



Civil Resolution Tribunal

Date Issued: March 25, 2019

File: SC-2018-005642

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Matrick v. Handyman Connection et al*, 2019 BCCRT 371

B E T W E E N :

Diana Lynn Matrick

APPLICANT

A N D :

Handyman Connection and 532766 BC Limited

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a tiling job the respondent Handyman Connection (Handyman) did for the applicant, Diana Lynn Matrick. The applicant says it was a horrible tiling job and claims \$3,492 as a refund of what she paid.

2. Handyman denies liability, and says the applicant is making false accusations and is unreasonably nit-picking.
3. As discussed further below, the respondent 532766 BC Limited did not file a Dispute Response and is not participating in this dispute.
4. The applicant is self-represented. Handyman is represented by Haider Ghazi, an employee or principal.

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 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.
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 to what extent, if any, the respondent owes the applicant a \$3,492 refund for the tiling job it did for her which the applicant says was poorly done.

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. I will deal with the named respondent 532766 BC Limited first, who as noted above did not file a Dispute Response. Ordinarily, this means that the party is in default and there is an assumption of liability against them. However, the applicant provided no explanation of who this party was or how it related to her claim. Instead, all of the applicant's submissions and the limited evidence she provided refer to Handyman only. The applicant provided a Proof of Notice that she served 532766 BC Limited by registered mail, but in it stated that the business name was Severide Law. There is no evidence or submission before me linking Severide Law to this dispute. For these reasons alone, I dismiss the applicant's claims against 532766 BC Limited.
12. I turn now to the relevant chronology. In May 2017, the applicant hired Handyman to replace the tiles in her bathtub area. She had used Handyman about 6 times in the past to do various odd jobs with no prior issue.
13. The parties' April 20, 2017 contract describes the job as "to remove bathtub tiles and drywall, install new drywall and ceramic tile". According to the contract, the job cost \$3,570. There is no explanation about the discrepancy between this sum and the claimed \$3,492 refund.
14. The applicant says Handyman's tile installer, NJ, did a terrible job: crooked tiles, faulty leaking faucet, 2 holes in the wall that NJ fixed but the applicant says still looks horrible, and a ruined bathtub shower door with grout mess.
15. The applicant says Handyman gave her a 1-year guarantee, so she called Mr. Ghazi and he hired someone else to fix the grout on February 6, 2018. The applicant says she was still not happy and "complained constantly". The applicant says she asked for a refund because Mr. Ghazi said he would not fix it, and she has to have it redone.

16. The applicant says she has a video of the terrible job done, although she did not actually provide the video or a link to a video, presumably due to its length and size. Given my conclusions below based on the applicant's photos and the absence of evidence from a professional criticizing the respondent's work, I find nothing likely turns on the fact the applicant's video is not before me. I say the same about the respondent's link to their video, which was broken and so I was unable to watch their video. In saying this, I am also mindful of the tribunal's mandate that provides for speedy and efficient dispute resolution services that are proportionate.
17. The applicant did provide photos of what she says show the horrible job done. While the photos show some excess grout in a few spots, I cannot agree they show an overall "horrible" job. I also cannot tell if the photo of the grout "mess" was taken before or after Mr. Ghazi sent someone to fix it in February 2018.
18. Handyman says it attended 3 times to try and address the applicant's concerns, which it says amounted to nit-picking. Handyman says it recorded the last visit to provide evidence of the applicant's false accusations. As noted above, I was unable to view their video. Handyman says there is no leak and that the alleged mess is in fact the result of the applicant's ongoing use of the shower and not keeping it clean.
19. I find the most significant point is that the applicant says she has had 4 professionals look at Handyman's allegedly terrible work. Yet, she provided no statement or opinion from any of them. The applicant also says that in December 2017 she had a plumber review the faucet and they said it is faulty. However, again, I have no evidence before me critical of Handyman's work, apart from the applicant's own submission and her photos that I find do not show a terrible job. Even if I had seen the applicant's own video, this would not resolve the absence of the professionals' observations. The applicant provided no explanation for the absence of such evidence, which given her stated discussions with other professionals I find she should have been able to obtain and provide. Parties are told during the tribunal's facilitation stage and in preparation for this decision to provide all relevant evidence.
20. Handyman's "Total Home Protection Guarantee" stated that for 1 year from the date of its invoice Handyman will repair "defects in workmanship" free of charge. The guarantee is on the 2nd page of the parties' contract, and also states that there are no other guarantees express or implied and no liability for consequential damages of any kind. The guarantee is for labour only, and that materials are not included. The guarantee finally states that plumbing is covered by a 30-day warranty.
21. However, given my conclusions above I find the applicant has not proved there were defects in Handyman's work or that Handyman failed to honour its guarantee.

22. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find she is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

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

Shelley Lopez, Vice Chair