



Civil Resolution Tribunal

Date Issued: June 5, 2019

File: SC-2019-000087

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leung v. Sljivo*, 2019 BCCRT 686

B E T W E E N :

SIU FAI LEUNG

APPLICANT

A N D :

Eldin Sljivo (Doing Business As PROGREEN CARPET CLEANING)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about damage to a bed. The applicant, Siu Fai Leung, says that she hired the respondent, Eldin Sljivo (doing business as Progreen Carpet Cleaning), for carpet cleaning at a rental property. She submits that the respondent placed furniture and garbage on one of her beds, leaving it unusable. She claims damages

for the bed (including mattress), bed furnishings, related expenses, and lost rent. The respondent disagrees that he damaged the bed.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. 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.
6. Under tribunal rule 9.3(2), 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

7. The issue in this dispute is whether the respondent damaged the applicant's bed, and if so, what is the remedy.

EVIDENCE AND ANALYSIS

8. The parties largely agree upon the facts. The applicant hired the respondent to clean carpets at a rental property. One of the rooms was furnished with a desk and bed that is at the center of this dispute. The applicant was not present at the time of cleaning.
9. The applicant provided a photo showing the room with the bed before the respondent began work. According to submitted text messages, the respondent took this photo. It shows the bedframe with a bare mattress on top. The mattress has a pillow, duvet, and capped disposable water bottle on it. There also appears to be some dirt on the mattress. Only a portion of the bed and mattress are captured in the photograph. On the carpeted floor is an area rug and what appears to be garbage, including crumpled paper and a broken coat hanger. In the room there is also a wooden desk, a second smaller desk, a chair, and a dresser.
10. The applicant took a photo of the same room after the respondent finished carpet cleaning. The wooden desk, rolled-up area rug, and what appears to be plastic and paper garbage are shown directly placed on the mattress. The respondent confirmed in a text message to the applicant that he placed the wooden desk and area rug on the mattress, but did not mention the garbage.
11. The applicant submits that the respondent was unprofessional, as her mattress became "contaminated" by the garbage and dirty area rug. Further, she submits that the bed was damaged by the wooden desk placed on top of it, making it "hazardous".
12. The parties disagree on whether the respondent previously cleaned carpets at the same property and placed the same furniture on the bed at that time. The applicant

also submits that the respondent damaged other furniture that is not part of her claim. However, I do not find it necessary to make findings on these points to resolve this dispute.

13. To be entitled to damages, the applicant must prove on a balance of probabilities that the respondent breached their contract: *Lund v. Appleford*, 2017 BCPC 91. Where the standard of a competent member of a trade or profession is at issue, evidence of those carrying on that occupation is necessary unless the matter is on non-technical matters or those of which an ordinary person may be expected to have knowledge: *Burbank v. R.T.B.*, 2007 BCCA 215.
14. In this case I find the applicant has not proven her claim that the respondent breached the contract. I will first discuss the placement of furniture on the bed. The respondent provided photos from other job sites that show he normally placed furniture onto beds as part of his preparation work for carpet cleaning. One photo shows a bed with a rolled-up area rug, a chair, two cardboard boxes, and other objects too numerous to list on it. Another photo shows a larger rolled-up area rug and laundry placed on top of it. A third photo shows a bed with a recliner on it. The depicted beds have mattresses and sheets or blankets on them. The respondent submits that “this is something we do everyday and this is how [it’s] done always”.
15. The applicant submits that the respondent should have moved the wooden desk out of the room. However, I was not provided any evidence that placing furniture on beds, as the respondent ordinarily did, fell below the standard expected of a carpet cleaner.
16. More importantly, it is unclear what damage, if any, was caused by placing the wooden desk on the mattress and bed. There is no evidence or submission that the mattress was unusable because the desk was placed on top of it. The applicant provided a photo of the underside of the bedframe that shows what appears to be a fallen and bent metal strut. However, it is unclear if the wooden desk caused the strut to fall. The bed was not new and the parties’ submissions indicate that it was

previously used by a tenant. The applicant also did not explain in her submissions if this damage required total replacement of the bedframe.

17. The applicant also submits that the respondent should not have placed the area rug and garbage on the bed. While unsightly, the garbage in the applicant's photo appears to be composed of capped disposable plastic water bottles, crumpled paper, plastic bags, and empty cardboard tissue boxes. The visible area of the rolled-up area rug does not appear dirty. It is unclear from the photo or submissions why the mattress could not be restored to its previous state by simply removing the garbage and area rug. There is no evidence or submissions regarding any permanent stains or odours resulting from the garbage or area rug.
18. Further, the photo of the bed before carpet cleaning commenced shows that the bare mattress already had some dirt on it, as well as a capped disposable water bottle. The respondent submits that the garbage was already there before he began work. Although only a portion of the bed is visible in the photo, I find that at least some garbage was on the mattress before the respondent began work. This creates further difficulty in drawing a link between any claimed damages and the respondent's work.
19. Finally, the respondent submits that his responsibility was limited to cleaning the carpets and did not include garbage disposal. The applicant did not refute this submission and there is no written agreement before me outlining the obligations each party had with respect to the garbage. I am therefore unable to conclude that the mere presence of the garbage on the mattress shows a breach of contract.
20. In summary, I am not persuaded that the respondent is responsible for damage to the applicant's bed, mattress, or bed furnishings. Even if I had found the respondent did not perform the carpet cleaning to a satisfactory standard, I do not find the applicant has proven on a balance of probabilities that she suffered any damages. Accordingly, I dismiss the claim for property damage and lost rent.

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. The applicant was unsuccessful in this dispute and is therefore not entitled to reimbursement of tribunal fees. No dispute-related expenses were claimed. The respondent did not pay tribunal fees or claim dispute-related expenses.

ORDER

22. I order the applicant's claim, and this dispute, dismissed.

David Jiang, Tribunal Member