



# Civil Resolution Tribunal

Date Issued: July 5, 2019

File: SC-2018-009279

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Henderson v. deBoersap*, 2019 BCCRT 812

**B E T W E E N :**

Lawanda Cederholm Henderson

**APPLICANT**

**A N D :**

Alex deBoersap

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. The applicant, Lawanda Cederholm Henderson, hired the respondent, Alex deBoersap, to refinish her kitchen cupboards. The applicant says the respondent's work was delayed and deficient. She wants the respondent to redo the cupboards to her satisfaction, or in the alternative, she wants the respondent to pay her \$5,000 for the cost of replacing the cupboards and making her whole.

2. The respondent says he completed the work to the standard and timeline agreed upon by the applicant.
3. Both parties are self-represented.

## **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 9.3 (2), 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**

8. The issue in this dispute is whether the respondent's work was deficient, and if so, what is an appropriate remedy for the applicant.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. The respondent made submissions but provided no evidence, despite having the opportunity to do so. I have only addressed the applicant's evidence and the parties' submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claim.
11. On November 24, 2017 the applicant hired the respondent to refinish her kitchen cupboards to their original state starting on January 2, 2018. The applicant paid the respondent a \$700 deposit on that date.
12. The respondent says he completed the work on January 5, 2018. The applicant says the respondent did not start the work until January 5, 2018 and did not reinstall the cupboards until May 2018. However, in her submissions the applicant says she paid the respondent the balance of the bill immediately after his employees installed the cupboards, and it is undisputed that the applicant paid the respondent \$1,578 on January 5, 2018. Therefore, I find the respondent completed the work on January 5, 2018. I address this date discrepancy further below.

13. The applicant says she expressed her dissatisfaction with the work as soon as the respondent's employees installed the cupboards, and she asked the respondent to take them back, which he would not do. The applicant says the kitchen door had a "big blob of grease" which was stained over and did not wash off. She said there was sawdust in the crevices which was not cleaned off and had been stained over. She says one cupboard door has 2 visible fingerprints, and that the respondent forgot to refinish a door.
  
14. The applicant submitted 5 photos of the cupboards with handwritten notes pointing to the alleged defective colour, sawdust, and grease stains. The photographs are all close-ups of relatively poor lighting and quality. I cannot see any sawdust in the photographs, and I am unable to determine whether there is any problem with the colour of the cupboards. While there are some small visible marks on the cupboards in some of the photographs, without a broader perspective on the kitchen I cannot determine if those marks were a result of the respondent's work or problems that already existed with the cupboards. There are no photos of the alleged fingerprints, and no photo to show that a door was left unfinished. Based on the parties' submissions and evidence I am unable to determine exactly what the cupboards were meant to look like after the work was completed. The respondent says he does not have any pictures of the applicant's cupboards before he completed the work. On balance, I am not satisfied that the applicant's photos show the respondent's work was defective.
  
15. The applicant says that after expressing her dissatisfaction with the cupboards the respondent told her to keep them for a few weeks and they would "grow on" her. She says he suggested having the cupboards repainted white, and that he would return with a sample of a white door a few days later, but that he did not return. She says her husband went to the respondent's shop to pick up a sample of white cupboard, but she ultimately decided not to have the cupboards repainted white as it did not match the décor in her home.

16. The respondent says that after he installed the cupboards the applicant complained about dark spots in the crevices and asked him to repair them. He says he touched up one cupboard door to the applicant's satisfaction, and so he proceeded to touch up the remaining doors in the same way. The respondent says that partway through this process the applicant asked him to stop because she was considering having the cupboards repainted. The respondent says the usual cost of repainting the cupboards was \$3,500, but he told the applicant he would deduct the amount she had already paid him and charge her only \$1,330. The respondent says that at a later date the applicant decided against repainting the cupboards, so he returned to her home to finish touching up the remaining cupboards. He says that during this work the applicant was angry and spoke to him in an abusive way, so he gathered his tools and left.
17. While both parties' versions of events are reasonable, I prefer the respondent's evidence. I find the applicant's allegation that the respondent did not reinstall the cupboards until May when in fact he installed them in January is a significant discrepancy. It either demonstrates that she was being untruthful, or that she was mistaken, but either way I find the respondent's evidence to be more internally consistent and reliable.
18. The applicant submitted a statement from J.W. and S.W. who hired the respondent to refinish their cupboards in 2013 and had a negative experience, however I find this evidence is unhelpful in determining whether the respondent's work on the applicant's cupboards was deficient.
19. The applicant submitted an unsigned statement, which based on her submissions I infer that she wrote. She said her husband hired a skilled cabinet maker from a hardware store to inspect their cupboards. She said the cabinet maker told her husband it would be possible but unlikely to repair the cupboards. However, this statement is double hearsay, and the applicant has provided no explanation as to why the cabinet maker could not provide a statement. Therefore, while I have

discretion generally to accept hearsay evidence, I place very little weight on this evidence.

20. The applicant submitted a statement from a realtor who said that a home with cupboards refinished in substandard condition will affect the value of the home. He said that in the applicant's case the substandard cupboard work could reduce the value of the home by 5 to 10 percent. He said the assessed value of the applicant's home as of March 25, 2019 was \$470,000, and that "the loss would be \$23,500 or greater." However, there is no evidence the realtor has any expertise in cabinetry and he did not explain how he determined that the refinishing on the cupboards was substandard. There is no evidence before me to reconcile the difference between what appear to be at most minor superficial problems with the cupboards and a \$23,500 loss. The respondent agrees that refinishing cupboards to their original condition tends to detract from a home's value. The applicant says there is no lost value in a home with original oak cupboards but provided no evidence to support this assertion. I do not find the realtor's statement to be particularly compelling or detailed with respect to the condition of the cupboards or the respondent's work on them, and therefore I place little weight on this evidence.
21. The applicant says she spent \$14,000 on new kitchen cupboards but provided no receipt, invoice or other evidence to support this claim. The applicant also says she must replace her countertop and backsplash, but she provided no evidence as to why this work is required or the amount it would cost.
22. The applicant is responsible for proving her claims, and I find she has not done so. I am not satisfied that the evidence before me establishes that the respondent's work fell below the standard of a reasonable cabinetry finisher. Therefore, I dismiss the applicant's claims.
23. 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. Since the applicant was unsuccessful I find she is not entitled to her tribunal fees or dispute-related expenses.

24. I also note that although not explicitly claimed, the applicant submitted a receipt for \$280 in legal fees. Under the tribunal's former rule 132, which was in force at the time the applicant brought this dispute, the tribunal will generally not require one party to pay the other party's legal fees except in extraordinary circumstances, and I find there is nothing extraordinary about this dispute. Therefore, even if the applicant had been successful I would not order the respondent to reimburse her legal fees.

## **ORDER**

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

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Sarah Orr, Tribunal Member