



Civil Resolution Tribunal

Date Issued: September 3, 2019

File: SC-2019-000219

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Noble v. Mike's Carpet & Flooring Limited*, 2019 BCCRT 1041

BETWEEN:

SHARA NOBLE

APPLICANT

AND:

MIKE'S CARPET & FLOORING LIMITED

RESPONDENT

AND:

SHARA NOBLE

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant and respondent by counterclaim, Shara Noble, hired the respondent and applicant by counterclaim, Mike's Carpet & Flooring Limited (Mike's), to install laminated flooring in her home. Ms. Noble paid Mike's a total of \$5,124.74 for the supplies and labour but has since received a refund from her credit card company for \$1,265.60.
2. Ms. Noble wants Mike's to refund her the remaining \$3,859 she paid it for allegedly substandard installation work and for misrepresenting measurements. Mike's says that all of its installation work was completed correctly without deficiencies, and all costs and measurements were set out in the parties' contract.
3. Mike's counterclaims for \$1,265.60, the amount Ms. Noble received as a refund from her credit card company, which the credit card company charged back to Mike's.
4. Ms. Noble is self-represented and Mike's is represented by an employee or principal.

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* (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.
6. 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, they 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.

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, where permitted under 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.

ISSUES

9. The issues in this dispute are whether a) Ms. Noble is entitled to a refund of the remaining \$3,859 she paid Mike's, and b) whether Mike's is entitled to reimbursement of the \$1,265.60 refunded to Ms. Noble by her credit card company.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, Ms. Noble must prove her claim on a balance of probabilities. This means I must find it is more likely than not that Ms. Noble's position is correct. Likewise, Mike's is responsible for proving its counterclaim.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
12. On June 15, 2018, Ms. Noble signed a contract with Mike's for \$4,074.74 including tax to remove carpets and install new laminate flooring in her living room, dining room, and hallway. The contract states that the total price could increase if additional labour was required to complete the work, and Ms. Noble was responsible for any resulting additional costs. The contract also provided a 12-month warranty for repair of labour defects.
13. On June 25, 2018, Ms. Noble paid Mike's a \$2,037.37 deposit, which was 50% of the total contract amount.
14. On June 27, 2018, Ms. Noble emailed Mike's asking about sealing the floor to water proof it, caulking joints and edges before installing skirting boards, vacuuming dirt under the carpet and levelling the floor as needed. On the same date Mike's responded by email informing Ms. Noble that their contract did not include any of the services listed in her email, and that if levelling was required she would be charged extra.
15. On July 4, 2018, Mike's emailed Ms. Noble to remind her that it would install the new floor the next day. The email listed services that were not included in the contract and stated that if Mike's was required to provide any of those extra services, including levelling, there may be an extra charge to Ms. Noble.
16. On July 5, 2018, Mike's replaced the floors in Ms. Noble's home. Evidently after removing the carpet Mike's determined it needed to level the floors, and it provided Ms. Noble a \$1,050 estimate to level the floors on top of the contract price. Ms.

Noble paid the \$1,050 that day. She also paid Mike's \$1,629.89 that day, which together with her \$2,037.37 deposit on June 25, 2018 was approximately 90% of the total contract amount.

17. On July 6, 2018, the parties did a walk-through of the work areas in Ms. Noble's home and Ms. Noble signed a work order. The work order states, "I acknowledge delivery of the goods and services described above and confirm that all goods and services to be provided and performed in connection with the Contract described above have been so provided and performed and that such goods were received in good condition, complete and fit in every way for the purpose for which they are intended."
18. Ms. Noble says Mike's told her it was standard practice to sign the work order, which she says she signed assuming Mike's had completed the work correctly. She says that over the following days she discovered many defects with Mike's work, including problems with the installation of the base shoe, laminate floor, and transitions, and large and irregular expansion gaps. A base shoe is a narrow molding joining the bottom of a baseboard and a floor.
19. Mike's says it installed the floor correctly with no deficiencies and that Ms. Noble signed the work order agreeing that the work was done correctly and that all materials were fit for their purpose.
20. I find the work order acknowledges that Mike's provided the materials and completed the services set out in the contract. I also find the work order confirms the quality of the materials delivered by stating that they were "received in good condition, complete and fit in every way." However, I find the work order does not speak to the quality of the work Mike's performed with those materials. Therefore, I find that signing the work order did not preclude Ms. Noble from bringing a claim against Mike's for substandard work.
21. On July 8, 2018 Ms. Noble paid Mike's \$407.48, which was the remaining 10% balance of the contract amount. As of that date Ms. Noble had paid Mike's a total of

\$5,124.74. It is unclear why Ms. Noble paid this amount if she believed the installation work to be substandard.

