



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tribiger v. Daniel Aguilera (dba Pro Well Technics and Health)*, 2024
BCCRT 847

B E T W E E N :

DAVID BRIAN TRIBIGER

APPLICANT

A N D :

DANIEL AGUILERA. (Doing Business As PRO WELL TECHNICS AND
HEALTH)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. The applicant, David Brian Tribiger, hired the respondent, Daniel Aguilera (doing business as Pro Well Technics and Health), to paint the interior of his house. The applicant paid the respondent for the work, but says it was deficient, and the

respondent did not fix the deficiencies. The applicant claims \$5,000 for the cost of repairing the deficiencies.

2. The respondent says the applicant signed off on the “perfect” paint job, and paid him for it. The respondent says any deficiencies are minor, and the applicant did not provide him a reasonable opportunity to fix them. So, the respondent asks me to dismiss the applicant’s claim.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (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. These are the CRT’s formal written reasons.
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. Further, bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find an oral hearing is not necessary in the interests of justice.
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.
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:
 - a. What did the parties' contract include?
 - b. Was the respondent's paint job deficient?
 - c. If so, is the applicant entitled to his claimed remedy?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove his 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.

Parties' contract

10. The applicant and the respondent entered into a written contract to paint the interior of the applicant's house on May 8, 2023. The contract was for labour only, and included painting all areas on the upper and lower floors, with the exception of any doors. It also included caulking baseboards and frames where needed. The contract price was \$6,000 exclusive of tax.
11. There are two versions of the signed contract in evidence. One version refers to a flat rate of \$50 per door, with a handwritten amendment indicating a flat rate of \$40 per door. The other mentions a flat rate per door, but does not say how much. The applicant also says the parties had an oral agreement that painting the doors would be included in the \$6,000 contract price, which the respondent generally disputes.
12. There is a strong common law presumption that signed contracts reflect the parties' whole agreement (see *Gallen v. Butterley*, 1984 CanLII 752 (BC CA) at paragraph 56). The presumption is strongest when an alleged oral representation is contrary to the signed contract, which is the case here. So, I find the written contract is the

parties' whole contract, and the doors were not included in the contract price. I find nothing turns on the flat rate per door, and I note that otherwise, the signed contracts are the same. To the extent the applicant suggests he signed the contract under duress due to time pressure, I find there is no documentary evidence to support that.

Alleged deficiencies

13. On May 8, the same day the parties signed the contract, the respondent began painting, and on May 9, the applicant transferred a first payment of \$1,000. The respondent completed the painting on May 12, and conducted a walk-through inspection with the applicant. It is undisputed, and the contract reflects, that the applicant signed off on the work and wrote it was a "great job to perfection". He transferred a second payment of \$3,000 to the respondent on May 12.
14. On May 13, the applicant texted the respondent saying he had noticed some deficiencies in the work. He also said he had transferred \$2,000 "in good faith", which I find is supported by a documented e-transfer. The respondent attended the applicant's house on May 15, and agreed to correct what he says were minor deficiencies. The respondent says the applicant told him he wanted to wait until the electrician had finished working on the house to have the deficiencies fixed. The applicant does not dispute this. Then, on May 18, the applicant texted the respondent to say he was not available the following week, and that he would give the respondent "advance notice". On June 6, the applicant texted the respondent to ask when he would be in town next. The respondent said he was working on a job in another city, and was not sure how long it would take. The applicant texted the respondent again on June 13 to ask when he would be in town. There is no answer from the respondent in evidence. The applicant filed his application for dispute resolution on June 19.
15. It is undisputed that there were some deficiencies in the paintwork, despite the applicant indicating the job was perfect on the walk-through. However, the parties dispute the extent of the deficiencies. The applicant says there were paint runs, cut

lines and nail marks, the previous colour was showing through, there was evidence that the walls and doors had not been sanded, and there was overspray, including where doorknobs and hinges had not been properly taped.

