Civil Resolution Tribunal

Date Issued: June 4, 2018

File: SC-2017-005202

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Moore v. S&S Westcoast Floors and Floors Ltd.*, 2018 BCCRT 230

B E T W E E N :

Maria Moore

APPLICANT

A N D :

S&S Westcoast Floors and Floors Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about whether the respondent S&S Westcoast Floors and Floors Ltd. failed to adequately install the applicant Maria Moore's floating laminate flooring, and if so, what is the appropriate remedy.

2. The applicant seeks a full refund of the $4,745 she paid, along with an order that the respondent remove all of the laminate floors, underlay, glue and linoleum in her kitchen/dining area. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.

5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

6. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:

    a. Did the parties agree that the respondent would be responsible for ensuring the floor was level or that it would advise the applicant about levelling?

b. Did the respondent fail to properly install the applicant's flooring, in breach of their contract?

c. To what extent is the respondent responsible to i) refund the cost of the flooring, and b) remove the flooring from her kitchen/dining area?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

9. The parties agreed that the respondent would install laminate flooring and acoustic underlay in the applicant's home, for a total of $4,500. The parties' signed 1-page May 18, 2017 contract states:

> It is the **customer's responsibility to provide levelled sub floor** for installation.
>
> **Customer is advised to have the floor level checked** by a Floor Levelling Co. & have it rectified if required.
>
> S&S WESTCOAST FLOORS AND FLOORS LTD. **is not responsible if there is any problem (moving, squeaking etc.) in the floor because of bad sub floor level**.
>
> [reproduced as written, bold emphasis added]

10. On May 29 and 30, 2017, the respondent did the installation, as discussed further below. On May 31, 2017, the applicant signed a receipt stating that she was satisfied with the job done.

11. The written contract does not expressly state the installed flooring will be "floating", but given the inclusion of underlay I infer that was the parties' original intention, which is not disputed by the respondent. However, the contract does not say that

glue will not be used at all, and I find in the circumstances the applicant has not proved that was an agreed term. My reasons follow.

12. It is undisputed the applicant was budget conscious. The respondent says that because the applicant declined to have the floor levelled, due to the additional cost of about $1,500, the installer used glue "to make the best out of what was given to us" so that movement of the floor was minimized.

13. A central issue in this dispute is what the respondent's installer S and the applicant discussed about levelling the floor. The applicant says that despite what the parties' written contract says, S verbally promised her on May 18, 2017 that he would check to see if the floors needed to be levelled. In her Dispute Notice, the applicant had said S told her he would take care of the levelling. In her submissions for this decision, the applicant says S promised her the respondent would give her the cost of levelling material at an estimated $75 per bag, with the cost to be determined once the carpets were removed. Elsewhere in her submissions and underlying evidence, the applicant emphasized the installer's broken English that made it very difficult for her to understand him.

14. The respondent says S told her at the outset the floor was not level and should be levelled. It denies that S made any promises otherwise.

15. In her reply submission, the applicant states that the respondent's submissions discount what S told her and her sister. I have no evidence before me from the applicant's sister. The applicant also replies that S "led us to believe" it was normal practice to check the floor level after carpet removal, and to give an estimate of cost if needed. I find "led us to believe" is more consistent with the applicant forming an impression about what S might do, rather than S saying he would take care of levelling the floor. The applicant says the installer did not mention any problems and she assumed it was all okay, and the installation proceeded while she was downstairs in her basement.

16. The applicant says that if they had given her an “unaffordable” levelling quote at the outset, she would have stopped the job and paid for work done to date.

17. On balance, I find the applicant has not proved that S made the comments about levelling that she says he made. I find it unlikely S would offer something verbally that was completely the opposite of the written contract the parties signed the same day.

18. In particular, I accept the respondent’s evidence that from the beginning it had told the applicant she needed to be sure the floors were level and that levelling was her responsibility. This is clear from the contract. I do not accept that the respondent’s installer told her it would check for levelling or that he told her the “floors were ok, no problem”. Given how the flooring had to be installed because it was not level, with glue in parts, I find it unlikely that S would make that statement. The applicant has said she had difficulty understanding what the installer was saying, and the applicant did not explain why she would rely upon that unclear conversation which contradicted the parties’ written contract.

19. Given all of the evidence before me, I consider the more likely scenario is that the installer could see the floors needed levelling but that the applicant wanted to proceed without the added levelling expense. It was only after the applicant realized how important leveling was, when she realized she had squeaking floors, that she was willing to consider any levelling at all. This is consistent with the applicant’s later decision in August 2017 to only have a part of the house levelled due to the associated expense, despite the respondent’s repeated advice that the whole area needed to be levelled.