22. Throughout July and August 2018 Ms. Noble communicated with Mike's about what she believed was its substandard flooring installation and unsuccessfully tried to reach a resolution with Mike's. In the meantime, she sought estimates from other flooring companies to repair or replace her floors.

23. In December 2018 Ms. Noble hired Ethical Flooring Ltd. (EFL) to replace her laminate floors with hardwood floors for \$5,875.82.

Is Ms. Noble entitled to a refund of the remaining \$3,859 she paid Mike's, or is Mike's entitled to reimbursement of the \$1,265.60 refunded to Ms. Noble by her credit card company?

Substandard Work

24. When a party such as Mike's holds themselves out as qualified to perform a specific trade, there is an implied warranty in the contract that the tradesperson will perform the job in a professional manner consistent with the standards of the trade, and that they will perform the task using the necessary skill and care required. I find such a warranty was an implied term of the contract in this case. The question is whether Mike's breached this implied warranty. On the evidence before me, I find it did.

25. Ms. Noble says there were problems with the installation of the base shoe, laminate floor, and transitions, and that there were large and irregular expansion gaps. She submitted numerous photos of Mike's installation work to support her allegations. I find the photos show undersized, missing, and broken base shoe; misaligned transitions; multiple gaps between the floor and the wall; and a large gap between the end of the laminate flooring and the washer and dryer. Ms. Noble also says some of the transitions were not properly glued to the floor.

26. Ms. Noble also says she paid for Mike's to install a reducer by the washer and dryer, which it never installed. However, I find there is no reducer included in the contract, so I dismiss this aspect of her claim.
27. Mike's says the gaps were required to allow them to click the floor pieces together. It says it must leave a quarter to half-inch gap between the baseboard and the laminate for expansion of the floor, and this is why it installed the base shoe. Ms. Noble says that in some places the gaps were more than an inch, but none of the photos indicate the measurement of the expansion gaps. However, she also says the gaps were poorly covered by the base shoe. One of her photos shows an undersized base shoe installed on one side of a door frame but not the other. Mike's says that once it completed its work there was a problem with the baseboards, which Ms. Noble had chosen not to replace. However, the evidence indicates that Mike's chose to install base shoe based on Ms. Noble's choice not to replace the baseboards.
28. I find Ms. Noble's claims are supported by estimates and evidence she received from 2 other flooring companies who inspected Mike's' work. On July 20, 2018, after inspecting Ms. Noble's floors, BC Best Flooring sent her a text message stating that the quality of Mike's' installation work was "shocking." In August 2018 Ms. Noble had EFL inspect Mike's installation work. On August 9, 2018 EFL provided Ms. Noble an estimate for \$1,265.60 to remove and replace the baseboards and install base shoe to cover the expansion gaps, replace transitions, and remove and re-install laminate flooring in the hallway where necessary. The estimate states that its purpose was to repair Mike's "substandard" work. On the same date EFL said in an email to Ms. Noble that the floor boards had been cut short in the hallway, that if it performed flooring work in her home it would be "fixing someone else's mistakes," and described Mike's flooring work as substandard.
29. While Mike's argues that the opinions of othering flooring companies are not neutral because they stand to make money from their opinions, I find their opinions are

consistent with the balance of the evidence. I note Mike's did not submit photos of its work or opinions from other flooring companies or experts.

30. Ms. Noble also says she also noticed dips in the floor at the time of Mike's installation and says she told Mike's it was not level on July 20 and 25, 2018, but Mike's told her it was normal because it was a floating floor. There is no documentary evidence before me of these conversations, and Mike's says Ms. Noble never raised any issues with the subfloor until this dispute. Mike's says that if Ms. Noble had raised issues with her subfloor and leveling it would have hired an independent inspector to provide an unbiased opinion. However, once Mike's installed the laminate flooring the subfloor was covered and therefore I find it would have been difficult to determine the quality of Mike's levelling work.
31. In December 2018 when EFL was replacing Ms. Noble's floors with hardwood it told her in an email that it would need to grind and level the subfloor in order to properly repair her floors. It said, "basically it's not that bad, but the previous installer just dumped the bags of compound and assumed that would fix itself. Which is not the correct way to do it." In another email to Ms. Noble EFL said that it ended up not needing to use levelling compound, but instead it spent 6 hours grinding the "stuff the previous installer put in badly." The evidence shows that this grinding work cost \$510 plus tax.
32. I find EFL's evidence from inspecting the subfloor in December 2018 to be the best evidence of the quality of Mike's subfloor levelling work. I find the fact that EFL revised its initial assessment of the work required to repair the subfloor once it uncovered it supports the reliability of its assessment.
33. On the evidence before me I find Mike's has not sufficiently addressed or explained Ms. Noble's concerns about the poor installation of the base shoe, the misaligned transitions, or the subfloor. On balance, I find Mike's levelling of the subfloor and installation of the laminate flooring and base shoe substandard. I therefore must determine an appropriate remedy for Ms. Noble.

