



Civil Resolution Tribunal

Date Issued: July 22, 2024

File: SC-2023-006706

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ditta v. Lanyon*, 2024 BCCRT 700

B E T W E E N :

SHARON RAM DITTA

APPLICANT

A N D :

TREVOR LANYON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. Trevor Lanyon performed several construction and repair tasks for Sharon Ram Ditta. Ms. Ditta says that Mr. Lanyon failed to complete some of these tasks, and damaged her property. She claims a total of \$1,537 for repair expenses, the cost to complete the work, and for a refund of a prepayment she made to Mr. Lanyon.

2. Mr. Lanyon says that Ms. Ditta terminated the parties' contract, so she is not entitled to a refund. He denies owing any of Ms. Ditta's claimed expenses.
3. Both parties are 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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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 that I am properly able to assess and weigh the documentary evidence and submissions before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. CRTA section 42 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.
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.

ISSUES

8. The issues in this dispute are whether Mr. Lanyon must pay Ms. Ditta any or all of the following amounts:
 - a. \$500 to repair Ms. Ditta's patio table damage,

- b. \$600 as the balance of a \$3,000 prepayment Ms. Ditta made to Mr. Lanyon for a gate installation,
- c. \$200 to restore Ms. Ditta's driveway to its original condition,
- d. \$37 for materials Ms. Ditta says Mr. Lanyon destroyed, and
- e. \$200 to remake Ms. Ditta's storage doors.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Ms. Ditta must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

Patio table damage

10. The parties agree that Mr. Lanyon damaged Ms. Ditta's patio table with some of his equipment. Ms. Ditta provided a photograph of a scratch on one of the large tiles on the patio table. Mr. Lanyon also provided a photo of the scratch, which I was unable to open. As Mr. Lanyon does not dispute that Ms. Ditta's photograph accurately shows the scratch, and given the CRT's mandate for speedy dispute resolution, I did not ask Mr. Lanyon to resubmit his photograph.
11. Mr. Lanyon says that he attempted to find replacement tiles but was unable to do so. He says that the damage was "minor" and could possibly have been fixed using a filler, like epoxy. However, Mr. Lanyon provided no evidence that a filler would have restored the patio table to its original condition.
12. As Mr. Lanyon does not dispute that he damaged Ms. Ditta's patio table, I find he is responsible for the repair cost.
13. Ms. Ditta claims \$500 to repair the table. Although she says the actual cost was higher, she explicitly limits her claim to \$500.

14. Ms. Ditta provided a receipt showing that she bought 13 tiles at a cost of \$183.60 each. She says that 3 of these tiles were for the table, and the rest were for her bathroom renovation. Ms. Ditta does not explain why 3 tiles were necessary to repair the table when only 1 tile was damaged. While it may be that Ms. Ditta replaced all of the tiles on the table so that they could match, Ms. Ditta does not say this, and she provided no evidence that she could not replace the single damaged tile. In the absence of further explanation on this point, I award Ms. Ditta \$183.60 for the cost of 1 replacement tile for the table.
15. Ms. Ditta also provided a \$354 receipt for a tile saw rental, which she says her contractor used to cut the tile down to the size needed for the table. The receipt shows that the saw can be rented for 4 hours for \$95, or for 1 day for \$118. Based on the \$354 rental cost, I infer that Ms. Ditta's contractor rented the saw for 3 days. As Ms. Ditta does not explain why it would take 3 days to cut the tile for the table, I award \$95 for the tile saw rental, as that appears to be the minimum rental cost.
16. In summary, I award Ms. Ditta \$278.60 for the table repairs, broken down as \$183.60 for the tile and \$95 for the tile saw rental. Ms. Ditta is entitled to pre-judgment interest under the *Court Order Interest Act* on these amounts from the receipt dates. This totals \$6.26.

