Civil Resolution Tribunal

Date Issued: August 16, 2019

File: SC-2019-003066

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wingren Floor and Supply Co Ltd. v. Coulson*, 2019 BCCRT 980

B E T W E E N :

WINGREN FLOOR AND SUPPLY CO LTD.

APPLICANT

A N D :

BRITTON COULSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about an unpaid invoice for carpet installation. The applicant, Wingren Floor and Supply Co Ltd., says that it installed carpeting for the respondent, Britton Coulson. The applicant says it offered a substantial discount

and credit to address a carpet flaw and drywall scratches but remains unpaid. The applicant claims $3,642.97.

2. The respondent agrees he has not paid the applicant. However, he says that the applicant agreed to replace carpeting in two rooms but never did so. He submits the offered discount does not fully compensate for the carpet flaws, including a seam issue, and window trim damage caused by the applicant.

3. The applicant is represented by Gordon Halkett, who I infer is an employee or principal. The respondent is 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* (CRTA). 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. As I shall discuss below, the parties dispute what was said and who is to blame for the delay in having this matter resolved. 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, both sides have called 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 9.3(2), in resolving this dispute the tribunal may make an order one or more of the following orders, where permitted by section 118 of the CRTA:

    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 must pay the applicant $3,642.97 for carpet installation.

FACTS AND ANALYSIS

10. 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.

11. The respondent hired the applicant to supply and install new wool carpets for $10,954.70. As documented in the November 20, 2017 estimate, he paid a 50% deposit, leaving $5,477.35 owing. The applicant completed the installation on January 10, 2018 but the respondent did not pay the remaining balance.

12. During the work an installer identified a flaw in the new bedroom carpet. The applicant told the installer to finish the job as it could not reach the respondent for instructions. The respondent emailed the applicant on January 12, 2018 that the installer overall did a “good job”, but there was a flaw in the bedroom carpet. He asked the applicant to go back to the manufacturer to ask for a discount and pass the savings on to him. In a January 15, 2018 email, the respondent noted damage to his drywall and wood window trim. He provided pictures of the carpet and damage done. At some point he also identified a seam issue with the carpet in the main room, though the respondent did not directly refer to it in the body of the January 12 or 15, 2018 emails.

13. On January 15, 2018, the applicant replied that the cost of fixing the window trim and drywall would be “looked after”, once it was informed of the cost of repairs. The applicant also agreed that the pictures appeared to show a flaw in the bedroom carpet. However, the applicant wrote it was unclear if the carpet seam was an issue and might need access to inspect it.

14. From January to July 2018, the applicant repeatedly requested access to inspect the carpet. The respondent submits that he was available, but inconsistent with that, also submits that he was extremely busy and travelling. I find that the correspondence shows that the respondent largely refused or ignored the applicant’s requests until the applicant sent an August 17, 2018 demand letter for payment of its outstanding bill.

15. On October 18, 2018, the applicant’s representatives inspected the carpet at an agreed-upon time. They concluded that there was a flaw in the bedroom carpet caused by the manufacturer and disagreed that there was any issue with the carpet seams. After discussions with the carpet manufacturer, on February 1, 2018, the applicant offered a discount of $1,811.73, as well as $300 for drywall scratches, though the applicant disputes whether it actually caused this damage.

16. The respondent submits in his Dispute Response that he has not paid the balance owing because the applicant agreed to replace the carpeting in the two rooms.

However, he also says a fair discount is an acceptable outcome. In his arguments he submits it is too late to change the carpets at this point.

17. In this case, the applicant installed carpeting for the respondent and remains unpaid for the balance owing under the November 20, 2017 estimate. The parties agree that the respondent did not entirely receive what he bargained for. There has therefore been a breach of contract. I find that the issue before me is to determine the correct measure of damages and deduct this from the amount owing to the applicant.

18. The respondent identified concerns with the bedroom carpet, a faulty seam in the main room, wall scratches, and window trim damage. I shall consider each in turn.

19. As noted above, there is still $5,477.35 owing under the November 20, 2017 estimate. The respondent provided no evidence about how much the flaw reduces the value of his bedroom carpet. His only submission is that a greater discount is warranted. The applicant offered a discount of $1,811.73 for the bedroom carpet flaw. The applicant negotiated this amount with the carpet manufacturer and says it drove a hard bargain. The applicant essentially did what the respondent requested in his January 12, 2018 email. On balance, I place greater weight upon the applicant's submission and find that $1,811.73 is a fair estimate of the reduction in the bedroom carpet's value.

20. I next consider the alleged faulty seam in the main room carpet. The respondent provided pictures, but I was not able to identify the issue with the main room carpet. The respondent also did not quantify what his losses were. The respondent says that during the October 2018 carpet inspection the applicant's representatives acknowledged that there was a seam issue in the main room carpet. However, the respondent's November 7, 2018 email indicates that he was absent at the time.

21. The applicant says that in October 2018 its manager and certified floor inspector, GH, both verified that the carpet installation had no seam issues. It submits that GH

has over 40 years of experience and would have identified any such flaws. I accept this evidence therefore do not find any damage occurred under this heading.

22. I turn to the drywall scratches. The applicant offered a discount of $300 for repainting. The respondent did not dispute this particular amount and nothing in the drywall photographs appears inconsistent with such a discount. I find this to be a fair estimate of the damage.

23. Lastly, I consider the window trim damage. The applicant did not provide any discount for the window trim damage, though in previous correspondence it said it would. I have reviewed the pictures of the trim and it is located at ground level. There are scratches that appear consistent with damage that might have occurred during carpet installation. On balance, I find that the applicant caused this damage. However, the respondent did not provide any evidence on what it would cost to fix the trim. The respondent has the burden to prove the amount of the damage as he is the one asserting a setoff in the price to pay the applicant. The respondent is also best situated to obtain a quote for such repairs. I therefore order $50 in nominal damages.

24. By my calculation, when the discounts of $1,811.73, $300, and $50 are applied to the $5,477.35 outstanding, the balance owing is $3,315.62. The applicant claims $3,642.97, which appears to include contractual interest, as noted in an August 17, 2018 demand letter. However, I was not provided the contract terms showing the rate of interest, nor was the calculation of contractual interest explained to me. I therefore find the applicant is not entitled to contractual interest.

25. That said, the applicant entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the sum of $3,315.62, from October 18, 2018. I find that date to be appropriate as it was clear by that time that the carpet seams were not an issue. While I considered a later date, I have found that some of the delay in resolving this matter was attributable to the respondent.

TRIBUNAL FEES

26. Under section 49 of the CRTA, 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.

27. As the applicant is successful party, it is entitled to reimbursement of tribunal fees of $175.00. The applicant did not claim for dispute related-expenses.

ORDER

28. I order that within 30 days of this decision, the respondent pay the applicant a total of $3,540.89, broken down as follows:

    a. $3,315.62 in debt,

    b. $50.27 in pre-judgment interest from October 18, 2018, under the COIA, and

    c. $175 in tribunal fees.

29. The applicant is entitled to post-judgment interest under the COIA, as applicable.

30. I dismiss the applicant's remaining claims.

31. Under section 48 of the CRTA, 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.

32. Under section 58.1 of the CRTA, 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.

David Jiang, Tribunal Member