down as follows:
- a. \$1,562.75 in damages for breach of contract,
  - b. \$91.78 in interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
30. The applicant is entitled to post-judgment interest, as applicable.
31. 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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Megan Stewart, Tribunal Member