



Civil Resolution Tribunal

Date Issued: November 8, 2018

File: SC-2017-005339

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yilmaz v. Restoration Hardwood Ltd.* 2018 BCCRT 700

B E T W E E N :

ABDULLAH Yilmaz

APPLICANT

A N D :

Restoration Hardwood Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Susan E. Ross

INTRODUCTION

- 1) This is a dispute over payment of the applicant Abdullah Yilmaz' invoice for carpet installation work he contracted to do for the respondent Restoration Hardware Ltd.
- 2) The applicant claims that the respondent owes him \$1,600. He claims an added \$400 as a penalty for not getting paid on time.

- 3) The respondent denies that the full amount of the applicant's invoices is owing because it says the applicant made mistakes in his work causing extra expenses for the respondent and because of the inconvenience of this dispute.

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 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. It 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 without an oral hearing because the issues could be resolved on the written evidence and submissions without seeing or hearing the parties in person.
- 6) Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - 1) order a party to do or stop doing something;
 - 2) order a party to pay money;
 - 3) order any other terms or conditions the tribunal considers appropriate.

ISSUES

- 7) The issues in this dispute are:
 - a. Did the applicant make mistakes in his work that caused the respondent to incur extra expenses?
 - b. Is either party entitled to a penalty amount?

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 referenced the evidence and submissions as necessary to give context to my decision.

Issue # 1 – adequacy of the applicant's work

- 9) The contract between the parties is the respondent's purchase order dated July 26, 2017. It shows the parties' agreement that the applicant would install carpet and underpad in specific rooms and stairways in the basement and upstairs of the respondent's customer's home. The description of the work included the installation of Pheonix ST145 carpet (spelled as written) in the basement rec room, suite bedroom, bullnose stairs and landing. The total cost of the purchase order was \$1,354.24, including GST. The purchase order provided for the carpet to be on site for the applicant to install and for him to pick up the underpad.
- 10) On July 29, 2017, the applicant gave an invoice to the respondent for \$1,596.79, including GST. The invoice itemizes three amounts: \$1,295.75 (carpet job), \$150 (cleaning space and moving items) and \$75 (patching cracked concrete). The respondent disputes only the \$1,295.75 item for carpet installation.
- 11) The applicant says he did the job he was contracted to do and is entitled to be paid his invoice in full. He says the respondent's sales person told him he had failed to carpet one room and there was not enough carpet to do that room because the

applicant had made a mistake cutting the carpet. The applicant denies cutting the carpet wrong.

- 12) The respondent says the applicant did not install the carpet in the basement suite because he claimed the respondent had not supplied enough carpet. The respondent says it did supply enough carpet and the reason the applicant did not have enough was because he failed to follow the cutting grid the respondent gave him. The respondent says that the applicant's cutting mistake required it to order more Pheonix ST145 carpet and hire a different contractor to install it.
- 13) The respondent has provided its gridded basement floorplan and cutting grid for the Pheonix ST145 carpet, as well as receipts for its initial and extra carpet costs and its extra installation cost using the different contractor.
- 14) I find that the cutting grid does allocate for the basement suite room and the respondent's documents show extra material (\$690.05) and labour (\$150) costs for the Pheonix ST145 carpet part of the job.
- 15) The applicant has provided no evidence or reply submission addressing the respondent's extra material and labour costs, although he had an opportunity to do so. The applicant also has not denied that the respondent gave him the cutting grid.
- 16) The applicant has provided a shipping receipt for 150 square yards of under pad. It is unclear how this relates to the applicant's claim. In any event, I find this document does not establish that the respondent failed to supply enough Pheonix ST145 carpet or failed to give the applicant the cutting grid that is in evidence.
- 17) On balance, I find the respondent's documents are reliable and find that the cutting grid was provided to the applicant. The respondent seeks a \$809.24 deduction from the total \$1,596.79 billed in the applicant's invoice, on account of its extra material and labour costs caused by the applicant's cutting mistake. I conclude that the applicant has not proven his claim for full payment of his invoice. The respondent is entitled to deduct \$809.24. The total amount owing by the respondent to the applicant is \$787.55.

18) Issue #2 – penalty amounts

- 19) The applicant claims \$400 as a penalty for not getting paid on time. I decline to order this as I find that no penalty amount was agreed to by the parties. I also accept the respondent's evidence that it offered to pay the applicant the amount I have found is owing, \$787.55, but the applicant declined to accept that amount.
- 20) The respondent claims a deduction of \$500 from the amount it owes the applicant as a penalty for the inconvenience of this dispute. The respondent has not provided evidence of any actual costs behind this claimed deduction and the tribunal does not generally award amounts for mere inconvenience. I therefore decline to order a deduction.

Conclusions

- 21) I find that the total amount owing by the respondent to the applicant is \$787.55.
- 22) Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. In this case, I decline to order reimbursement of the applicant's tribunal fees because he has succeeded in recovering only the amount that the respondent already offered to pay him.

ORDERS

- 23) Within 30 days of the date of this order, I order the respondent Restoration Hardwood Ltd. to pay the applicant Abdullah Yilmaz a total of \$798.61, broken down as follows:
- a) \$787.55 for unpaid carpet installation work owed to the applicant; and
 - b) \$11.06 in pre-judgment interest under the *Court Order Interest Act*.
- 24) The applicant's remaining claims are dismissed. The applicant is entitled to post-judgment interest, as applicable.

- 25) 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.
- 26) 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.

Susan E. Ross, Tribunal Member