34. Ms. Noble wants a refund of the entire amount she paid to Mike's less the \$1,265.60 she has already been refunded through her credit card company, for a total of \$3,859. However, the evidence indicates that EFL determined the floor could be repaired without replacing all of the laminate for a cost of \$1,265.60, and that Ms. Noble has already been refunded this amount. While Ms. Noble has chosen to replace the laminate flooring Mike's installed with hardwood, the evidence indicates that this was not necessary, rather it was Ms. Noble's preference.
35. This leaves the issue of the subfloor. EFL's invoice shows the subfloor grinding work cost \$510 plus 5% tax for a total of \$535.50. While Ms. Noble did not specifically claim reimbursement for EFL's work levelling the subfloor, I find it to be a more accurate assessment of the damages she incurred as a result of Mike's' substandard work. Therefore, I find Ms. Noble is entitled to repayment of \$535.50 to repair and level the subfloor.
36. Having found that Ms. Noble was entitled to the refund of \$1,265.60 from her credit card company in addition to payment of \$535.50 for work to repair the subfloor, I find Mike's is not entitled to repayment of \$1,265.60, and I dismiss its counterclaim.

Fraudulent Misrepresentation

37. Ms. Noble also says that Mike's fraudulently misrepresented the measurements of her floor. A fraudulent misrepresentation is a representation of fact made without any belief in its truth, with the intent that the person to whom it is made will act on it, and which actually causes that person to act on it (see *Shaughnessy v. Sidhu*, 2016 BCPC 308 (CanLII)).
38. Ms. Noble says Mike's charged her for 156 linear feet of base shoe to be installed in front of the baseboards, when the total length of the baseboards in her living room is 80 linear feet. She also says Mike's charged her for 468.48 square feet of laminate flooring when the surface area of her living room and hallway is only 368 square feet.

39. Mike's does not dispute the measurements in Ms. Noble's home, but it says the difference between the measurements and the amount of materials charged was to account for wastage. Ms. Noble says the industry standard for wastage for laminate flooring is 15% but provided no evidence to support this claim.
40. Mike's also says that all of these measurements and costs were explicitly set out in the contract, which Ms. Noble signed in advance of the work. I agree with Mike's. Ms. Noble signed the contract on June 15, 2018 which was 3 weeks before Mike's started the work. There is no evidence that she raised these issues with Mike's at any time prior to Mike's starting the work. I am not satisfied that Mike's fraudulently misrepresented the measurements or costs in the contract, and I dismiss this claim.
41. Ms. Noble also says that in 2018 the price of the laminate used in her home was \$2.99 per square foot but Mike's charged her \$3.49 per square foot. However, she provided no evidence to support this contention, and I note the contract sets the agreed price of laminate at \$3.49 per square foot, which she signed in advance of the work. Therefore, I dismiss this aspect of Ms. Noble's claim.
42. The *Court Order Interest Act* (COIA) applies to the tribunal. Ms. Noble is entitled to pre-judgment interest under the COIA on the amount owing calculated from July 8, 2018, which is the date of her final payment to Mike's, to the date of this decision. This equals \$10.80.
43. Under section 49 of the CRTA 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 Ms. Noble was only partially successful I find she is entitled to reimbursement of half her tribunal fees for a total of \$87.50. Ms. Noble claimed \$16.63 in dispute-related expenses for registered mail, which I find to be reasonable in the circumstances. Therefore, I find she is entitled to \$8.32 which is half the amount of her dispute-related expenses. Since Mike's was unsuccessful in its counterclaim I find it is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDERS

44. Within 14 days of the date of this order, I order Mike's to pay Ms. Noble a total of \$642.12, broken down as follows:
- a. \$535.50 as partial repayment for the cost of repairing the subfloor,
 - b. \$10.80 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$95.82 for \$87.50 in tribunal fees and \$8.32 for dispute-related expenses.
45. Ms. Noble is entitled to post-judgment interest, as applicable.
46. I dismiss Mike's' counterclaim.
47. 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.
48. 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.

Sarah Orr, Tribunal Member