



Civil Resolution Tribunal

Date Issued: July 3, 2019

File: SC-2019-000563

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *SHAHABALDIN v. FILIPOVIC*, 2019 BCCRT 797

B E T W E E N :

MOJGAN SHAHABALDIN

APPLICANT

A N D :

DRAGAN FILIPOVIC

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over the installation of drywall and IKEA kitchen cabinets.
2. The applicant, MOJGAN SHAHABALDIN, says the respondent, DRAGAN FILIPOVIC, wrongly installed drywall and incorrectly measured and installed IKEA

kitchen cabinets. She claims reimbursement of \$4,000 that she paid the respondent to perform the work and \$650 she paid to return the cabinets to IKEA.

3. The respondent denies the applicant's claims. The respondent says he performed the work to a professional standard.
4. The applicant is self-represented. The respondent is represented by his wife, Mirjana Filipovic Lojpur a non-legal representative because he had health issues when this dispute started. The respondent has recovered and requested the opportunity to provide direct evidence. Because of my findings below, I find that the applicant has not established her claims and I do not need any further evidence from the respondent.

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 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

9. The issue in this dispute is whether the respondent is required to pay the applicant for the amounts claimed, or at all, for alleged deficiencies in his work.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant to prove her claims on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. The applicant alleges that the respondent performed a faulty installation of drywall in her home. I find her evidence on the drywall installation ambiguous. She says that a plumbing company (Hillcrest), was re-positioning a small baseboard heater just inside the living room closet. She claims the respondent did not communicate with Hillcrest, and this resulted in Hillcrest mounting the heater “inside the drywall”, which was dangerous and had to be removed. With respect to this same piece of drywall, the applicant says the respondent installed it “around” the heater. In another submission, the applicant says the respondent put the drywall “inside” the heater. The applicant provided no photographs of the drywall vis-à-vis the heater or

other evidence to establish what had happened. The applicant's submissions are not sufficiently clear to allow me to make any findings with respect to how the drywall was installed or who was at fault for the problem with the heater.

12. The applicant claims that apart from the problem with the heater, two pieces of drywall were not symmetrical. The applicant does not say who installed these pieces of drywall. The applicant submits a photograph of drywall around a door frame. I find the photograph does not clearly depict the drywall was either newly installed or meant to line up symmetrically, it just looks unfinished.
13. I find the applicant has not substantiated her claim that the respondent improperly installed the drywall. Even had I found the respondent improperly installed the drywall, the applicant has not substantiated her damages claim. The applicant provided no evidence, such as an invoice, showing she incurred costs to fix the drywall or how much she paid to fix the drywall.
14. With respect to the kitchen installation, the applicant says the respondent pressured and pushed her to purchase IKEA kitchen cabinets. She claims she did not need the cabinets and does not like IKEA.
15. I infer from her submissions that the applicant purchased the cabinets herself, directly from IKEA. The applicant provided no particulars as to what the respondent had said to her or how he was able to pressure her to purchase cabinets she did not want from IKEA. There is no evidence that the respondent worked for IKEA or that he would have received a commission through her purchase. I find she has not established that the respondent pressured or pushed her to purchase the cabinets.
16. To support her claim that the respondent improperly measured and installed the IKEA cabinets, the applicant submitted photographs with notations as follows:
 - a. The corner of the kitchen cabinet where a 'lazy susan' is sometimes placed, was totally empty, no kitchen cabinet section was put there. There is only counter top over an empty space.

- b. The section of the cabinet above the refrigerator was shallow and did not come out of the wall as far as the other pieces and being above the refrigerator, no one could reach the handles.
 - c. Many of the handles did not line up and the cabinets were not of a “soft close” variety.
17. The photographs show the kitchen cabinets installed, without the countertops. The applicant submitted photographs of lower cabinets installed with no corner cabinet. I infer, for reasons that are unknown to me, the applicant did not purchase a corner cabinet. Instead the photographs show two rectangular cabinets at a perpendicular angle installed in a way to accommodate the corner, which left a small space against one wall. I find based on the photographs, if the cabinets were positioned to eliminate the space, one of the cabinets would have become inaccessible. I find the applicant has not established that the respondent chose these cabinets, or that he improperly measured or installed them.
18. The applicant submitted photographs of a cabinet that seems to be installed to accommodate a fridge. The fridge is not in the photographs. I find the photographs show the cabinet is the same depth and is lined up perfectly with the other cabinets. The cabinet handles are affixed to the bottom of the cabinet door. Even if the cabinet was inaccessible, which is not proven, I find the applicant has not established it was due to the respondent’s measurements. For example, she provided no evidence that with different measurements she could have purchased a cabinet of a sufficient depth to reach both the back wall while still being accessible over the fridge. Further, it seems that if “no one” could reach the cabinet’s handles, the cabinet could have simply been repositioned a few inches out from the back wall. The photographs show the space could have accommodated the adjustment. The applicant does not say why this was not done or could not be done, if she was unable to reach the cabinet. I find the applicant has not established the respondent improperly measured or installed the over-the-fridge cabinet.

19. I find that the handles depicted in the photographs line up with each other and appear properly installed. As I inferred on the evidence that the applicant purchased the cabinets, I find the respondent would not be responsible if the installed cabinets were not of a soft closing variety.
20. In the body of the applicant's evidence, she included a photograph of a bathroom vanity door and submitted a note that says, "he put particle board cabinet that separated in just few weeks". The photographs show a cabinet door exposing slightly blackened particle board. I find the cabinet looks old. I find the applicant's submissions are vague and based on the photograph, there is no evidence the respondent failed to do the contracted work properly.
21. The applicant has the onus to prove her claims on a balance of probabilities. I find she has failed to do so here.
22. As the applicant's claims were unsuccessful, I find she is not entitled to damages. Under the Act and the tribunal's rules, I find as the unsuccessful party, she is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

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

Trisha Apland, Tribunal Member