



Civil Resolution Tribunal

Date Issued: January 18, 2019

File: SC-2018-006650

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Salihovic v. SMART AND EFFICIENT HOME SOLUTIONS LTD.*,
2019 BCCRT 78

B E T W E E N :

Eliane Salihovic

APPLICANT

A N D :

SMART AND EFFICIENT HOME SOLUTIONS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about an alleged payment for a quartz countertop. The applicant, Eliane Salihovic, says the respondent's representative A came to her house for an estimate and the applicant gave her cash. The applicant says the respondent,

SMART AND EFFICIENT HOME SOLUTIONS LTD., denies she paid the cash and filed a lien against her home for payment of the countertop. This lien apparently followed a reversal of the credit card charge the respondent originally as payment for the countertop. The applicant claims \$3,744, which she says is what she paid to have the lien removed.

2. The respondent denies receiving any cash payment and says the applicant has provided nothing to prove her allegations. The applicant is self-represented. The respondent is represented by Wei Dong Ou, who I infer is the respondent's owner.
3. For the reasons that follow, I dismiss the applicant's claims.

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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 the recent decision *Yas v.*

Pope, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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 whether the respondent owes the applicant \$3,744 in respect of the parties' agreement about a quartz countertop.

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 referenced the evidence and submissions as necessary to give context to my decision.
10. The respondent provided the relevant chronology. On March 7, 2018, the applicant ordered countertops. It is undisputed the job was finished before the end of March and there is no issue before me about the quality of the work. The issue in this dispute is the method of payment and whether the applicant paid for the countertop.
11. The applicant alleges that the respondent's representative A came to her house to provide an estimate for a quartz countertop and the applicant paid her "cash". The applicant says A took her cash and "used some credit card". In contrast, the respondent says the applicant provided a credit card that was not her own, and the amount was later charged back by the credit card provider. The respondent's

evidence shows it charged \$3,024 on March 7, 2018, but that this was charged back on April 10, 2018. Later, the respondent showed the card provider it had done the job correctly, but then on May 10, 2018 the credit card company advised the respondent that it had to again charge back the \$3,024 because the credit card used was not the applicant's.

12. The applicant says she has 2 testimonials from witnesses who were present when she gave A the cash. However, the applicant provided no evidence at all to support her claims, and in particular no witness statements. The respondent's submission notes the applicant had alleged on Facebook that she had given A \$3,024 cash, but did not obtain any receipt or acknowledgement from A.
13. Elsewhere, the applicant submits A sent her an email thanking her, without any reference to the method of payment. Yet, again, the applicant provided no evidence in support of this statement, and in particular did not provide the alleged email from A.
14. On balance, I prefer the respondent's evidence about what happened. I find the applicant's account simply lacks credibility and does not have the ring of truth to it. Further, there is simply no evidence to support the applicant's assertions, despite her statements that supporting evidence exists. I also agree with the respondent that if the applicant had made such a substantial cash payment to A, over \$3,000, it is more likely the applicant would have asked for a receipt. I also find it likely that the applicant would be able to provide some record, such as a bank statement, to support such a substantial payment. Yet the applicant provided nothing.
15. Finally, the applicant's claim is framed as money required to repay her for removing the respondent's lien. The applicant provided no evidence about the lien or the expenses she incurred in respect of it. While I have no jurisdiction over liens as set out in the *Builders Lien Act*, I find the applicant's claim is simply unproven and I find it is not established that the *Builders Lien Act* applies in these circumstances.

16. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful in this dispute I find she is not entitled to reimbursement of \$175 in tribunal fees.

ORDER

17. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair