



Civil Resolution Tribunal

Date Issued: December 20, 2024

File: SC-2023-009344

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Raftery v. Clarke*, 2024 BCCRT 1302

B E T W E E N :

NATALIE RAFTERY and DERMOT RAFTERY

APPLICANTS

A N D :

JAMES CLARKE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jeffrey Drozdiak

INTRODUCTION

1. This dispute is about plumbing services.
2. The applicants, Natalie Raftery and Dermot Raftery, hired the respondent, James Clarke, to complete plumbing work and install a new hot water tank at their home. The applicants say Mr. Clarke's work was deficient and the hot water tank was too

small. They claim \$5,000 in damages, which includes \$3,026.43 to fix the allegedly deficient work, a \$1,700 refund for the hot water tank, and \$273.57 for their personal time.

3. Mr. Clarke denies that his work was deficient. He argues the applicants' replacement plumber was financially motivated, and they completed additional work that was unnecessary. Mr. Clarke admits there was a miscommunication about the hot water tank, and he is willing to refund \$1,700.
4. The parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties call into question the credibility, or truthfulness, of the other's evidence. Under the circumstances, I find that I am properly able to assess and weigh the evidence and submissions before me without an oral hearing. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. Neither party requested an oral hearing. So, bearing in mind the CRT's mandate is for proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
7. 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.

8. 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.

Evidentiary Issue

9. I was unable to open one piece of the applicants' evidence entitled, "Invoice #4_James Hot Water Tank". However, I was able to open similar evidence about the hot water tank. Mr. Clarke also agrees to refund the cost to supply and install the tank. So, I find it is unnecessary to ask the applicants to re-submit this evidence.

ISSUES

10. The issues in this dispute are:
 - a. Was Mr. Clarke's plumbing work deficient?
 - b. If so, how much must Mr. Clarke compensate the applicants?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants 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 the evidence and argument that I find relevant to provide context for my decision.

The Plumbing Work

12. In early 2023, the applicants hired Mr. Clarke to complete the rough-in plumbing work for renovations in their 115-year-old home. The services included renovating the upstairs bathroom, re-piping the entire house, and supplying and installing a new hot water tank. The applicants say their intentions were to have the house's plumbing comply with the building code and meet industry standards.

13. The parties did not provide any written agreement for the work. The only evidence before me includes text messages between the parties discussing the hot water tank, and Mr. Clarke's invoice for the plumbing work. In the January 17, 2023 messages, the applicants agreed to pay Mr. Clarke \$1,700 to supply and install a 50-gallon hot water tank. Mr. Clarke's March 17, 2023 invoice shows the applicants paid him \$7,200 for the plumbing work.
14. The applicants say they originally had a good working relationship with Mr. Clarke. However, over time, they say other plumbers started pointing out Mr. Clarke's allegedly deficient work.
15. On May 2, 2023, the applicants messaged Mr. Clarke saying he accidentally installed a 40-gallon hot water tank when they paid for a 50-gallon tank. In submissions, Mr. Clarke admits there was a miscommunication, and in a sign of good faith, he will refund \$1,700 to the applicants.
16. Based on the other plumber's input, the applicants say they decided not to hire Mr. Clarke to complete the finishing work. In a May 30, 2023 email, the applicants let Mr. Clarke know about their decision, and they summarized what they believed were the deficiencies with his work, which included:
 - a. Installing an air admittance valve (AAV) to vent the plumbing fixtures in the upstairs bathroom when he should have installed a roof vent,
 - b. Installing water lines on an exterior wall, which increased the risk that the waterlines could freeze,
 - c. Not installing shutoff valves for the waterlines to the tub filler faucet,
 - d. Not installing a cleanout on the vanity drain,
 - e. Not installing a toilet flange before the tiler laid the floor tiles, and
 - f. Not installing a freestanding drain flange for the bathtub before the applicants finished the floor.

Was Mr. Clarke's Plumbing Work Deficient?