Gate payment

17. Ms. Ditta says that in January 2023, she asked Mr. Lanyon to install an electric sliding gate across her driveway. Ms. Ditta undisputedly paid Mr. Lanyon \$3,000 for materials and labour before he completed the gate, at his request. Ms. Ditta says that she cancelled the gate project in May 2023 because Mr. Lanyon had not made adequate progress. Ms. Ditta says that Mr. Lanyon has refunded her \$2,400 of her \$3,000 payment, and she claims the balance of \$600.
18. Mr. Lanyon acknowledges that he had not completed the gate by May 2023, but he says the parties did not agree on a specific timeline, and that the delays were reasonable due to weather conditions, illness, and other work Ms. Ditta and her

partner asked him to do. He says he repaid \$1,000 of Ms. Ditta's payment, and he understood that the parties agreed that Ms. Ditta's partner, N, would pay her the balance that N owed Mr. Lanyon for another project in order to settle the issue. The parties agree that N owed Mr. Lanyon \$1,400, which he paid to Ms. Ditta instead.

19. I find the parties' text messages in evidence do not establish that Ms. Ditta agreed to accept \$2,400 as a refund of her payment for the gate. However, there is also no evidence to support Ms. Ditta's argument that Mr. Lanyon agreed to repay her the entire \$3,000, as Ms. Ditta alleges. So, I find neither party has established that they had a meeting of the minds about how much Mr. Lanyon would repay Ms. Ditta. In the absence of a repayment agreement, I will consider the parties' arguments from a contract law perspective.
20. Although she does not use this term, I find Ms. Ditta essentially argues that she was entitled to terminate or rescind the gate installation contract because Mr. Lanyon fundamentally breached it, either because he did not complete the gate in a reasonable time or because he was unable to complete it to a reasonable standard.
21. First, there is no evidence before me that Mr. Lanyon agreed to complete the gate in a particular timeframe. Ms. Ditta says that she kept asking Mr. Lanyon to make progress on the gate, particularly before she and N were going to be away. However, she provided no evidence of this, such as text messages or emails between the parties. Overall, I agree with Mr. Lanyon that the parties did not agree on a specific timeline for the gate. So, I find Ms. Ditta has not established that Mr. Lanyon breached the parties' contract on this basis.
22. As for Ms. Ditta's argument that Mr. Lanyon was not capable of completing the gate to a reasonable standard, I also find this unproven. Expert evidence is typically required to prove construction deficiencies, except where the work is obviously substandard (see *Schellenberg v Wawanesa Mutual Insurance Company*, 2019 BCSC 196). Here, Ms. Ditta provided no evidence that Mr. Lanyon's work on the gate was obviously substandard, and no expert evidence commenting on Mr. Lanyon's work. So, I find Ms. Ditta has not proven that Mr. Lanyon breached the implied term

in the parties' contract that Mr. Lanyon would complete the gate to a reasonable standard.

23. As I find Ms. Ditta has not established that Mr. Lanyon breached the contract, I find she was not entitled to terminate it. So, by telling Mr. Lanyon she did not wish to proceed with the project in May 2023, I find that Ms. Ditta repudiated the parties' contract. In the case of repudiation, the innocent party (here, Mr. Lanyon) is entitled to claim damages based on their out-of-pocket losses (see *Bhullar v. Dhanani*, 2008 BCSC 1202).
24. While Mr. Lanyon did not file a counterclaim for damages, I infer he argues he is entitled to a set-off of the \$600 balance because he incurred expenses for his time and materials. Mr. Lanyon says that he bought steel for the gateframe for \$200, and spent about 12 hours welding and painting the frame. While Mr. Lanyon provided no documentary evidence supporting this, Ms. Ditta does not dispute these amounts. Mr. Lanyon also says that he had to drive to pick up the steel, but does not say how long this took.
25. There is no evidence before me that the parties agreed to an hourly rate for Mr. Lanyon's work. So, I find it appropriate to calculate the amount Mr. Lanyon is entitled to on a *quantum meruit* basis (meaning value for work done). Text messages in evidence show that Ms. Ditta's partner N agreed to pay Mr. Lanyon either \$30 or \$35 per hour for the work Mr. Lanyon did for him. I find this is the best evidence of Mr. Lanyon's hourly rate, and I find \$30 per hour reasonable for Mr. Lanyon's work on the gate. Based on Mr. Lanyon's estimate of 12 hours of labour, I find Mr. Lanyon is entitled to \$360 for his work on the gate. Adding this to the \$200 Mr. Lanyon paid for the steel, I find he is entitled to \$560. In the absence of any evidence about how long it took Mr. Lanyon to pick up the steel, I find he has not established that he is entitled to further payment for his driving time.
26. So, I find Mr. Lanyon is entitled to keep \$560 of Ms. Ditta's gate payment. The result is that I find he must refund Ms. Ditta \$40 of the \$600 balance. Ms. Ditta is entitled to

