



Civil Resolution Tribunal

Date Issued: June 21, 2018

File: SC-2017-006797

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Parissay v. Archstone Kitchens Inc.*, 2018 BCCRT 275

B E T W E E N :

Avazeh Parissay

APPLICANT

A N D :

Archstone Kitchens Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about granite countertops the respondent Archstone Kitchens Inc. installed in the applicant Avazeh Parissay's home.

2. The applicant says she was away during the November 6, 2017 installation and that her boyfriend and mother briefly looked at the countertops before she agreed to pay the respondent's bill, which she did remotely. When she returned on November 11, 2017, she found the dark kitchen countertops were dirty and when she cleaned them on November 12, 2017 she realized they were scratched.
3. The applicant wants the respondent to either fix the scratches or pay her \$3,000 so she can replace the countertops. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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

8. The issues in this dispute are whether the respondent damaged the applicant's granite countertops at the time of their installation, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. 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.
10. The applicant says that the brand new kitchen granite countertops were scratched either before or during their installation by the respondent. The applicant paid the respondent to cut the right size and then finish the surfaces. I agree the photos show scratches on the countertops. I also agree that based on the circular and deep scratch pattern on the granite surface, it is likely that tools caused the scratches.
11. The respondent installed the countertops while the applicant was travelling for business. She had her mother and boyfriend attend her apartment to let the respondent in and out, and they sent her photos of the respondent's installation. The applicant says the respondent insisted on payment immediately, and so she paid them remotely.
12. Based on the photos, I accept the respondent left the apartment dusty and dirty. I agree with the applicant this explains why her mother and boyfriend did not notice the scratches on the dark countertops.
13. After the applicant returned home on November 11, 2017, she noticed the dirt in the hallway and in her apartment. I accept this evidence, noting it was 4 days after the installation. She cleaned the countertops the next day on November 12, 2017 and noticed the scratches. She immediately contacted the respondent.

14. The respondent submits that granite does get scratched depending “on how you use it and maintain it”. I find this submission irrelevant given the applicant had never used the countertops at all, as they were brand new. Contrary to the respondent’s submission, I accept the applicant’s explanation of why her mother and brother did not notice the scratches during their brief inspection, namely that the countertops were dark and they were covered in dust and dirt from the installation process.
15. The material point is that the scratches were noticed and reported by the applicant almost immediately upon her arrival home, after she cleaned the countertops. I find it unlikely that the applicant damaged the countertops herself during cleaning. While I accept the respondent’s evidence that natural stone like granite has imperfections, including minor scratches, I find the scratches found in the applicant’s countertops are scratches made by a tool, rather than imperfections inherent in the stone.
16. In summary, I find the respondent liable for the scratches on the applicant’s countertops.
17. On November 6, 2017, the applicant paid the respondent \$3,333.33 plus \$166.67 GST, for a total of \$3,500. The invoice is for both the kitchen countertops at issue, and a bathroom countertop. The invoice also includes 2 undermount sinks and the removal of the applicant’s old countertops. There is no breakdown in the invoice. While the applicant mentioned she noticed a scratch on her new bathroom countertop, that item is not an issue in this dispute.
18. Ordering a party to do something is called ‘specific performance’. Specific performance is generally only ordered if monetary compensation will not suffice or is not appropriate. I have no evidence before me as to what it would cost to fix the scratches or to replace just the kitchen countertop piece. I also have no evidence before me as to whether the scratches can be reasonably repaired.

19. Bearing in mind the principle of proportionality, I have decided asking the parties for evidence about repairing or replacing the countertop is not warranted. Therefore, I order the respondent to reasonably fix the scratches on the applicant's kitchen countertop. If it is not possible to repair the scratches so that they are no longer visible, then I order the respondent to replace the applicant's kitchen countertop, with the same granite, at its expense.
20. The applicant was successful. In accordance with the Act and the tribunal rules, I find the applicant is entitled to reimbursement of \$125 in tribunal fees that she paid.

ORDERS

21. Within 30 days of the date of this decision, I order the respondent to:
 - a. at a date and time agreed upon in writing by the parties, repair the scratches on the applicant's kitchen countertop, at the respondent's expense, so that the scratches are no longer visible, and
 - b. pay the applicant \$125 as reimbursement of tribunal fees.
22. If it is not possible to complete the repair ordered in paragraph 20(a) above, then I order the respondent to replace the applicant's kitchen countertop at the respondent's expense, within 45 days of this decision, at a date and time agreed upon in writing by the parties.
23. The applicant is entitled to post-judgment interest as applicable.
24. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's decision.

25. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair