

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Saunders v. Louisburg, 2008 NSSM 20

BETWEEN:

JOHN W. SAUNDERS

Claimant

- and -

SHIRLEY LOUISBURG

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on April 1, 2008

Decision rendered on April 2, 2008

**APPEARANCES**

For the Claimant: Self-represented

For the Defendants: Brad Callaghan  
Dalhousie Legal Aid

**BY THE COURT:**

- [1] The Defendant applied for and received a grant to have some improvements made to her home under the Nova Scotia Provincial Housing Emergency Repairs Program (PHERP). The Claimant was the contractor eventually hired to do the work.
- [2] The Defendant became unhappy with the Claimant and terminated his services partway through. Another contractor completed work that would otherwise have been done by the Defendant.
- [3] The Claimant has not been paid for two invoices covering work that he did. Specifically, he arranged for a re-roofing job, for which he billed the agreed price of \$2,850.00, and had done a mostly electrical but partly plumbing job, for which he billed \$1,700.00.
- [4] The Defendant is in possession of cheques for the work issued by PHERP. She has refused to hand them over because she has issues about how the work was done. She also raises an issue about a window problem which I will address in due course.

**The roofing job**

- [5] The main issue that the Defendant takes with the roofing job is that the debris from removal of the old roof was never properly cleaned up. It appears that there is already an agreement in principle mediated through PHERP that the sum of \$150.00 will be deducted from the payment and passed on to the Defendant's new contractor, who will do the cleanup for

that price. The real issue for me is the mechanics of how to split an existing cheque. There is obviously a level of suspicion that causes the Defendant not to trust the Claimant to pay her the \$150.00. I will deal with this issue later.

### **The other work**

- [6] Most of the other work was electrical. All of the outlets in the house were to be replaced. A new smoke detector was to be installed. The complete electrical system was to be inspected. And a new kitchen faucet was to be installed.
- [7] The Defendant complains that this work took a lot longer than she had expected, requiring numerous visits from the Claimant and/or his electrician. She claims that the Claimant was unprepared and unprofessional. She blames the Claimant for problems with her doorbell which she says was not working for a time, causing her inconvenience. She was clearly very frustrated with how this contract was performed.
- [8] The Claimant disputed the Defendant's view and his evidence differed from hers on a number of points. In the final analysis, however, the Defendant conceded that all of the work called for in the contract has been done and has passed inspection by the PHERP inspector. She remains nervous about the results of the electrical work, because it is not practical for anyone to inspect the wiring inside the walls to assure its safety.
- [9] I appreciate that the experience for the Defendant was not a happy one. However, the value of work under a contract such as this is measured by

the result more than by the quality of the experience. There is nothing in the contract that specifies how many visits to the Defendant's home would be required to do the work. The work was completed within the time allowed by the PHERP program, albeit with an extension of three weeks.

[10] The Defendant says that she should be allowed an abatement off the price to compensate for the inconvenience. I am not satisfied that she has suffered any inconvenience that exceeds what would be considered to be within normal tolerances. It is well known that having renovations done to one's home can be stressful at the best of times.

[11] Ultimately it is a question as to whether or not the Claimant has performed his contract. I find that he has, and he should be paid in full.

[12] The Defendant's claim for an abatement sounds more like a general damages claim than a reflection on the value of the work. The most I could allow for general damages is \$100.00, given the provisions of the Small Claims Court Act, but as I have already observed I would not allow any abatement.

### **The window problem**

[13] The Claimant had a third contract to supply and install four new windows. He measured the existing windows and ordered new ones from a local supplier. He did not get to install them because his services were terminated. Another contractor picked them up and installed them.

- [14] At the trial the Claimant stated that he believed he had paid for the windows (by having them placed on his account) and not been reimbursed for them. The Defendant believed that her contractor had paid for them. I directed that inquiries be made after the trial to sort this out. The Claimant now says that he has straightened this out with the supplier. The charges have been removed from his account.
- [15] This would therefore be a non-issue, except for the fact that one of the windows supplied was wrong. It was supposed to be a horizontal slider. When the contractor was set to install the window, it became obvious that the dimensions had been reversed, with the result that it would only fit if rotated 90°. It functions, after a fashion, but is not designed to be a vertical slider and needs to be replaced.
- [16] The question is: who is responsible for this incorrect window? There are only two possibilities. Either the Claimant ordered the wrong window, or the supplier wrongly interpreted the dimensions provided. The one person who is clearly not responsible is the Defendant.
- [17] I believe that the right result is to charge the Claimant with the cost of the window and sort it out with the supplier. The cost is not large. The window was \$161.59 plus HST (then 14%) for a total of \$184.21. This amount should be charged to the Claimant.

### **Result**

- [18] In the result, the Claimant is entitled to receive the two cheques totalling \$4,550.00, subject to paying the \$150.00 debris rebate and the \$184.21

cost of the wrong window. These total \$334.21. The Claimant should receive his filing fee of \$85.44, as it was clearly necessary for him to bring this to court and he has been substantially successful. This reduces the amount that he must rebate to the Defendant to \$248.77.

- [19] The mechanics of how this is to be done are as follows. I direct the Claimant to deliver cash or certified funds in the amount of \$248.77 to the Defendant's representative, and in exchange he should receive the two PHERP cheques totalling \$4,550.00.

**Eric K. Slone, Adjudicator**