20. As referenced above, after the applicant complained in July 2017, the respondent attended again and re-installed a portion of flooring on August 15, 2017. Leading up to this, on August 11, 2017 the applicant emailed the respondent:

> If the installers had checked for the floor level after they ripped the carpets out like they were suppose to, and said ok, it’s needs this much levelling, I would

have been ok with that. The installers with their extremely hard to understand English, indicated all was ok, no problem. Now I know they took care of the levelling with gluing many areas of the floating floor down and when the floor is taken up, the proof will be there.

21. When the respondent attended on August 15, 2017, it says the applicant only agreed to have the hallway levelled due to her financial constraints, which perpetuated the flooring problem. The respondent says it had recommended the entire floor be levelled, and that it told the applicant if she authorized this they would re-install the flooring at their cost, but only "in one go". The respondent did not agree to re-do the floor piece-meal. I find this submission is supported by the applicant's August 13, 2017 email exchange with the respondent, which ended with the applicant saying she only wanted the hallway "dip" levelled and "that will be it for levelling".

22. After the applicant again complained about the flooring in September 2017, the respondent offered again to re-do the flooring, but that the applicant would need to bear the costs associated with levelling the floor, as set out in the original contract. The applicant refused.

23. The applicant says that she hates the crinkling and creaking noises the floors make when walked on, "not to mention all the dips from the uneven floor". The applicant however also emphasizes that her complaint is not just about levelling, but includes other concerns, which based on her evidence is a broken baseboard under the kitchen sink, glue on the linoleum floor underneath the underlay, and underlay not entirely butted together.

24. There is no evidence before me as to the extent of the broken baseboard or the associated cost to fix it. I am not prepared to make any award in these circumstances. As for the underlay's gaps, the contract does not specify that there can be no gaps and there is no evidence before me, apart from the applicant's own assertion, that this was inappropriate in the circumstances. I dismiss this aspect of the applicant's claim.

25. As for the glue on the linoleum, the applicant says that on May 29, 2017 she had asked the installer to ensure the linoleum would remain good to use if she ever wanted to remove the laminate. The applicant says the floor is "100% ruined" because of where it was glued down. While I accept that there may be some damage to the linoleum due to the glue, I do not accept the parties agreed that the linoleum's condition would be preserved, given the installation of flooring on top of it. I find the applicant has not proved this was an element of the parties' contract, and here I note the written contract said nothing about preserving the linoleum.

26. The owner also is concerned that the laminate floor product's label says that it should be acclimatized on-site for 48 hours before installation. The applicant speculates that perhaps the flooring problems are in part due to the fact that the laminate was not acclimatized in her own home. The respondent says it was sufficient that the laminate acclimatized at its warehouse.

27. The applicant says 'every flooring company" she has spoken to since says the laminate flooring must be acclimatized to her house, as every home is different. Yet, the applicant did not provide any supporting documentation or statement from another flooring company. I find the applicant has not proved lack of acclimatization in her home has caused any damage. I dismiss this 'acclimatized' aspect of the applicant's claim.

28. In summary, the applicant signed a contract stating that she was responsible for levelling the floors, and she chose not to do it. Even if the installer told her they were "OK" (which is disputed), the respondent later offered to re-install the flooring for free if she had the floors levelled afterwards. The applicant's claim cannot succeed.

29. In other words, I find the parties' contract was for the installation of laminate and underlay, with the applicant making the choice not to level her floors due to cost. This is consistent with the parties' written contract which I find to be the best evidence of their agreement. The squeaking floors and "dips" are a result of the

unlevelled floor, and the applicant is in these circumstances responsible for that outcome.

30. Moreover, the respondent twice offered to re-do the applicant's floor, so long as she bore the cost of the levelling as per the parties' contract and so long as the respondent did the entire floor at once. In the circumstances, I find this was more than reasonable. While I have no doubt the applicant regrets not having her floor levelled at the outset, I have found the decision to proceed without levelling was hers and she must bear the consequences of it. I dismiss the applicant's claims.

31. In accordance with the tribunal's rules, I find the applicant is not entitled to reimbursement of tribunal fees and expenses, given she was not successful in the dispute.

32. The respondent seeks reimbursement of $650 in claimed dispute-related expenses. This claim is not an appropriate dispute-related expense, but rather is the subject of a counterclaim. I say this because it represents the respondent's charges for attending to the applicant's home in August 2017, which at the time it did as a courtesy but the respondent now says it wants to be paid given the work did not satisfy her. I would not order reimbursement of that sum given it was offered as a courtesy at the time, but I make no decision about it as there is no counterclaim before me. I dismiss the respondent's request for $650 on the basis that it is not an appropriate dispute-related expense.

ORDERS

33. I order that the applicant's claims, and therefore this dispute, be dismissed.

34. I also dismiss the respondent's claim for $650 in expenses.

Shelley Lopez, Vice Chair