



# Civil Resolution Tribunal

Date Issued: February 22, 2019

File: SC-2018-002774

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Barry Sawatzky (dba End of the Roll Courtenay) v. Klco et al*, 2019 BCCRT  
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**B E T W E E N :**

Barry Sawatzky (Doing Business As End of the Roll Courtenay)

**APPLICANT**

**A N D :**

Dan Klco and Lisa Klco

**RESPONDENTS**

**B E T W E E N :**

Barry Sawatzky (Doing Business As End of the Roll Courtenay)

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. This dispute is about payment for residential carpeting.
2. The applicant, Barry Sawatzky (Doing Business As End of the Roll Courtenay), says the respondents, Dan Klco and Lisa Klco (the Klcos), failed to pay the outstanding balance for carpet installation. Mr. Sawatzky seeks payment of \$2,541 for materials, labour, and taxes.
3. The Klcos say they are not liable to pay due to poor workmanship by Mr. Sawatzky's employees. The Klcos say there were problems such as visible seams, missing vent holes, asymmetrical carpet on stairs, and debris left behind. The Klcos say Mr. Sawatzky failed to fix these deficiencies, even after the carpet was re-installed.
4. In their counterclaim, the Klcos say that due to installation deficiencies, the carpet must be replaced. They seek a refund of the \$2,500 deposit they paid for the carpet, plus reimbursement of a \$472.50 fee paid to a carpet inspector. Mr. Sawatzky says carpet replacement is unnecessary, as the carpet is still covered under his and the manufacturer's warranties.
5. All parties are self-represented.

## **JURISDICTION AND PROCEDURE**

6. 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.

7. 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.
8. 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.
9. 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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Is Mr. Sawatsky entitled to payment of \$2,541 for his outstanding invoice?
  - b. Are the Klcos entitled to a refund of their \$2,500 deposit?
  - c. Are the Klcos entitled to reimbursement for the \$472.50 carpet inspection fee?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means Mr. Sawatsky must prove his claim, and the Klcos must

prove their counterclaim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

12. In August 2017, the Klcos agreed to purchase new carpeting from Mr. Sawatsky for their master bedroom, hall, stairs, and living room. They negotiated the purchase with Mr. Sawatsky's salesman, H. The work order says the total price for the purchase would be \$5,041, including Mohawk "flawless vision" carpet, underpad, removal and disposal of existing carpet, labour, materials, and taxes.
13. Shortly after the carpets were installed, the Klcos contacted H to complain about problems with the installation, including visible seams. Repairs were performed in February 2018, including replacing carpets in the upstairs areas. The Klcos remained unsatisfied with the installation work, even after the repairs. They say a number of problems remained, including raised seams in 3 separate areas, and non-matching of carpet pattern in the master bedroom and on the stairs. Mr. Sawatsky says he then inspected the installed carpets himself, and found that while the seams were not perfect, they were within the expected standard.
14. After continued disagreement with Mr. Sawatsky about the carpet installation and the amount owed for that work, the Klcos requested that an inspector from the BC Floor Covering Association (BCFCA) examine their carpets. Inspector GH visited the home on July 30, 2018, and provided a detailed, signed report. GH concluded that there were 3 problems with the carpet installation: overlapped seams, gapping in seams, and pattern mismatch on the stairs. GH said that under the Carpet and Rug Institute Standard for Installation of Residential Carpet, properly constructed seams will not be invisible, but will have the following characteristics:
  - a. Cleanly trimmed edges properly secured with sealer
  - b. Tightly abutted edges, without gaps or overlaps
  - c. Reasonable pattern match
15. GH's report contained the following findings:

- a. First seam, on walkway to the right of the top of the stairs: seam edges up to 1.5 millimeters apart, and close to the wall the seam was easily separable and not fixed together.
  - b. Second seam, on walkway near the master bedroom: the seam was 1 millimeter apart in spots, and in 2 spots the seam was overlapped. Also, the pattern was misaligned by  $\frac{1}{4}$  of an inch.
  - c. Third seam, in master bedroom: seam edges up to 1.5 millimeters apart. One area of seam was easily separable. Pattern was misaligned.
  - d. Stair risers: pattern was misaligned on 13 out of 16 stairs. Misalignment ranged from  $\frac{1}{4}$  of an inch to 1 inch.
16. I place significant weight on GH's report. He is an independent flooring inspector, certified by an organization called Flooring Consultants and Inspection Training Services (FCITS). On that basis, I find that GH's report qualifies as expert evidence, as contemplated in tribunal rule 113. GH inspected the carpets for the specific purpose of determining whether there were installation flaws, and I am persuaded by his findings of 4 separate areas of flaws, as outlined above. While Mr. Sawatsky provided photos, I find these do not counter GH's opinion, as they contain no measurements of gaps, overlaps, or pattern misalignment.
17. I also note that in his submissions to the tribunal, Mr. Sawatsky admits there are issues with the carpet seams, but says they are covered by his own warranty and that of the manufacturer. I disagree. This is not a situation where the carpet has shifted or broken down over time. Rather, the issue is with deficient installation. Mr. Sawatsky had the opportunity to fix the installation deficiencies outlined by GH, but has not done so, and so relying on a warranty will not remedy the Klcos' concerns. Mr. Sawatsky submits that the carpet issues are "largely visual", which is true. However, much of the purpose of new wall-to-wall carpeting is for its visual effect.
18. For these reasons, I find the Klcos are not required to pay Mr. Sawatsky's outstanding invoice for \$2,541. Based on the deficiencies set out by GH, I find the

carpet installation did not meet a reasonably required standard. Mr. Sawatsky's claim is therefore dismissed.

### ***Counterclaim***

19. In their counterclaim, the Klcos seek a refund of the \$2,500 deposit they paid for the carpet. They say they purchased the carpet in order to help with the future resale of their home, and due its deficiencies the carpet will need to be replaced or reinstalled.
20. Based on GH's report I accept the carpet is unsatisfactory in its current condition. However, I find the Klcos have not proven they are entitled to a full refund for all the materials and labour provided by Mr. Sawatsky. While there are problems with the stairs, walkway, and master bedroom, the price also included carpet in the living room. There is no evidence of any problems with the carpet installation in that room, so the Klcos did have some benefit from the contract. Also, there is no evidence that all of the underpadding will have to be thrown out, which was part of the negotiated price. Finally, in their submissions, the Klcos are unclear about whether the existing carpet can be reinstalled. Again, the Klcos bear the burden of proving this counterclaim, and they provided no evidence to establish that the existing carpet is worthless.
21. For all of these reasons, I find the Klcos are not entitled to a refund of their \$2,500 deposit.
22. The Klco's also claim reimbursement of \$472.50 for GH's report. As I relied on GH's report in deciding the dispute, I would ordinarily allow such an expense. However, the Klcos were asked to provide the tribunal with all relevant evidence to support their claims, but provided no invoice, receipt, cheque stub, or other evidence to prove that they paid GH any amount for his report. For this reason, I do not order any reimbursement for GH's report.
23. The Klcos' counterclaims are dismissed.

24. The tribunal's rules provide that a successful party is generally entitled to recovery of their tribunal fees. As Mr. Sawatsky's claim is dismissed, and the Klcos' counterclaim is also dismissed, I order no reimbursement of tribunal fees.

## **ORDERS**

25. Mr. Sawatsky's claim is dismissed. The Klco's counterclaim is also dismissed.

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Kate Campbell, Tribunal Member