

REPLY



PROVINCIAL COURT OF BRITISH COLUMBIA

REPLYING TO A CLAIM OR A COUNTERCLAIM

REGISTRY FILE NUMBER

What is the registry file number and location shown on the Notice of Claim?

Check appropriate box for replying to a claim or a counterclaim.

What are a defendant's options?

A defendant who receives a **notice of claim** may do any one or more of the following (Rule 3(1)):

- pay the amount claimed directly to the claimant and ask the claimant to withdraw the claim;
- admit all or part of the claim;
- admit all or part of the claim and propose a payment schedule;
- oppose all or part of the claim by listing reasons why the claim is opposed;
- make a counterclaim against the claimant.

A defendant who receives a **notice of civil resolution tribunal claim** must file a reply unless they filed and served a response in the Civil Resolution Tribunal and a copy of the response was filed with the Notice of Civil Resolution Tribunal Claim.

A defendant who must file a reply to a **Notice of Civil Resolution Tribunal Claim (Rule 1.1(40))** may do any one or more of the options for a defendant who receives a notice of claim, except they cannot make a counterclaim without the permission of a judge.

Step 1

COMPLETE the REPLY form, print clearly and firmly. There are 3 copies, so be sure all copies are legible. ****NOTE:** This form can be completed online using the Filing Assistant <https://justice.gov.bc.ca/cso>. For more help, there are guides called "What is Small Claims" and "Replying to a Claim." **Forms and guides can be found at the Government of BC website: www.gov.bc.ca/smallclaims**

Step 2

FILE the REPLY by taking or mailing it to the court registry at the address shown on the NOTICE OF CLAIM or NOTICE OF CIVIL RESOLUTION TRIBUNAL CLAIM. The fee for filing is \$26 for claims up to and including \$3,000, and \$50 for claims over \$3,000 unless you have agreed to pay the full claim.

If you have set out a counterclaim there will be an additional fee of \$100 if your counterclaim is up to and including \$3,000 or \$156 if the counterclaim is over \$3,000. The staff will check your form and if it is in order accept it for filing. **The REPLY must be filed in the registry within the time limit shown on the NOTICE OF CLAIM or NOTICE OF CIVIL RESOLUTION TRIBUNAL CLAIM.**

Step 3

THEN the court will send a copy of your Reply to the claimant and in most cases set a date for a settlement conference. You will receive a notice telling you the date and place of the conference. Some cases will go directly to trial and you will receive a notice telling you the date and place.

Step 4

When the date is set, you can prepare for the conference or trial. For more help there is a booklet called "Getting Ready for Court".

FROM:

This is where you identify the defendant who is filing this Reply. Give an address where notices and other information about the claim can be sent to you. If this address changes at any time be sure to notify the court registry.

DISPUTE

Here you must list the reasons why you oppose the claim. You do not need to tell everything about your case here. You must tell just enough to indicate to the claimant and the court what parts of the claim you dispute, and why. Look at the "How Much" section of the Notice of Claim. If the claim has more than one part - a, b, c, and so on - then you should reply to each part separately, using the same letters. If there is anything in the Notice of Claim that you agree with, be sure to include that here.

AGREEMENT WITH THE CLAIM

If you admit all or part of the claim, and if you are proposing a payment schedule, try to make it a reasonable one. If the claimant agrees with your proposal, you may file a consent order, or the claimant may file a consent order or a payment order. If the claimant agrees to the amount but not the terms for the payment, the claimant may request a payment hearing to ask the Court to set the payment schedule. You will be asked about your financial circumstances and expected to provide supporting documents.

COUNTERCLAIM

If you have a counterclaim, you must tell just enough to let the claimant know what your counterclaim is about. A Claimant may not include a counterclaim when replying to a counterclaim.

If your counterclaim is made up of several parts, separate them here and show the amount you are claiming for each part.

For example:

a	Amount owing on unpaid invoice	\$\$\$\$\$\$\$\$
b	Interest under the contract	\$\$\$\$\$\$\$\$

The claimant might agree with part of your counterclaim if you show its separate parts.

