



Civil Resolution Tribunal

Date Issued: October 4, 2018

File: SC-2018-000701

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grover v. Ghuman*, 2018 BCCRT 594

B E T W E E N :

Justin Grover

APPLICANT

A N D :

Bhupinder Ghuman

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a house sale. The applicant, Justin Grover, says the respondent, Bhupinder Ghuman, failed to provide a completed second kitchen by the noon February 2, 2017 possession date, as agreed. The applicant says the

second kitchen was incomplete, as the cabinets, countertop, and sink were not installed by the deadline. The applicant seeks \$3,237.40 as reimbursement for his cost to finish the kitchen.

2. The respondent acknowledges he had not finished the second kitchen by noon on February 2, 2017. However, the respondent says he was “past our deadline by like 2 hours” and he was more than willing to put in the kitchen at no labour cost to the applicant. The respondent offered the applicant \$1,000 but the applicant refused. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the tribunal’s formal written reasons. 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 find I am able to fairly resolve this dispute based on the documentary evidence and written submissions before me. An oral hearing is not necessary.
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.

ISSUE

7. The issue in this dispute is to what extent, if any, the respondent owes the applicant \$3,237.40 for costs to finish the second kitchen that the respondent did not complete.

EVIDENCE AND ANALYSIS

8. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
9. The applicant says the completion of the second kitchen, by the February 2, 2017 noon deadline, was essential because his wife is a baker and was required to have that separate kitchen for her business. It is undisputed that the applicant explained this to the respondent in advance. The applicant says that as the second kitchen was not completed on time, the applicant's wife had to cancel some of her contracts as she did not have the second kitchen ready as required.
10. The parties' December 2016 contract of purchase and sale stated that vacation possession would be at 12 p.m. on February 2, 2017. The contract also included this term (my bold emphasis added):

The Buyer and Seller agree that it is a **fundamental term of this contract** that the seller include upper and lower cabinets, with counter top and double sink, to be constructed of the same quality products as the rest of the house. The length of the cabinet will be 48 inches. [C]ounter tops will be laminate.

11. I accept the applicant's evidence that the kitchen's completion by noon on February 2, 2017 was essential to the parties' contract. As noted, it is undisputed that the respondent did not meet this deadline.

12. What is the appropriate remedy for this breach of a fundamental term of the contract? I find in the circumstances the applicant was entitled to end the contract and claim his losses that resulted from the respondent's breach. While it may be true that the respondent could have finished the kitchen later that day on February 2, 2017, the fact remains that the respondent breached a term it knew and agreed was fundamental to the parties' contract.
13. The purpose of a damages award in a contract case is to place the innocent party in the position that it would have occupied had the contract been carried out by both parties. Here, if the respondent had met the noon deadline, the applicant would have had the completed kitchen. The courts have held that if parties could only recover their "reliance interest" (meaning their out-of-pocket expenses), there would be no incentive to perform the contract.
14. So, what are the applicant's losses, as a result of the respondent's breach of contract? It is undisputed that the respondent did not install the countertop or sink, as agreed. There is no evidence that the respondent ever bought a countertop or sink for the kitchen. However, the respondent did buy cabinets, which I find were on the site. I do not need to determine to what extent the cabinets were completely installed, because the fundamental point is that I find their installation was not complete. The applicant was not satisfied with the way the cabinets were being installed and the respondent removed them and took them away at the applicant's request. While the applicant arguably could have retained the cabinets and had someone else install them, the applicant says the respondent was late in doing the work and appeared ill-prepared to do it properly. Given the tenor of the parties' submissions, I find this concern was reasonable. Therefore, in all of the circumstances I find the applicant is entitled to compensation for the cabinets' replacement.
15. The respondent gave the applicant a cheque for \$1,000, but says it sat in the applicant's realtor's office for 4 months and it was never picked up. The respondent says his realtor then contacted him and advised him that the applicant

was no longer interested in taking it. The applicant has not explained why the installation apparently did not occur for 9 months and yet he could not wait for a few hours for the respondent to finish the kitchen, even though the respondent was admittedly past the noon deadline. Nonetheless, I have found above that the respondent breached a fundamental term of the parties' contract. I have also found the applicant sustained a loss due to the respondent's failure to complete that kitchen, and the appropriate damages award is to compensate the applicant for the completed kitchen the respondent failed to provide.

16. The applicant provided invoices and receipts for what he spent to buy cabinetry and countertops and complete the second kitchen installation. The applicant says these receipts total \$4,740.94, but one receipt shows a \$280.35 deduction was applied in the purchase of a countertop. Further, the applicant acknowledges that he added 3 extra cabinets, but has not included those "extras" in his claim and so he claims only \$3,237.40. I find the appropriate result is to deduct \$280.35 from the \$3,237.40, for a net total of \$2,957.05.
17. The applicant is entitled to pre-judgment interest on the \$2,957.05 under the *Court Order Interest Act* (COIA), from October 19, 2017, the date of the applicant's installation invoice.
18. In accordance with the Act and the tribunal's rules, I find the applicant is also entitled to reimbursement of \$200 in tribunal fees.

ORDERS

19. Within 30 days of this decision, I find the respondent must pay the applicant a total of \$3,190.24, broken down as follows:
 - a. \$2,957.05 in damages for the respondent's failure to complete the second kitchen,
 - b. \$33.19 in pre-judgment interest under the COIA, and

- c. \$200 in tribunal fees.
20. The applicant is entitled to post-judgment interest under the COIA, as applicable.
 21. 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 final decision.
 22. 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