17. There is an implied term in contracts that work will be performed with reasonable care and skill. In projects involving construction or renovations, such as this one, that term generally includes, at a minimum, compliance with the applicable building code (see *Parker v. Robinson*, 2014 BCPC 237 at paragraph 3).
18. As the party alleging deficient work, the applicants must prove it (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Expert evidence is usually needed to prove whether a professional's work was deficient and fell below a reasonable standard. This is because an ordinary person does not know the standards of a particular profession or industry (see *Balfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 at paragraph 19). Exceptions to this general rule include 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).
19. Here, the alleged deficiencies are technical and not obvious. So, I find expert evidence is needed to show that Mr. Clarke's plumbing work was deficient and fell below industry standards. The applicants say they provided two different opinions proving Mr. Clarke's work was deficient.
20. First, the applicants provided two invoices from Mr. Swirl the Friendly Plumber (Mr. Swirl), the plumber they hired to repair Mr. Clarke's allegedly deficient work. In the invoices, Mr. Swirl briefly commented on the work they completed at the house. The applicants highlight these comments as proof Mr. Clarke's work was deficient. Mr. Clarke alleges Mr. Swirl was financially motivated to discredit his work, and I should not consider their opinion. Mr. Clarke did not provide any evidence to support this allegation. So, I find the allegation speculative and unproven.
21. In any event, I find Mr. Swirl's invoices are not sufficient to prove Mr. Clarke's work was deficient. CRT rule 8.3 requires an expert to state their qualifications. The applicants did not provide a statement from Mr. Swirl's plumber. So, there is no

evidence before me about who the plumber was, or their qualifications. I find the notes also do not sufficiently explain why Mr. Clarke's work was deficient. So, I place no weight on the comments in Mr. Swirl's invoices.

22. Second, the applicants provided a written opinion from Alex Saavedra, an owner of 20-20 Solutions Mechanical Ltd. Alex Saavedra says they have 12 years of plumbing experience with eight years as a red seal plumber. In their report, Alex Saavedra reviewed pictures of the plumbing job and provided their opinion on Mr. Clarke's work. I will summarize their observations in more detail below.
23. Mr. Clarke does not address Alex Saavedra's report in his submissions, challenge the author's qualifications as an expert, or argue the report's conclusions were wrong. So, I accept Alex Saavedra's report as expert opinion evidence. Since Alex Saavedra is an impartial third party and provided a balanced opinion, I place significant weight on their report.
24. In submissions, Mr. Clarke demands that the applicants produce the "inspection report", claiming this will show that his work was not deficient. The applicants did not address this submission in reply. Mr. Clarke says an inspection report is required by law but does not expand on this point. He also does not say who completed the inspection, and whether the inspection is done in stages, or when the work is complete. Without more, I am unable to make any findings on this issue.
25. I will now address each of the alleged deficiencies raised by the applicants.

Venting the Plumbing Fixtures

26. Mr. Clarke says the drainage for the bathroom must have a vent for it to comply with the building code. He says a vent is a pipe that extends to open air through the roof to balance positive and negative pressures in the drainage system so that water can drain properly.
27. Mr. Clarke says he told Mrs. Raftery that he needed to push a pipe through the roof to vent the plumbing system. Mr. Clarke claims Mrs. Raftery wanted to save money

and asked if there was a way to do it without pushing a pipe through the roof. Mr. Clarke says he told her about the AAV, which he noted was not as effective as a vent pipe, but it was cheaper and allowed under the building code. Mr. Clarke says Mrs. Raftery agreed to go with installing an AAV. In reply, the applicants do not dispute what Mr. Clarke says happened, so I accept Mr. Clarke's version of events.

28. The applicants say Mr. Clarke removed an existing vent pipe, which they claim could have vented at least one fixture. They argue this means the AAV was unnecessary. The applicants did not provide any expert evidence to support this argument. So, I find it unproven that the AAV was unnecessary.
29. Turning to the expert evidence, Alex Saavedra wrote that an AAV is acceptable if it is in an accessible location and is installed four inches above the fixture drain and six inches above any insulation. Alex Saavedra noted that the AAV cannot be surrounded by insulation, as that would prevent the AAV from getting sufficient air.
30. Alex Saavedra gave the opinion that Mr. Clarke's AAV installation did not meet industry standards. They observed that there were no provisions for future access, and the AAV was completely buried by insulation. From the captioned pictures relied on by Alex Saavedra, it shows that the applicants, and not Mr. Clarke, had fully insulated the AAV and drywalled over it.
31. The applicants argue Mr. Clarke never told them that the AAV needed an access panel in the wall, or that insulation should not be packed around it. They say Mr. Clarke knew they were going to complete this work and never warned them.
32. In response, Mr. Clarke says, after the cabinet was installed, he would have installed an access door with an air grill so that the AAV was accessible with proper airflow. Instead, Mr. Clarke claims Mr. Swirl convinced the applicants to pipe a vent through the roof. I infer Mr. Clarke argues this was an unnecessary expense.
33. As noted, Alex Saavedra wrote that an AAV was acceptable, and the only issues were accessibility and insulation. Notably, they did not address whether Mr. Clarke's planned finishing work would fix these issues. More importantly, Alex Saavedra did

not provide evidence that the applicants' only option was to pipe a vent to the roof, as recommended by Mr. Swirl. For these reasons, I find the applicants have not proven that the AAV installation was deficient.

34. I pause to note that Alex Saavedra separately commented on the "wet vent" being undersized. However, it is unclear what they are referring to and whether Mr. Clarke or Mr. Swirl installed the "wet vent".
35. The applicants also argue Mr. Clarke did not follow subsections 2.5.9.2 and 2.5.9.3 of the 2018 BC Plumbing Code (Code) when installing the AAV. However, they do not explain this point further or say if Mr. Clarke's proposed finishing work would comply. They also did not provide evidence from Alex Saavedra about the Code. Without more, I find the applicants have not proven the AAV violated the Code.
36. On balance, I find the applicants have not proven the AAV installation was deficient, unnecessary, or did not comply with the Code.

Water Lines on the Exterior Wall

37. The applicants say Mr. Clarke installed the new vanity water lines on the exterior wall of their home. They say the home has original wood siding covered in vinyl, and the water lines could have frozen in cold weather. In response, Mr. Clarke says he intended to box the water lines in with insulation to isolate them from the outdoor conditions. Mr. Clarke says the applicants never gave him the chance to do this.
38. In their report, Alex Saavedra wrote that waterlines cannot be installed inside an exterior wall cavity unless a minimum of three inches of "iso/frost board" is installed between the cold wall and the waterlines. To provide adequate frost protection, Alex Saavedra wrote that the wall needed to be 5.5 inches. They noted that the exterior wall thickness is only 3.5 inches. So, Alex Saavedra concluded that Mr. Clarke's work was deficient, and he should have installed the water lines under the floor.
39. Based on Alex Saavedra's report, I find Mr. Clarke's work installing the vanity waterlines was deficient.

No Shutoff Valves to the Tub Filler Faucet

40. The applicants allege Mr. Clarke did not install the necessary shutoff valves to the tub filler faucet. They say Mr. Swirl later needed to open a hole in the kitchen ceiling to install the valves. The applicants argue Mr. Clarke should have installed the valves as part of his rough-in plumbing work.
41. In response, Mr. Clarke says section 2.6.1.3 of the National Plumbing Code of Canada outlines where shutoff valves are necessary. He claims the only fixture that requires a shutoff valve is a toilet.
42. Turning to Alex Saavedra's report, they wrote that a freestanding tub filler faucet must have individual shutoff valves at a nearby location to isolate the fixture in case of leaks or servicing. Alex Saavedra did not refer to any applicable code in making this statement, so I infer shutoff valves are an industry standard. Since Mr. Clarke did not meet industry standards, I find the applicants have proven that this aspect of his work was deficient.

Cleanout on the Vanity Drain

43. The applicants allege Mr. Clarke did not install a cleanout on the vanity drain. They claim that this is a crucial part of the plumbing system. They did not provide any expert evidence to support this allegation. So, I find the applicants have not proven this part of Mr. Clarke's work was deficient.

The Toilet Flange

44. The applicants say Mr. Clarke did not install the toilet flange before the tiler laid the floor tile. When Mr. Swirl arrived to install the toilet, the applicants say Mr. Swirl informed them that the toilet flange should have been installed before finishing the floor. The applicants say Mr. Swirl had to chip out the newly finished marble tile to install the flange.
45. Mr. Clarke says he left a three-inch vertical pipe intentionally long in length. He says there was no need to cut tiles and damage the floor. Instead, Mr. Clarke says Mr.

Swirl should have installed a three-inch inside diameter adjustable ABS toilet flange. In support, Mr. Clarke provided a picture of the flange.

46. Alex Saavedra confirmed that Mr. Clarke's approach was correct. So, I find the applicants have not proven Mr. Clarke's rough-in work for the toilet was deficient.