The most you may claim in Provincial Court of British Columbia (Small Claims Court) is \$35,000.00, including the amount of money claimed AND the value of any goods or services claimed. This does not include interest and expenses.

If your counterclaim is for more than \$35,000.00 and you wish to file in this court just say in this section "I am abandoning the amount over \$35,000.00". Otherwise, you should file your claim in Supreme Court. If you choose to abandon part of your claim you cannot sue for that part later.

Are you asking for something besides money (eg. recovery of goods)? If so fill that in and show the value, but do not add the dollar amount for that part to the Total Claimed.

For more help on your counterclaim there is a booklet called "Making a Claim".

REPLY

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

- To a Claim
- To a Counterclaim

REGISTRY FILE NUMBER 2227591
REGISTRY LOCATION North Vancouver

TO:

NAME	O'Brien Contracting Ltd	CLAIMANT
ADDRESS	6029 Promontory Road	
CITY, TOWN, MUNICIPALITY	Chilliwack	BC
		PROV.
	V2R-4M4	POSTAL CODE
TEL. #	604 360-6395	

REPLY

FROM:

NAME	Jennifer Sandoval	DEFENDANT
ADDRESS	736 W 20th	
CITY, TOWN, MUNICIPALITY	North Vancouver	BC
		PROV.
	V7P-2B2	POSTAL CODE
TEL. #	778 990-7229	

DISPUTE:

a See REPLY - Attachment

b

c

d

e

AGREEMENT WITH THE CLAIM: _____ (NAME) agree to pay \$ _____

I could make the following payments: (GIVE DATES AND AMOUNTS)

COUNTERCLAIM (YOU SHOULD ONLY FILL OUT THIS PART OF THE FORM IF YOU WISH TO MAKE A CLAIM AGAINST THE CLAIMANT)

WHAT HAPPENED? (THIS PART IS NOT TO BE USED WHEN REPLYING TO A COUNTERCLAIM OR TO A NOTICE OF CIVIL RESOLUTION TRIBUNAL CLAIM)

See COUNTERCLAIM - Attachment

HOW MUCH?

a wallpaper remediation		\$	1100.00
b recessed vanity installation		\$	977.00
c time for design and material sourcing		\$	1900.00
	TOTAL	\$	
	+ FILING FEES	\$	156.00
	= TOTAL CLAIMED	\$	3977.00



REPLY - ATTACHMENT PAGE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

Response(s) to 'What Happened':

Our* response will be to Schedule A provided by the claimant, which essentially states that we owe 7,688.73 (for reasons we will dispute).

***please note that we are filling this form out online and the online form only allows one name, but the claim was made against us (Jennifer Sandoval and Christopher Carlsen) and we are responding herein together. : Disagree**

Why? - The claimant cites our purchasing of some materials for the project as a reason to support the \$7,688.73 left owing.

There is no relationship between our purchasing some materials and the claim that we owe \$7,688.73. We assert that there is no relationship as such for two reasons:

1) There is no prohibition in the contract to our purchasing some materials. In fact, it is important to note that our decision to purchase some materials on our own was largely prompted by the claimant's lack of direction regarding design or materials. Since our repeatedly asking for these details to be provided was met with his simple preference to source materials we were unhappy with, we decided it was in our best interest to source some materials ourselves.

2) Thereafter, we discussed at length and on several occasions, via email and in person, that we would source some of our own materials because the claimant was unable to source materials to our satisfaction. We are happy to provide these emails. While the claimant in some instances advised against certain purchases, he did not prohibit it, but rather his advice was a matter of routine in terms of what might work better or less optimally. Ultimately, he installed the materials we purchased, but for one item that he refused to install, but none of that has bearing on the claim that we owe him money. Rather, we purchased these materials ourselves, spending more than 100 of our own hours, and avoided paying the markup that the claimant would add if he were to purchase these materials himself. This allowed us to buy the materials of quality we were content with, without adding to the budget (rather, this saved the contractor from spending the money himself for these materials). Furthermore, the claimant supported our doing so, which is apparent in numerous email that we can provide and, furthermore, the claimant later agreed to credit us for these purchases (which we also can prove by email; we submit that this is further evidence that he did not fundamentally oppose the purchases).

