



# Civil Resolution Tribunal

Date Issued: April 22, 2024

File: SC-2023-002941

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dumaresq v. Shelton*, 2024 BCCRT 385

B E T W E E N :

MICHAEL DUMARESQ

**APPLICANT**

A N D :

ANDREW SHELTON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about a failed electrical service installation.

2. Michael Dumaresq hired Andrew Shelton<sup>1</sup> (who does business as A. Shelton Fire & Electrical) to install a 400 amp electrical service on Mr. Dumaresq's property. Mr. Dumaresq paid Andrew Shelton \$4,000. Andrew Shelton obtained a permit and ordered some materials, but did not do anything further. Mr. Dumaresq claims \$3,820 for a partial refund of the \$4,000 they paid Andrew Shelton. Mr. Dumaresq is self-represented.
3. Andrew Shelton says after they contracted with Mr. Dumaresq for the electrical service, they were hospitalized and had to shut down their business. They say if they had the funds they would repay Mr. Dumaresq any monies owing, but they do not. Andrew Shelton is also self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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 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.
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. Here, I find I am properly able to assess and weigh the documentary evidence and submissions before me, without an oral hearing.
6. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

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<sup>1</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure the CRT addresses them respectfully throughout the process, including in published decisions. Andrew Shelton did not provide their pronouns or title. So, I will use gender neutral pronouns and their full name to refer to them throughout this decision, intending no disrespect.

7. Where permitted by CRTA section 118, 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.

## **ISSUE**

8. The issue in this dispute is whether Andrew Shelton must reimburse Mr. Dumaresq the claimed \$3,820 for the failed electrical service installation.

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil proceeding, Mr. Dumaresq must prove their 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 that is necessary to explain my decision. Andrew Shelton did not provide submissions or documentary evidence apart from the Dispute Response they filed at the beginning of this proceeding, despite having the opportunity to do so.
10. The main facts are undisputed. In May 2022, Mr. Dumaresq and Andrew Shelton contracted for the installation of a 400 amp electrical service on Mr. Dumaresq's property. There is no evidence of a separate written contract, but a May 5, 2022 invoice for the installation, which Mr. Dumaresq does not challenge, included a \$6,520.50 quote. So, I find the May 5 invoice was the parties' contract. The invoice requested payment of 60% of the quoted amount, which was \$3,912.30. Mr. Dumaresq paid Andrew Shelton \$4,000. This is supported by a copy of a May 7, 2022 cheque in that amount made out to Andrew Shelton in their business name.
11. The invoice indicated Andrew Shelton obtained a permit and ordered certain materials. However, it is undisputed that sometime after that, Andrew Shelton was hospitalized, and eventually had to shut down their operations. They did not do anything more on Mr. Dumaresq's electrical service installation.

12. Mr. Dumaresq says in the meantime, they discovered that the cost to connect a 400 amp service would be significantly higher than what Andrew Shelton had advised, and that a 200 amp service was sufficient for their needs. So, they proceeded with getting a design for a 200 amp service and doing the work themselves.
13. Andrew Shelton does not suggest Mr. Dumaresq breached the parties' contract by proceeding with getting a design for a different service or doing the work themselves, and I find they did not. Instead, I find it was Andrew Shelton who breached the contract by not completing the installation, though I acknowledge this was not done deliberately or through any fault of their own.
14. The usual remedy for breach of contract is damages. Here, I find Mr. Dumaresq is entitled to claim damages based on their out-of-pocket expenses. This is because I find Andrew Shelton repudiated the contract (essentially, refused to perform the agreed work). Where there has been a repudiatory breach, the innocent party is entitled to be placed in the position they were in before the contract was made (see *Bhullar v. Dhanani*, 2008 BCSC 1202 at paragraphs 42 to 45).
15. Mr. Dumaresq claims \$3,820. He says this amount accounts for a deduction of \$180 from the \$4,000 they paid for some electrical conduit Andrew Shelton provided to them. Andrew Shelton does not dispute Mr. Dumaresq's calculation of the conduit's cost, and I accept it is reasonable.
16. I considered whether a further deduction was necessary for the permit Andrew Shelton obtained. However, it is unclear whether the permit was transferable to Mr. Dumaresq, and whether it was of any value to them. Even if the permit was transferable, Andrew Shelton did not provide evidence of its cost. So, I have not made a further deduction for the permit.
17. In the circumstances, I find \$3,820, plus the electrical conduit Andrew Shelton already gave Mr. Dumaresq, compensates Mr. Dumaresq for their out-of-pocket expenses. I order Andrew Shelton to pay Mr. Dumaresq \$3,820.

18. Andrew Shelton says they cannot afford to pay. I acknowledge Andrew Shelton is experiencing financial difficulty, but an inability to pay does not relieve a person of their obligation to pay.
19. The *Court Order Interest Act* applies to the CRT. Mr. Dumaresq is entitled to pre-judgment interest on the \$3,820 damages award from September 30, 2022, the date Mr. Dumaresq's text message evidence shows they began requesting a refund, to the date of this decision. This equals \$257.66.
20. 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. So, I find Mr. Dumaresq is entitled to reimbursement of \$175 in paid CRT fees. They did not claim any dispute-related expenses.

## ORDERS

21. Within 30 days of the date of this order, I order Andrew Shelton to pay Mr. Dumaresq a total of \$4,252.66, broken down as follows:
  - a. \$3,820 in damages,
  - b. \$257.66 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
22. Mr. Dumaresq is entitled to post-judgment interest, as applicable.
23. 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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Megan Stewart, Tribunal Member