



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nowak v. Scott Russel Watch (Doing Business As Van Green Flooring)*,
2018 BCCRT 704

B E T W E E N :

Renata Anna Nowak

APPLICANT

A N D :

Scott Russel Watch (Doing Business As Van Green Flooring)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

- 1) This is a contract dispute arising from renovation work. The applicant, Renata Anna Nowak, claims \$1,850 for returned flooring.

- 2) The respondent, Scott Russel Watch (Doing Business As Van Green Flooring), says that the applicant is only entitled to \$354.67 after deductions for work performed, a cancellation fee, materials not returned and restocking fees.
- 3) The 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 relationships between parties that may continue after the dispute resolution process has ended.
- 5) The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. I find that I can fairly resolve this dispute by writing based on the documents and written positions before me because there are no significant issues of credibility or other reasons that might require an oral hearing.
- 6) The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether 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.

ISSUE

- 8) The issue in this dispute is whether, and to what extent, the applicant is entitled to a refund of the \$1,850 paid for flooring materials that were returned.

EVIDENCE AND ANALYSIS

- 9) The applicant bears the burden of proof on a balance of probabilities. I have commented upon the evidence and submissions only to the extent necessary to give context to these reasons.
- 10) The applicant hired the respondent to remove flooring and install new flooring bought through the respondent. The parties disagree about the nature of their agreement. I find that the parties made separate agreements for labour and materials. My reasons follow.
- 11) In reaching this conclusion, I have not entirely accepted the position of either party. The applicant says that she had a contract with the respondent for labour but did not have a contract for materials. The respondent says that there was a single contract for labour and materials and that the three payments by the applicant were deposits. The respondent also says that if there had been two contracts he would have structured his labour costs differently.
- 12) I find that the communication and conduct between the parties shows a separation of a labour contract and a materials contract. The terms and payments were close in time but separate. The respondent himself distinguished one payment as the “labor deposit.” And, while I accept that the respondent may have discounted his price on labour because he expected to supply the product, he did not tell the applicant this. The respondent’s desire does not alter the parties’ clear words in the text messages.

- 13) The parties agreed that the applicant would pay the respondent \$1,100 including taxes for labour. Specifically, to remove and dispose of flooring, level the floor, deliver materials and install laminate, underlay, and transitions. This was the labour contract.
- 14) On the same day the parties also agreed that the applicant would pay the respondent \$1,400 for flooring materials. I find that the agreed flooring materials were 400 square feet of oak flooring and underlay, 3 transition strips and new baseboards. The applicant paid the respondent \$1,400 that day. The respondent then sent an invoice showing \$1,250 for oak flooring and 5% in GST of \$150.
- 15) Although the invoice records 5% GST as \$150, 5% would be \$62.50. If the invoice had included a charge for 7% PST, as subsequent invoices for materials do, 7% would be \$87.50. Together these percentages would be \$150 on the total, which I find is what the respondent was intending.
- 16) The applicant returned flooring choices twice, with the respondent's agreement, before deciding to buy flooring from someone else. It is undisputed that the respondent received the flooring back and did not provide a refund.
- 17) It is also undisputed that on a date agreed to by the parties the respondent removed the flooring, underlay and baseboards in the applicant's home and levelled sections of concrete. On that day the respondent told the applicant that the cost of labour would now be \$1,250. At the same time, the respondent requested a \$500 "labor deposit" and it is undisputed that the applicant paid it. The parties agree that the defendant did not end up installing flooring in the applicant's home.
- 18) The parties' relationship broke down and 9 days later the respondent sent the applicant a final invoice offering a \$354.67 refund. The final invoice lists labour costs as a cancellation fee of \$800, levelling for \$200, removal and dumping of flooring and baseboards for \$120, and deliveries for \$100. The labour costs total \$1,220 plus 5% GST of \$61. Under a separate heading, the final invoice details materials costs for underlay of \$236, a restocking fee for the first flooring of \$251.79

and a restocking fee for the second flooring of \$150. The material costs total is \$637.79 plus 5% GST of \$31.89 and 7% PST of 44.65. The total for the final invoice is \$1,955.33 and, \$2,350 is deducted for money previously paid by the applicant leaving a credit of \$354.67.

