



Civil Resolution Tribunal

Date Issued: February 19, 2019

File: SC-2018-001688

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stewart v. TM TILEMART LTD. et al*, 2019 BCCRT 197

B E T W E E N :

Carolyn Stewart

APPLICANT

A N D :

TM TILEMART LTD., Navita Mangat, Jaswinder Khangura, and Hardev Mangat

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Carolyn Stewart, says the respondents did an inadequate job installing waterproofing and tile in her bathroom, which caused her damages after

she had to hire someone to re-do it. She also says the respondents damaged her tub. The applicant claims \$3,518 in damages.

2. The respondent TM TILEMART LTD. (Tilemart) sold the applicant the tile and contracted with the applicant to install it. While not entirely clear, it appears Mr. Khangura and possibly Navita Mangat and Hardev Mangat were employees or principals of Tilemart. As discussed below, Navita Mangat and Hardev Mangat did not respond to this dispute, despite being properly served.
3. The applicant is self-represented. Jaswinder Khangura represents himself and Tilemart.
4. For the reasons that follow, I substantially allow the applicant's claims against Tilemart, and dismiss them against the personal respondents.

JURISDICTION AND PROCEDURE

5. 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.
6. 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 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.

7. 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.
8. 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

9. The issue in this dispute is whether the applicant is entitled to \$3,518 in damages related to faulty bathroom waterproofing and tile installation.

EVIDENCE AND ANALYSIS

10. 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.
11. As discussed below, the applicant's contract was with the corporate respondent Tilemart. There was no agreement with the personal respondents directly. For this reason, I dismiss the applicant's claims against the personal respondents. My comments below address Tilemart's liability.
12. It is undisputed that on June 2, 2017 the applicant placed a special order for floor and wall tile from Tilemart for her bathroom. She paid \$1,090.84.
13. It is also undisputed that the applicant later hired Tilemart to install the tile in the bathroom. The parties agreed that Tilemart would do the work on August 10 and 11, 2017. On August 2, 2017, the applicant paid a deposit of \$1,300 towards Tilemart's

\$2,572.74 invoice 5367B dated August 2, 2017, which was for the purchase of special order Hardy board, tiles, “kerdi cloth”, waterproofing, and trims, plus installation. The installation part of the invoice totaled \$1,170 plus tax, with the balance being for materials. The applicant says this \$2,572.74 was more than the \$1,200 quote she had earlier received, and that Mr. Khangura explained the increase was due to the extensive waterproofing the applicant’s spouse wanted done. As noted below, the applicant later successfully had the \$1,300 MasterCard charge reversed.

14. I find the applicant’s agreement with Tilemart for tile installation agreement clearly included waterproofing as part of the tiling job in the applicant’s bathroom. This is consistent with Tilemart’s August 2, 2017 invoice.
15. The applicant’s photos show uneven tiles, rough grout and grout staining or spread across tile surfaces, holes in the grout, grout haze, mismatched grout colouring, and gaps in the caulking and in the tilework. They also show significant debris left behind.
16. On August 19, 2017, the applicant wrote to Mr. Khangura, who was Tilemart’s representative for the parties’ contract, and told him the bathroom job had been completed without the waterproofing and that she had a number of concerns she wanted addressed. I reject Mr. Khangura’s submission that “we did the waterproofing” or that the applicant advised Tilemart that she was happy with the job. This is simply not consistent with the weight of the evidence before me.
17. I also note Mr. Khangura’s other submission that “when we started the job my installers did few mistakes”. In his submission for this decision, Mr. Khangura indicates he had his installers fix the waterproofing and that the applicant approved it before the tiling work proceeded. Yet, in the Dispute Response he filed at the outset of this proceeding, Mr. Khangura stated the applicant refused to let him fix the deficiencies. The apparent inconsistency and vagueness of these submissions, causes me to conclude Mr. Khangura’s evidence is less reliable than the applicant’s. Where there is a conflict, I prefer the applicant’s evidence.

18. Based on the applicant's telephone record and an audio recording of a conversation in which the applicant and Mr. Khangura discussed the expected fixes, I find that Mr. Khangura said Tilemart's workers would return on August 29, 2017 to review the work and what was required to fix it. I accept the applicant's evidence that no one from Tilemart showed up on August 29. On September 15, 2017, the applicant successfully disputed the \$1,300 MasterCard charge that was used to pay the deposit. On October 13, 2017, the applicant found an undated note on her door that appeared to be from Tilemart, indicating they were available to fix the tile. At that point, I accept that it was too late because the applicant had reasonably already found someone else to fix the work.
19. In particular, the applicant provided a September 4, 2017 invoice from Rightway Tile for \$5,638.75. This invoice included the removal of "old tile and drywall" because the tile and existing membrane in the shower area "was not waterproofed correctly". The invoice also set out removal of tile and drywall beside and behind the vanity "due to poor workmanship (tile lipage uneven cuts and top of tile out of level)". In addition, this invoice included removal of floor tile "due to poor workmanship and excessive height at doorway", plus disposal of old tile and drywall. It included waterproofing and the supply and installation of new tile.
20. I accept Rightway Tile's assessment that Tilemart's job was inadequate and in particular lacked waterproofing, which should have been properly included.
21. The applicant claims \$3,518. I find this amount is reasonable, as it reflects the difference between the \$5,638.75 Rightway Tile invoice and Tilemart's \$2,572.74 quote. It also reflects the \$399.99 plus tax replacement cost for the applicant's tub, for which the applicant provided a Costco receipt. I accept the applicant's undisputed evidence that Tilemart's workers damaged her tub and that she is entitled to reimbursement for its replacement.
22. In summary, the applicant is entitled to \$3,518 in damages. She is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on that amount, from September 4, 2017.

23. In accordance with the Act and the tribunal's rules, I find the successful applicant is entitled to reimbursement of \$175 in tribunal fees. The applicant also claims \$66.25 in reasonable registered mail costs for serving the respondents. She did not provide receipts and I find naming the personal respondents was not reasonable, given her contract was only with the corporate respondent Tilemart. On a judgment basis, I allow \$11.50 in dispute-related expenses for serving Tilemart.

ORDERS

24. Within 14 days of this decision, I order Tilemart to pay the applicant a total of \$3,768.58, broken down as follows:

- a. \$3,518 in damages,
- b. \$64.08 in pre-judgment interest under the COIA, and
- c. \$186.50, for \$175 in tribunal fees and \$11.50 in dispute-related expenses.

25. The applicant's claims against the personal respondents are dismissed. The applicant is entitled to post-judgment interest, as applicable.

26. 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.

27. 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