



Civil Resolution Tribunal

Date Issued: August 29, 2024

File: SC-2023-007235

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McDonald v. Fenestra Agency Inc.*, 2024 BCCRT 842

B E T W E E N :

MICHAEL MCDONALD, also known as LINDSAY MCDONALD

APPLICANT

A N D :

FENESTRA AGENCY INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

DECISION

1. Michael McDonald, who goes by Lindsay McDonald, hired Fenestra Agency Inc. for a kitchen renovation. Mr. McDonald says the kitchen is missing several parts and is not finished to his satisfaction. He claims \$5,000. Mr. McDonald represents himself.

2. Fenestra acknowledges that parts are missing but says it did its best. It also says Mr. McDonald owes it \$4,700. Fenestra is represented by its owner, Andreas Sachs.
3. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. Given this mandate and the limited evidence and submissions in this dispute, this decision is brief. That said, I have read and considered everything the parties submitted, and these are the CRT's formal written reasons. I note that Fenestra did not provide any documentary evidence, despite having the opportunity to do so.
4. On the Dispute Notice, the applicant was identified as "Michael, Lindsay McDonald". At my request, Mr. McDonald clarified that he should be identified as Michael McDonald also known as Lindsay McDonald. Given that the parties operated as if the correct name were used, I have amended the style of cause (title page) accordingly.
5. There is no formal written contract before me. Although there is evidence that Mr. McDonald first connected with Andreas Sachs as a subcontractor for a different company, the parties agree that the kitchen renovation contract was between Mr. McDonald and Andreas Sachs' company, Fenestra.
6. Fenestra's estimate was around \$28,000 for the kitchen. There is no suggestion that the parties had a fixed-price contract. The work took place in 2022 and 2023 and several changes were made. At some point the work was expanded to include bedroom closet cabinets. Mr. McDonald made three payments totalling \$40,000.
7. Mr. McDonald says Fenestra's work was deficient and incomplete. When a customer alleges deficiencies, they must prove them, typically with expert evidence (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287). However, here Fenestra acknowledges that it did not complete the kitchen renovation.

8. Emails between Mr. McDonald's spouse and Fenestra show that when the renovation was nearly complete, Andreas Sachs experienced difficult personal circumstances that prevented him from completing the work. A contractor is generally entitled to a reasonable opportunity to address deficiencies before the customer can have someone else fix them and claim damages (see *Lind v. Storey*, 2021 BCPC 2, at paragraphs 89-91). Here, I am satisfied that Mr. McDonald gave Fenestra a reasonable opportunity to address the deficiencies.
9. To prove his damages, Mr. McDonald relies on an itemized estimate from Shuswap Custom Cabinetry. That estimate comes to \$2,869. Fenestra does not challenge the estimate, and I accept it as the best evidence of the cost to address the deficiencies in Fenestra's work.
10. That said, contractors are generally entitled to full payment upon substantial completion of their work (see *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403). Fenestra says there is an outstanding balance of \$4,700 that needs to be paid. While Fenestra did not provide a full accounting, that outstanding amount is supported by the parties' emails in evidence. Further, Mr. McDonald does not dispute it, and in fact says he would have paid the \$4,700 if Fenestra had returned to fix the deficiencies. So, I find Fenestra is entitled to \$4,700.
11. Although Mr. McDonald repeats in his reply submissions that Fenestra owes him \$5,000, the only explanation he provides for claiming more than the Shuswap estimate is that he says Shuswap's estimate only addresses the most obvious issues to make the kitchen functional. He says he will still have a subpar kitchen. To the extent that he argues there are other deficiencies beyond what is captured in the Shuswap estimate, I find he has not proven this assertion with supporting evidence.
12. I find it is appropriate to set off the \$4,700 that Mr. McDonald owes Fenestra under the contract against the \$2,869 for deficiencies. Even allowing a reasonable amount over budget for deficiency repairs and the \$150 Mr. McDonald says he paid for Shuswap's estimate, the deficiency repair costs will not exceed the balance owed

on the contract. As Fenestra did not file a counterclaim, I cannot order Mr. McDonald to pay Fenestra the difference. I can only dismiss Mr. McDonald's claim.

13. Under CRTA section 49 and the CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Fenestra was successful but did not pay CRT fees. I dismiss Mr. McDonald's claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

14. I dismiss Mr. McDonald's claims and this dispute.

Micah Carmody, Tribunal Member