- 19) After receiving the final invoice, the applicant told the respondent that she did not want the underlay supplied as she believed it was not in good condition. There is no evidence before me of what happened to the underlay.
- 20) I find that the applicant's claim relates to the contract for materials between the parties and that in the end the parties had an agreement for the respondent to supply 400 square feet of flooring, the same amount of underlay, 3 transition strips and new baseboards for \$1,400 plus GST and PST.
- 21) The applicant says that the respondent owes her \$1,850 for the flooring materials she returned or did not receive. On the evidence before me, I find that the applicant is entitled to a refund minus the restocking fees and cost for underlay in the respondent's final invoice. My reasons follow.
- 22) The applicant says that she agreed to pay a restocking fee for returning the first flooring but that the respondent told her in person that he knew the supplier and was able to cancel the order without cancellation or restocking fees. I find that a restocking fee was charged, and that the applicant agreed to pay it though she may not have realized the breakdown of the costs. Specifically, when the applicant asked to change the first flooring to the second flooring the respondent told her that it would cost \$450 more for the change. The applicant agreed to pay the \$450 more. The respondent sent an invoice the same day for the change which detailed the cost breakdown including a restocking fee. It is undisputed that the applicant paid the \$450.
- 23) With the return of the second flooring, the applicant says that she agreed to pay a 15% restocking fee. In the final invoice the respondent charged the applicant a \$150 restocking fee. On the evidence I am unable to say whether the fee charged by the

respondent is 15%. On balance, given the costs in issue and the applicant's agreement to pay 15%, I find the \$150 restocking fee reasonable.

- 24) The respondent says that the underlay costs should not be refunded. I agree. The applicant has the burden of proof and there is no evidence that the underlay was returned. The cost of the underlay detailed in the final invoice is \$236. The applicant does not dispute that cost, and, on balance, I find it to be reasonable.
- 25) The respondent says that the applicant's award should be reduced by the cost of his labour set out in the final invoice. I disagree. Given the separate contracts' terms, I take the respondent to be asking for equitable set off. In that case, the respondent has the burden of proof for the set off and I find it has not been met. Even if I had thought that burden was met, I would not award the set off. My reasons follow.
- 26) The applicant paid the respondent \$500 for labour. The labour costs in the final invoice after applying tax is a cancellation fee of \$840 and \$441 for levelling, removal, dumping and deliveries. There is no evidence that the parties agreed to a cancellation fee and it is not clear that the applicant cancelled the labour contract. If the respondent did the levelling, removal, dumping and deliveries as set out, there would be no set off. On balance, I would not allow the respondent's claim for a cancellation fee and as a result no set off would be warranted.
- 27) The respondent also says that he suffered thousands of dollars in damages from lost income when rescheduling the applicant's installation, including an unsubstantiated claim of \$950 for hiring other tradespeople. The respondent also says that the applicant defamed him damaging his reputation and business. Quite apart from the fact that the tribunal has no jurisdiction over defamation, I find that the respondent is making substantive claims for which he would need to file a counterclaim. There is no counterclaim before me. I refuse to resolve the question of these claimed damages.

- 28) Given the above, I find that the respondent must pay the applicant \$1,135.68 plus pre-judgment interest under the *Court Order Interest Act* (COIA), from February 2017. In reaching this total I began with \$1,850.01 and deducted 5% GST of \$82.59 and 7% PST of \$115.63 and then deducted the restocking fees of \$251.79 and \$150 as well as the underlay cost of \$236. The result was \$1014. I then added 5% GST of \$50.70 and 7% PST of \$70.98 for a total of \$1,135.68.
- 29) The applicant also claims \$22.68 for registered mailing costs supported by receipts. I accept that the applicant received the first mailing back resulting in a second mailing to the place of business. I find the claimed costs for dispute-related expenses reasonable in the circumstances and I allow them.
- 30) The applicant was substantially successful. Given that, I find that the respondent should reimburse the applicant \$125 for her tribunal fees.

ORDERS

- 31) Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,294.31, broken down as follows:
- a) \$1,135.68 as reimbursement for returned materials,
 - b) \$10.95 in pre-judgment interest under the *Court Order Interest Act* (COIA),
 - c) \$125 in tribunal fees, and
 - d) \$22.68 for dispute-related expenses.
- 32) The applicant is entitled to post-judgment interest under the COIA, as applicable.
- 33) 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.

- 34) 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.

Megan Volk, Tribunal Member