Response(s) to 'How Much':

A : Disagree, Value = \$7688.73

Why? - As noted above, there is no valid relationship between the claim of our changing the original contract (which we dispute, as noted previously) and the amount claimed by the claimant.

We have not paid the requested \$7,688.73 for several reasons:

1) We have not been provided details regarding work associated with the contract and subsequent change order, including that of the contractor and subcontractors, sufficient to support the invoiced charges and to ensure that what is being claimed for us to pay is accurate and legitimate. The claimant has not substantiated that the amount charged was fair and reasonable and we believe that it is not. The change order agreement of Aug 23, 2021 (paragraph 4, "subcontractors") states that "the contractor will include the subcontractors invoiced amount in each bill provided to the owner upon each stage of completion". The contractor did not do so, until we repeatedly pressed for these subcontractor details (see further below), himself violating the change order agreement. Given our desire for transparency, we requested the subcontractors invoices so that we could appreciate those details and ensure that charges were fair and reasonable. We did so in an October 28, 2021 email to the claimant. He initially responded by email (Oct 29, 2021) opposing the request and instead simply stated his claim that he substantially finished the project and expected payment. We pushed back, given the lack of substance in his reply, and on November 2, 2021 we noted that he had erred by charging 25% markup when the contract was for 20% markup. In response, on the same day, he apologized for his error in the markup rate and also relented by providing some of the requested details (subcontractor invoices). However, the information provided remains incomplete in terms of adequately substantiating his invoicing of us. The claimant suggests that the difference between the total claimed and the amount reflected in the limited details he provided reflects his own personal work on the project. However, we strongly dispute that this legitimately fills this gap. See #2 below. We reiterated our concerns in a letter dated Dec 22, 2021, in which we again requested details that would substantiate the claimant's invoice. This request was met with no response other than his placing a lien on our house.

2) The claimant claimed, and charged for (according to his accounting to us), that he was present along with his apprentice for hours during which in fact the claimant was not present on site. On Nov 2, 2021 he emailed these are just my work hours that were logged, however, I was on site the same days, and put in the same hours. We hope that this is as clear and transparent as possible for you. However, in addition to our concern that his hours were not documented we are additionally concerned by his later reversal of his own statement by saying the following on Nov 14, 2021, in response to our pushback regarding his hours: Your observation of there being days that Ben was on site alone does not mean that I was not attending to other things in regards to your job. This inconsistency and lack of documentation is not commensurate with the transparency that he claims and that we expect.

3) The latest statement detailing what he believed owing, to us from the claimant, was on Oct 25, 2021 for \$7186.09 rather than \$7688.73. In either case, we dispute this for the more fundamental reasons noted earlier in our comments, but simply clarify that the \$7688.73 on the Notice of Claim does not reflect the claimant's own accounting (and further substantiates his poor accounting and inconsistency).

Overall, we came into this project optimistically trusting the contractor, but he repeatedly violated our trust in ways noted above. Therefore, we submit that nothing should be simply assumed and that, rather, it is now incumbent on him to fully substantiate his charges. He seems to feel that just because we signed documents that he should be allowed to charge freely and without substantiation, and we feel that this is unacceptable.



COUNTERCLAIM - ATTACHMENT PAGE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

What Happened? - Other

What led to this claim:

The claimant did not finish the project.

The claimant stated that we must buy a mounting kit for the medicine cabinet, so we did (at our expense

Also, as noted previously, we had to spend many hours on design and material sourcing given the inade

Furthermore, there are ripples in the wallpaper, which the contractor recognized as flaws in his installatio

Finally, the lien on house refers to in-floor heating mat but this was never fully installed as the claimant p

We were surprised that he put that interest above ours, and sought our own quotes which were substant