



Civil Resolution Tribunal

Date Issued: March 13, 2019

File: SC-2018-005184

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *gorgichuk v. Spectrum Stone Ltd*, 2019 BCCRT 309

B E T W E E N :

erica gorgichuk

APPLICANT

A N D :

Spectrum Stone Ltd

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about a contract for goods and services. The applicant, erica gorgichuk, paid the respondent, Spectrum Stone Ltd, \$1,700 to provide and install quartz countertops in her kitchen and bathroom. The applicant says the quartz the respondent provided and the respondents' installation of it were defective, and she

wants the respondent to refund her \$1,700. She also wants the respondent to pay her \$500 for 2 days of lost income.

2. The respondent says they do not owe the applicant anything because neither the quartz nor their installation work was defective.
3. The applicant is self-represented and the respondent is represented by an employee or principal.

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*. 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 demeanor 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. 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.

ISSUES

8. The issues in this dispute are:
 - a. Is the respondent required to reimburse the applicant the \$1,700 she paid for the purchase and installation of quartz countertops for her kitchen and bathroom?
 - b. Is the respondent required to pay the applicant \$500 for loss of income?

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
11. It is undisputed that in 2018 the applicant underwent renovations to her kitchen and bathroom. In February 2018 the parties agreed that the respondent would provide and install 2 quartz countertops in the applicant's home, 1 in her kitchen and 1 in her bathroom, for \$1,700 including GST. The applicant paid the respondent a \$1,000 cash deposit on February 22, 2018. The respondent installed the kitchen

countertop on March 1, 2018. On March 4, 2018 the applicant paid the respondent the remaining \$700 balance of the agreement by e-transfer.

12. The applicant says that within a few days of installation she realized the quartz was defective, as it unreasonably marked and stained. She says she notified the respondent of the problem within a week of installation. The parties disagree about what happened next.
13. The applicant says that on April 14, 2018, F., a representative of the respondent, went to her home to inspect the kitchen countertop. She says F. told her the quartz countertop had not been factory sealed, and that the respondent would either attempt to seal it, or else they would remove the countertop and replace it with a new one. The applicant says she chose the first option, and that the respondent agreed to complete the work immediately.
14. The respondent agrees that at some point after the applicant complained about the quality of the quartz it sent a representative to her home. However, the respondent says there was nothing wrong with the quartz, and that its representative simply cleaned the applicant's countertop. The respondent says quartz is not required or recommended to be sealed.
15. Between March and June 2018, the applicant claims the respondent was unreasonably delayed in responding to her communications and installing her bathroom countertop. The respondent says the delay installing the bathroom countertop was a result of the applicant's delay in having her bathroom cabinets completed, her complaints about the kitchen countertop, and her misrepresentation of the dimensions of the bathroom. The applicant says the respondent's delay caused a months-long delay to the rest of her home renovations which caused her to live without running water. She says this caused her significant expense, stress and anxiety, however she has not made a specific monetary claim in relation to these concerns, nor has she submitted any evidence to support them. I will not address them further in this decision.

16. It is undisputed that the respondent installed the applicant's bathroom countertop in June 2018. The applicant says this work was also defective and that the quartz the respondent used was significantly different than the sample she chose. She said she had to pay her contractor to remove and re-install it. However, the applicant is not claiming any monetary damages for the bathroom countertop in this dispute, so I will not address the issue in this decision.
17. The applicant says that despite her dissatisfaction with the kitchen counters she has now completed her renovation as she could no longer stand to live in an unfinished kitchen.
18. I note that the applicant submitted some evidence to the tribunal after the stipulated deadline which was not initially disclosed to me or to the respondent when it made its submissions. Based on the description of this evidence in the applicant's submissions, I determined that the evidence could be material to my decision, and I decided to accept it. The respondent had an opportunity to review this evidence and respond to it. I have relied on this additional evidence and the respondent's response in my decision.

Is the respondent required to reimburse the applicant the \$1,700 she paid for the purchase and installation of quartz countertops for her kitchen and bathroom?