16. A contractor is required to perform its work to a reasonable standard (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). The law does not require perfection. Generally, expert evidence is required to prove whether a professional's work fell below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry. Exceptions to this general rule are when the work is obviously substandard, or the deficiencies relate to something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).
17. Here, the applicant provided a statement from "Rob" of RK Painting & Remodeling. Rob wrote that on inspecting the applicant's house, they found "the worst paint job I have seen in over 18 years in the business". They noted poor caulking on the trim and baseboards, unsanded patches, blotchy-looking walls, and painted-over doors. However, Rob's statement does not include their surname and is unsigned. It also does not indicate their qualifications, and does not say whether their over 18 years' of experience is in painting. The statement is undated, so it is unclear when they looked at the house, and how much time had passed since the respondent had painted. Considering all of this, I find Rob's statement is not expert evidence, and I give it no weight.
18. However, I find I do not need expert evidence to determine there were some deficiencies in the paint job. Some of the applicant's pictures show rough or bumpy patches on walls and doors, which suggests they were not sanded or that particles stuck to the paint as it was drying. While the contract does not explicitly say sanding was included, I find that sanding where required is part of painting to a reasonable standard. I say this because the parties do not dispute that sanding was included in the contract. They simply disagree on whether the respondent sanded or not.

19. Other pictures show paint drips, wall nicks, lines along the seams where walls meet, paint on a metal bar attached to the walls and on door handles and hinges, blotchy paint, and poor caulking. Some of the pictures are blurry or too far away to see alleged deficiencies. Overall, while the pictures show some deficiencies in the work, I find that given the scale of the work, the deficiencies are relatively minor.
20. Contractors are usually entitled to a reasonable opportunity to fix deficiencies. If the owner does not give the contractor that opportunity, they are generally not entitled to claim damages to have the work repaired (see *Lind v. Storey*, 2021 BCPC 2 at paragraph 91). The respondent says the applicant did not give him a reasonable opportunity to fix the deficiencies, because the applicant was not available on two occasions shortly after the respondent completed the work, and then contacted him on June 6. The respondent says by that time he was busy with other jobs. He also says the reason he did not respond to the applicant's June 13 text is because he was often working in areas without mobile phone reception.
21. I find the applicant did give the respondent a reasonable opportunity to fix the deficiencies. The parties' text messages show that after the applicant told the respondent he was not immediately available for the repairs on May 18, the respondent agreed to the applicant contacting him at a later point to schedule the repairs. The respondent did not say he might be unavailable due to other jobs. In these circumstances, I find contacting the respondent to schedule the repairs on June 6 was not unreasonable, as the respondent suggests. The evidence indicates that from this point, the respondent made no effort to schedule the repairs. So, I find he had a reasonable opportunity to perform the repairs, but chose not to.

Remedy

22. The applicant claims damages to repair the deficiencies, which I find are appropriate. The question is, what are the applicant's damages? He claims \$5,000, which he says will cover only half the amount it will cost him to have the respondent's deficient work repaired. The applicant submitted a \$9,366 estimate from another painter in support of this. However, I find in addition to the repairs, the

estimate includes repainting all of the walls, doors, windows, and trim. The estimate does not break down the cost of the repairs and the cost of the repainting. As noted above, I find the deficiencies in the applicant's pictures are relatively minor. So, I find the percentage of the estimate to repair the deficiencies is likely small. On a judgment basis, I award the applicant \$300 for repairs.

23. In coming to this figure, I did not consider the repair cost of any deficiencies in the door painting. This is because although the contract included an additional flat rate per door and the respondent undisputedly painted more than 20 doors, the applicant has not paid for them. The applicant says the respondent never provided him an invoice for the doors, and notes the respondent says in his Dispute Response that he painted the doors for free. Whatever the case, I find the applicant is not entitled to the repair cost of painted doors he has not paid for.
24. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$300 damages award from June 13, 2023, the date the respondent stopped responding to the applicant and a date I find reasonable, to the date of this decision. This equals \$18.36.
25. 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. The CRT often awards partial CRT fees where an applicant is partially successful. However, in previous disputes, the CRT has declined to do so where the applicant received a very small percentage of their initial claim (see for example, *Dennie v. Rodgers*, 2023 BCCRT 509, *Pivnick v. Planet Lazer Entertainment Ltd.*, 2023 BCCRT 7, and *West Coast Car Rental Inc. v. Shrestha*, 2021 BCCRT 53). While previous CRT disputes are not binding on me, I agree with this approach. I find the applicant was minimally successful, having received only \$300 of the claimed \$5,000. So, I dismiss the applicant's claim for reimbursement of CRT fees. Neither party claimed dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order the respondent to pay the applicant \$318.36, made up of \$300 in damages and \$18.36 in pre-judgment interest under the *Court Order Interest Act*.
27. The applicant is entitled to post-judgment interest, as applicable.
28. 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.

Megan Stewart, Tribunal Member