



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Parsons et al v. TM TILEMART LTD. et al*, 2019 BCCRT 36

B E T W E E N :

Lindsay Parsons and Matthew Parsons

APPLICANTS

A N D :

TM TILEMART LTD. and DIRECTBUY FLOORING (2013) LIMITED

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicants, Lindsay Parsons and Matthew Parsons, say the respondent TM TILEMART LTD. (Tilemart) did a terrible job of installing their kitchen backsplash. The applicants claim \$1,196 to repair the tile installation.
2. The role of the respondent DIRECTBUY FLOORING (2013) LIMITED (DirectBuy) is unclear, as discussed below. However, as also discussed below, only the respondent DirectBuy formally participated in this proceeding, although Tilemart provided a statement.
3. The applicants are represented by Lindsay Parsons. DirectBuy is represented by Hardev Mangat, who appears to be an employee or principal of Tilemart.

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 118 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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.

ISSUE

8. The issue in this dispute is to what extent, if any, each of the respondents owe the applicants a refund for a poor tile installation in the applicants' kitchen backsplash.

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 submissions below as necessary to explain my decision.
10. This dispute has proceeded somewhat unusually. The respondent DirectBuy filed a Dispute Response saying it was the "wrong party", as it was only a wholesaler and had no direct retail relationship with the applicants. All of the applicants' evidence and submissions are about the tile installation work it says Tilemart did. The applicants rely on Tilemart's invoices for part of its refund claim. There are no allegations against DirectBuy. Given these circumstances, I dismiss the applicants' claims against DirectBuy.
11. The respondent Tilemart did not file a Dispute Response as required, despite being properly served. Ordinarily, this would mean Tilemart is in default and the applicants would be entitled to an assumption of liability against Tilemart. However, in this case, DirectBuy's only submission was a 'copy and paste' from an undated letter from Tilemart clearly written in support of its position in this dispute.

12. Tilemart's letter simply states that Ms. Parsons hired it to "do her kitchen backsplash". Tilemart stated it "sent our guys" to start the job but that Ms. Parsons was rude, which she denies. Tilemart stated that Ms. Parsons "let them" finish the job and that it called Ms. Parsons the next day at which point Ms. Parsons stated everything was good. However, Tilemart stated that later that evening, Ms. Parsons called back complaining about various aspects of the installation. Tilemart stated it "talked to my guys" and that it told Ms. Parsons "there's nothing wrong with the job", but if she still had concerns to have Tilemart return, and Ms. Parsons said no and that she wanted a refund. Tilemart stated that in their "terms and conditions" it gives 2 years' warranty on all installation jobs, although those terms and conditions were not provided.
13. I find that the applicant's photos of Tilemart's tile job, along with a September 14, 2017 quote from a third party tile setter, show that Tilemart's tiling job on the kitchen backsplash was inadequate. In particular, the repair quote from another installer was for \$2,000 plus GST, and the author stated:

The re-tiling of the back-splash is necessary for the following reasons:

Several tile are set backwards, there is a pattern that must be followed with a beveled edge tile, the pattern was abandoned in some areas.

The tile edging is very poor quality. There are jagged edges and open joints where the joints should be tight. The cut edge of many tiles appear to have been made with a hand held angle grinder, not a wet saw. Almost all horizontally cut tiles have a very jagged edge.

The precision of cut tiles is completely lacking at most corners. Grout has been used to fill these voids where the cut was made much too big.

Chipped tiles were used.

Tile edging was cut too short in several instances.

The tile was not thoroughly cleaned of mastic or of excess grout and grout haze.

14. While I have considered Tilemart's statement above, I find it does not address the specific deficiencies set out above. On balance, I accept those deficiencies existed. The applicant denies Tilemart made any effort to repair the work and was a "no show" twice. I prefer this evidence over Tilemart's statement, which I find was vague. I also note that Tilemart never formally filed a Dispute Response, which was required under the tribunal's rules. I find the applicants were entitled to seek a repair elsewhere, rather than have Tilemart fix the work.
15. The applicants paid \$834.40 to Tilemart on August 15, 2017, by Visa credit card. The applicants claim only \$1,196, rather than the quoted amount of \$2,000 for a new backsplash, as they received some reimbursement from Visa for what they paid to Tilemart. The applicants say that if they receive an order for \$1,196 they will not receive a free backsplash, because they still will have paid the "initial amount for our backsplash". I find this refers to the cost of the tile, which was not included in Tilemart's invoice. On balance, I find that the applicants should be entitled to an order for \$1,196, which together with the partial Visa refund they say they received (they did not specify the amount), will enable them to have the backsplash repaired for \$2,000 plus GST.
16. I do not order pre-judgment interest under the *Court Order Interest Act*, as the evidence is that the applicants have not yet repaired the backsplash and therefore have not yet incurred the repair expense.
17. The applicants were successful in this dispute. In accordance with the Act and the tribunal rules, I find they are entitled to reimbursement of \$125 in tribunal fees and \$13.50 in dispute-related expenses, which reasonably relate to service of the Dispute Notice on Tilemart.

ORDERS

18. I order the applicant's claims against the respondent DirectBuy are dismissed.
19. Within 14 days of this decision, I order the respondent Tilemart to pay the applicant a total of \$1,334.50, broken down as follows:
 - a. \$1,196 in damages,
 - b. \$138.50, for \$125 in tribunal fees and \$13.50 in dispute-related expenses.
20. The applicant is entitled to post-judgment interest from Tilemart, 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