19. The respondent says that if the applicant was not satisfied with its installation work or the quality of the quartz, she would not have paid them the balance of their agreement 3 days after they installed the kitchen countertops. While it is unclear why the applicant paid the balance of the agreement if she was not satisfied with the respondent's product or work, this alone is not a sufficient defense to the applicant's claims.

The Quality of the Quartz

20. The applicant's claims with respect to the quartz are threefold. First, she claims the respondent admitted the quartz was defective. Second, she claims the quartz

unreasonably marks and stains. Third, she claims the material the respondent installed is a quartz “knockoff.”

21. With respect to the applicant’s claim that the respondent admitted the quartz was defective, I am satisfied that at some point after the applicant complained about the quality of the quartz in her kitchen the respondent sent a representative to her home. However, on the evidence before me, I find the applicant has not established that the respondent agreed the quartz was defective or agreed to factory seal it or replace it.
22. The applicant relies on a text message in evidence from a representative of the respondent to the applicant which states that the “factory finish issue is a supplier issue not my fabricator error. I’m willing to send someone to fix it but that is it.” The applicant says this text message is from F. in relation to his alleged visit to her home on April 14, 2018. However, elsewhere her evidence indicates it is from S., a different representative of the respondent. It also appears that this text message was sent in mid-May 2018, and that it was in the context of negotiations with the applicant about installing her bathroom countertop, as she had indicated her dissatisfaction with the respondent’s product and work. There is another text message in evidence from that text conversation in which S. said he would send some of his installers to install the applicant’s bathroom countertop, and says, “please let the installers know to seal the kitchen.”
23. These text messages appear to imply that the respondent agreed to seal the applicant’s kitchen countertops. However, the respondent says that sometimes its customers have trouble removing dirt or stains from their quartz countertops and they ask the respondent to “seal” them. The respondent says “sealing” is a layman’s term, and in relation to quartz it actually means the respondent simply cleans the quartz countertop, as truly sealing quartz countertops is not necessary or recommended. The respondent submitted evidence to support this claim. I have already found that the respondent went to the applicant’s home at some point to clean her kitchen countertop. Based on the other evidence before me, both of these

text messages appear to have been sent before the respondent made that visit to the applicant's home. Based on the respondent's explanation about the term "sealing," which is supported by evidence, I am not satisfied that these text messages amount to admissions from the respondent that the quartz countertop was defective.

24. The applicant says the day after the bathroom countertop installation in June 2018, F. sent her the contact information for its supplier and told her to choose a quartz sample to replace the defective kitchen countertop. This communication is not in evidence. The applicant says she sent F. her choice of sample quartz and 2 weeks later F. told her there would be an additional \$750 fee. The applicant says she refused to pay the fee and said she expected the defective countertop to be replaced under warranty.
25. The text messages in evidence indicate that in late June and early July 2018 the applicant chose a new quartz sample to replace her kitchen countertops, however the only text from the respondent about this issue is on July 7, 2018 from F. That text states, "this is much better material," and implies that the respondent would be willing to install the new quartz material for \$750, which does not appear to include the cost of labour. However, in the circumstances I am not satisfied that this amounts to the respondent's admission that the quartz was defective. By July 2018 the relationship between the parties had broken down, and the applicant had already brought a complaint against the respondent to the Better Business Bureau. I find this text message was sent in the context of the respondent attempting to resolve the applicant's issues, and that it is not an admission of wrongdoing.
26. The applicant also says the quartz the respondent installed in her kitchen is defective because it unreasonably marks and stains, but she provided no evidence to support this claim, such as photographs or an opinion from a quartz manufacturer or installer. The respondent says that sometimes customers have trouble keeping their quartz countertops clean, and they ask the respondent to "seal" their counters. The respondent says quartz countertops do not need to be sealed, nor is it

recommended for them to be sealed. In these circumstances the respondent can help its concerned customers eliminate the dirt on their countertops, which they say is what happened in this case. I find the applicant has not established the quartz unreasonably marks or stains.