Freestanding Drain Flange for the Bathtub

47. The applicants argue Mr. Clarke should have installed a freestanding drain flange for the bathtub before they finished the floor. They say Mr. Swirl had to open a large hole in the kitchen ceiling to access the drain for the bathtub installation.
48. Mr. Clarke argues there was nothing wrong with his approach. He says he installed a p-trap below the floor and an ABS pipe extending above the floor. When installing the bathtub, Mr. Clarke says he would have cut the ABS pipe to the proper height and glued on an FIP adapter so that the bathtub drain could screw into it. Mr. Clarke claims this method is more effective at sealing the drain.
49. In their report, Alex Saavedra wrote that Mr. Clarke's bathtub drain is not installed using "best practices". Due to limited access, they wrote that the roughed-in drain would make it difficult to install the bathtub. Alex Saavedra confirmed that a freestanding tub drain should have been used. However, Alex Saavedra does not say Mr. Clarke's work was below industry standards, or deficient. They simply say Mr. Clarke's work was not "best practices".
50. On balance, I find the applicants have not proven Mr. Clarke's rough-in work for the bathtub fell below industry standards. So, I find the applicants have not proven this aspect of Mr. Clarke's work was deficient.

How Much Must Mr. Clarke Compensate the Applicants?

51. As noted, Mr. Clarke agrees to refund the applicants for the hot water tank. It is undisputed that the applicants paid \$1,700 for Mr. Clarke to supply and install the tank. So, I find the applicants are entitled to that amount.

52. For the deficient plumbing work, the applicants claim \$3,026.43. However, I find the applicants have only proven two deficiencies and not all six claimed. The proven deficiencies include installing the vanity waterlines in an exterior wall, and not installing shutoff valves for the tub filler faucet.
53. The applicants claim \$450 for the plumbing costs to move the vanity waterlines and install the shutoff valves. In support, the applicants provided Mr. Swirl's May 19, 2023 invoice. In the invoice, Mr. Swirl did not break down their costs. Instead, they charged a total of \$2,951, plus tax, to install the bathtub drain connection, move the vanity waterlines, install the tub filler, and run a vent pipe for the tankless water heater. Since fixing the deficiencies covered a small portion of this work, I find it reasonable to award the applicants the claimed amount of \$450.
54. The applicants also provided a June 19, 2023 invoice from Saunders Construction Management (Saunders) for drywall repair. In the invoice, Saunders charged the applicants for four trips to complete drywall repairs, totaling \$694.45. The applicants do not say what Saunders did on these four trips. Based on the pictures in evidence, I find Saunders likely spent one trip installing drywall after Mr. Swirl opened a hole in the kitchen ceiling to install the shutoff valves. Given this, I find the applicants are entitled to 25% of Saunders' invoice, or \$173.61.
55. Finally, the applicants claim \$273.57 for their time and effort needed to fix Mr. Clarke's deficient work. They say they invested significant personal time removing drywall, insulation, and the vapour barrier to install a new vent, priming and repainting the repaired section, and disposing of all materials. They also say they spent considerable time contacting new plumbers and tradespeople, obtaining quotes, and arranging repairs.
56. The applicants did not provide an estimate of the hours spent dealing with these issues, or how they calculated the amount claimed. The applicants were also only partially successful. So, I find the applicants have not sufficiently proven this aspect of their claim, and I dismiss it.

Conclusion

57. In conclusion, I find the applicants have proven that part of Mr. Clarke's work was deficient. Mr. Clarke also agreed to refund the applicants \$1,700 for the hot water tank. In total, I order Mr. Clarke to pay the applicants \$2,323.61.
58. The *Court Order Interest Act* applies to the CRT. In their Dispute Notice, the applicants explicitly chose not to claim interest, understanding that they could not claim this amount later. So, I order none.
59. 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. As the applicants were only partially successful in their claims, I find they are entitled to reimbursement of \$87.50, which is half their paid CRT fees. The applicants did not claim dispute-related expenses, so I order none.

ORDERS

60. Within 30 days of the date of this order, I order Mr. Clarke to pay the applicants \$2,411.11, which includes \$2,323.61 in damages and \$87.50 for CRT fees.
61. The applicants are entitled to post-judgment interest, as applicable.
62. I dismiss the applicants' remaining claims.
63. 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.

Jeffrey Drozdiak, Tribunal Member