



# Civil Resolution Tribunal

Date Issued: July 15, 2019

File: SC-2019-000095

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Spectrum Stone Ltd. v. Medd*, 2019 BCCRT 851

BETWEEN:

SPECTRUM STONE LTD.

**APPLICANT**

AND:

LEE MEDD

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

### INTRODUCTION

1. This dispute is about the unpaid balance for renovation work. The applicant, Spectrum Stone Ltd., says that it was hired by the respondent, Lee Medd, to install quartz countertops at the respondent's residence. The applicant submits that it is

still owed \$1,750. The respondent submits that the applicant damaged his wood flooring and he should not have to pay this amount until the applicant fixes it.

2. The applicant is represented by Alan Mok, whom I infer is a principal or employee. The respondent is 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. The applicant claims \$500 for filing a lien under the *Builders Lien Act* (BLA). However, as noted in *Willow Springs Constr. Ltd. v. 3423 Hastings Ltd.*, 2008 BCPC 370, the BLA provides that the BC Supreme Court is the appropriate forum for the enforcement and discharge of such liens. The tribunal has jurisdiction to address the applicant's debt claims. However, I find that the cost of filing the lien falls within the jurisdiction of the BC Supreme Court. I therefore refuse to resolve the applicant's claim for \$500 for filing the builders lien.

7. 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**

8. The issue in this dispute is whether the respondent breached the parties' contract, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The parties agree that the respondent hired the applicant to install quartz countertops at the applicant's property in August 2018. The respondent paid the applicant with a cheque for \$5,750. The parties agree that this is the price of the work. The applicant was unable to cash the cheque as it was made out to the wrong entity.
11. In his Dispute Response, the respondent provides inconsistent reasons for why the cheque was not negotiable. He initially refers to it as a "bank draft" that was lost. He then says that he instructed his bank to withhold payment on the bank draft because the countertops were not installed correctly and there was floor damage. However, he also submits his bank accidentally cancelled his outstanding cheques, including the "bank draft", as part of a debt consolidation. Given these contradictions, I do not find that the respondent initially withheld payment due to any concerns with the applicant's work.

12. The respondent advised in early September 2018 that the applicant had created a stain on his wooden floor by dropping acetone on it. On October 15, 2018, the applicant's technician went to the respondent's property to fix any deficiencies and obtain a replacement cheque.
13. According to the technician's May 21, 2019 letter, the technician removed glue residue from the previously-done work. He then looked at the stain. He told the respondent that the applicant's acetone could not have caused the stain as it would evaporate in a few minutes, before any stains could occur. He then poured acetone on a wood flooring sample provided by the respondent. The technician wrote that after 20 minutes the acetone had evaporated and there was no observable damage.
14. The respondent submits the opposite occurred and that the acetone noticeably damaged the floor sample. However, I prefer the technician's evidence. I find it unlikely that he would be mistaken about the results of the floor sample test. I also find it unlikely that he would refuse to repair the floor stain if he observed any stains on the wood sample, given that he was there in part to correct work deficiencies.
15. Ultimately the respondent provided the technician a cheque, but only for \$4,000, and refused to provide the remaining balance of \$1,750.
16. The respondent submits that the only outstanding issue with the applicant's work is the floor stain. I find it speculative that the applicant caused the stain. The applicant submits, and I accept, that the respondent did not say that the floors were damaged when the work was first completed in August 2018. This is consistent with the fact that the respondent initially attempted to pay the applicant in full.
17. The applicant also says that at the time the work was done, the respondent's property was under construction, and many tradespersons were working in the area. I accept that this was the case and I conclude that it weakens any possible link between the applicant's work and the floor stain.
18. The respondent submits that the applicant did its work in a "consistently subpar" way. I did not find the evidence persuasive on this matter. Notably, the respondent

acknowledges that, aside from the floor stain, the applicant's work was largely acceptable. There is no expert report that suggests otherwise.

19. In summary, I find that the respondent breached the parties' contract by not paying the applicant in full. The applicant is entitled to \$1,750.

## **TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES**

20. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.
21. The applicant was largely successful in this dispute. I therefore award it \$125 for reimbursement of tribunal fees. The applicant did not claim dispute related-expenses.
22. The respondent did not claim tribunal fees but claimed \$600 for an expert report as a dispute-related expense. There is no evidence that this report was obtained or paid for. I decline to order reimbursement for this amount.

## **ORDERS**

23. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$1,898.75, broken down as follows:
  - a. \$1,750.00 in debt,
  - b. \$23.75 in pre-judgment interest from October 15, 2018, under the *Court Order Interest Act* (COIA), and
  - c. \$125.00 as reimbursement of tribunal fees.
24. The applicant is entitled to post-judgment interest under the COIA.

25. 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.
26. 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.

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David Jiang, Tribunal Member