



Civil Resolution Tribunal

Date Issued: April 2, 2019

File: SC-2018-007421

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kavakbasi v. Hi Rollerz Flooring*, 2019 BCCRT 414

B E T W E E N :

Habip Alper Kavakbasi

APPLICANT

A N D :

Hi Rollerz Flooring

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Habip Alper Kavakbasi is a floor installation subcontractor. The applicant says he did floor installation for the respondent Hi Rollerz Flooring but was not paid in full. The applicant claims \$2,458.00 for his unpaid invoice.

2. The respondent says the applicant's work was unsatisfactory. The respondent says someone else had to be paid to correct deficiencies in the work. The respondent asks that the dispute be dismissed.
3. The applicant is self-represented. The respondent is represented by principal or employee Christine Khan.

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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
6. 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

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 make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the respondent owes the applicant the claimed \$2,458 for flooring installation and, if so, whether that amount should be offset due to alleged deficiencies in the quality of the applicant's work.

EVIDENCE AND ANALYSIS

10. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
11. In mid-June 2018, the applicant was contracted by the respondent as a floor installation subcontractor.
12. On August 23, 2018, the respondent wrote the applicant a letter to reprimand him for an incident the day before, which involved a disagreement between the applicant and a colleague at the work site.

13. The letter also specified that the applicant and his crew had some deficiencies to address, including gluing the edges of all flooring boards, and clearing garbage and wood cuttings off the floor after completing installations.
14. The applicant says that he returned and remedied any deficiencies and, once the respondent indicated that the work was satisfactory, he left. Although I accept this evidence, I also find that certain deficiencies were not discovered until a walk through by the respondent after the applicant had stopped working at the site.
15. On September 17, 2018, the respondent issued a “charge back” sales order to the applicant for \$2,165.73, which they say is for deficiencies in installations that the applicant worked on. The sales order is in the respondent’s name. It does not specify who completed the work to remedy the deficiencies nor the hours of labour that were contributed. The deficiencies are summarized as follows:
 - a. Unit 505 Re-Install \$784.80
 - b. Unit 505 Rip out not glued completely \$327.00
 - c. Unit 707 Re-install \$388.80
 - d. Unit 707 Rip out not glued as instructed \$162.00
 - e. Unit 905 902 901 service charges \$250
 - f. Steel toed boots not returned \$150
16. The respondent provided evidence that the applicant sometimes failed to glue the hardwood floors appropriately or as instructed. I accept that evidence, placing particular weight on the statement from BH, who worked with the applicant and observed these issues directly.
17. Based on BH’s statement and the photographs of deficiencies in Units 707, 902 and 901, I order that the payment of the applicant’s outstanding invoice be offset by \$800.80. I arrive at this figure by adding up the amounts pertaining to revisions in these units from the charge back sales order. While I was not able to separate out

the unit 905 work from the \$250 charge, I have included that entire amount in the \$800.80, on a judgement basis, given the other evidence about general deficiencies.

18. There were no photographs of the alleged deficiencies in unit 505. In early September 2018, there was a flood in unit 505. I find that there is insufficient evidence that the costs of repairing the flooring were due to a deficiency in the applicant's flooring installation, as distinct from water damage. As a result, I do not order an offset for the re-installation of flooring in unit 505.
19. As well, I find the respondent's claim for steel toed boots was not proven. The applicant says, and I accept, that the boots were gifted to him by another tradesperson, a year earlier. There was no evidence that these boots were owned by the respondent. I do not allow an offset for the value of these used work boots. The value of the boots was also not established. That is, I was not provided with evidence such as a receipt or an advertisement for equivalent boots.
20. I order the respondent to pay the applicant a total of \$1,657.20, which is the \$2,458.00 owing for the flooring installation, less the offset of \$800.80 to correct deficiencies. I will use September 15, 2018 to calculate pre-judgement interest, as I find that is the date by which the applicant should have been paid.
21. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As the applicant was partly successful, I find he is entitled to reimbursement of 50% of his \$125 in tribunal fees, at \$62.50, plus \$39.93 for dispute-related expenses for photocopying and delivery of the Dispute Notice, which I find reasonable.

ORDERS

22. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$1,774.73, broken down as follows:
 - a. \$1,657.20 in payment for flooring installation services rendered,
 - b. \$15.10 in pre-judgment interest under the *Court Order Interest Act* from September 15, 2018 to the date of this decision, and
 - c. \$102.43, for \$62.50 in tribunal fees and \$39.93 for dispute-related expenses.
23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.
25. 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.

Julie K. Gibson, Tribunal Member