27. The applicant also alleges that the material the respondent installed in her kitchen is not actually quartz, but rather a quartz “knock-off.” She says she learned this from “other professionals” but provided no statements from these professionals, or any other evidence to support this claim. I am not satisfied the respondent installed a quartz “knock-off” in the applicant’s kitchen. I find the applicant has failed to establish that the quartz the respondent installed was defective, and therefore she is not entitled to reimbursement under the parties’ agreement on this basis.

The Quality of the Work

28. The applicant also says the respondent’s installation of the kitchen countertop was defective, however, for the following reasons I find the applicant has not substantiated this claim. When a party such as the respondent holds itself out as qualified to perform a specific trade, the law implies a warranty into the contract that the tradesperson will perform the job in a professional manner consistent with the standards of the trade, and that they will perform the task using the necessary skill and care required. I find that such terms were implied into the agreement between the parties. For the applicant to succeed in her claim, she must prove that the respondent breached this implied warranty or else did something wrong that entitles her to repayment of the amount of the agreement.
29. The applicant says the respondent left a 2-inch gap between the countertop and the wall, but none of the photographs in evidence depict this. She says the kitchen sink cut-out was too far forward which resulted in her having to pay a plumber to do additional work to fit the sink, but none of the photographs in evidence depict the sink cut-out, nor is there any evidence of the cost of the alleged plumbing work.

30. The applicant says the respondent did not install the kitchen countertop squarely, and that this is visible from a gap between the counter and the stove, and when measured against the cabinets on all sides of the kitchen island. One of the photographs the applicant submitted does show a very small space between the stove and the counter, but the respondent says the applicant could have moved the stove away from the counter for the photograph. Without a wider context for the photograph, I agree that I cannot rule out that possibility, or determine whether the gap was caused by the respondent's defective work.
31. Another photograph the applicant submitted appears to have been taken from the floor facing upwards, and it appears to show that the counter is not square with the cabinets. The applicant has written on the photograph indicating the counter it is $\frac{3}{8}$ of an inch off square. However, it is unclear whether this is actually the case, or whether it is simply the angle from which the photograph was taken. A different photograph the applicant submitted showing the entire completed kitchen appears to show that the kitchen countertops are square with the wall. It is undisputed that the respondent did not install the cabinets. The respondent suggests that it could be the cabinets that were not square with the room, suggesting that it compensated for another tradesperson's error. Without more, I find these photographs are insufficient to prove the respondent's installation work was deficient.
32. The applicant says the respondent's joining of a seam on the kitchen countertop was defective. She submitted a photograph of a seam taken from across the room, but I cannot determine from the photograph why exactly the applicant says it is defective. She says her contractor told her the industry standard is to use a binding machine and that the respondent failed to do so, however the applicant did not submit a statement from her contractor. The respondent says it is not essential to use a binding machine for the seam between 2 slabs. I find the applicant's allegations and single photograph do not establish that the respondent breached its standard of care with respect to the seam.

33. The respondent agrees that 1 of the photographs the applicant submitted shows a damaged edge on the countertop but says the damage occurred after installation. The respondent says it could have been caused by one of the other contractors who subsequently worked in the applicant's kitchen. The photograph is not dated, and aside from the applicant's allegation, there is no evidence to establish the respondent caused the damage shown in the photograph. I find the applicant has not established that the respondent's work installing her kitchen countertop was defective and she is not entitled to reimbursement of any amount under the agreement.

Is the respondent required to pay the applicant \$500 for loss of income?

34. The applicant claims she missed 2 days of work, on May 23, 2018 and another date in June 2018 for appointments with the respondent for which the respondent did not attend. At one point in her submissions the applicant says she wishes to withdraw this claim. As it is unclear whether the applicant wishes to pursue this claim, I will address it here. Aside from the days the applicant says she missed work, she submitted no evidence about the nature of her work, her regular income, or the amount of her income loss. Without more, I find the applicant has not established she lost income because of anything the respondent did or failed to do, and I dismiss this claim.

35. Under section 49 of the Act, and tribunal rules, as the applicant was unsuccessful in this dispute I find she is not entitled to reimbursement of the \$125 she paid in tribunal fees.

ORDER

36. I dismiss the applicant's claims and this dispute.

Sarah Orr, Tribunal Member