pre-judgment interest on this amount from May 9, 2023, the date she terminated the parties' contract, to the date of this decision. This equals \$2.41.

Driveway and materials

27. Ms. Ditta says that Mr. Lanyon cut a piece of concrete out of her driveway and removed a cedar post. She says Mr. Lanyon had also screwed wheels into her driveway for the gate. Ms. Ditta claims \$37 for the post and concrete because she says she paid for them before Mr. Lanyon removed them. She also claims \$200 for the estimated cost of repairing the driveway and post and removing the wheels.
28. I dismiss Ms. Ditta's \$37 claim for materials, because I find she has not provided evidence that she paid for them. As noted above, the only material that I find Ms. Ditta paid Mr. Lanyon for is the steel for the gate frame. I find Ms. Ditta has not established that she paid for the gate post or concrete that she says Mr. Lanyon removed.
29. I also find Ms. Ditta is not entitled to compensation for the cost to repair the driveway, because she terminated the gate contract without notice to Mr. Lanyon. Mr. Lanyon says, and I accept, that he was still actively working on the gate project when Ms. Ditta terminated the parties' contract. As the party repudiating the contract, I find Ms. Ditta is not entitled to damages to restore her driveway to its original condition. I dismiss this part of Ms. Ditta's claim.

Storage doors

30. Finally, Ms. Ditta claims \$200 to have someone remake doors to a storage area Mr. Lanyon built outside her carport. Ms. Ditta says that she asked Mr. Lanyon to make the storage area airtight because she was concerned about rust on her bikes, but that the doors Mr. Lanyon built had gaps in between them and at the bottom.
31. Mr. Lanyon does not dispute that Ms. Ditta asked him to make the storage area airtight, and that the doors he built had gaps. I find this is also supported by photographs Ms. Ditta provided in evidence, showing gaps between and under the

plywood doors. Mr. Lanyon does not address this claim in his submissions, other than saying that he intended to get to the doors at some point, but that he ran out of time.

32. As Mr. Lanyon does not dispute that his work on the storage doors was substandard, I find Ms. Ditta is entitled to the cost to remake the doors. Ms. Ditta provided a quote in evidence for \$250 in materials and \$160 in labour to install a new door on the storage area. Mr. Lanyon does not dispute that this quote is reasonable, and I find that it is. However, as noted, Ms. Ditta only claimed \$200 for this work. So, I order Mr. Lanyon to pay Ms. Ditta \$200 for the door repair. As there is no evidence before me that Ms. Ditta has already had this work done, I do not award pre-judgment interest on this amount.

CRT FEES AND EXPENSES

33. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Ditta was partially successful, so I find she is entitled to reimbursement of half of her CRT fees, which equals \$62.50. Ms. Ditta also claims \$24 for registered mail and for printing pictures, but she provided no evidence of these expenses, so I dismiss this claim.

ORDERS

34. Within 30 days of this decision, I order Mr. Lanyon to pay Ms. Ditta a total of \$598.77, broken down as follows:
- a. \$518.60 in debt and damages,
 - b. \$8.67 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
35. Ms. Ditta is entitled to post-judgment interest, as applicable.

36. 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.

Alison Wake, Tribunal Member