



# Civil Resolution Tribunal

Date Issued: October 29, 2019

File: SC-2019-002560

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Adam.21Construction Inc. v. Friesen Floor & Window Fashions Ltd.*, 2019  
BCCRT 1227

B E T W E E N :

ADAM.21CONSTRUCTION INC.

**APPLICANT**

A N D :

FRIESEN FLOOR & WINDOW FASHIONS LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This is a construction payment dispute. The applicant, Adam.21Construction Inc., says that it performed flooring installation services for the respondent, Friesen Floor

& Window Fashions Ltd., for which it has not been paid in full. The applicant wants the respondent to pay it \$4,900. The respondent does not deny that the applicant performed the work it describes, but says that the work contained deficiencies that it paid to rectify. The respondent's position is that the repair costs exceeded the amount claimed by the applicant, and it does not owe the applicant any more money.

2. The applicant is represented by its principal, and the respondent is represented by an employee.

## **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* (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.
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. 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.

## **ISSUE**

- 7. The issue in this dispute is whether the respondent owes the applicant the \$4,900 it claims.

## **EVIDENCE AND ANALYSIS**

- 8. The parties agree that the respondent hired the applicant to perform flooring installation in a number of residential housing units. Although the respondent paid the applicant fully for a number of jobs, the evidence shows that the respondent made a number of adjustments to some invoices and applied back charges to the applicant for items such as labour and materials it says were required to address deficiencies in the applicant's work, and a charge for the improper disposal of carpet.
- 9. The applicant's position is that the respondent is trying to blame it for deficiencies in work performed by other contractors, particularly with respect to the installation of subfloors. The applicant says that it did address concerns with its work in some jobs and also rectified deficiencies in other contractors' work. The applicant says that the respondent did not call him first to fix the problems, and states that he was not told about the alleged deficiencies in his work until 1 year later. According to the applicant, the fact that the respondent hired it to rectify deficiencies in other contractors' work means that the respondent did not have a problem with its work.
- 10. The applicant says the respondent owes \$4,553.63 in unpaid invoices, plus \$350 for a lawyer consultation. While this totals \$4,903.63, the applicant claims damages of \$4,900.00.

11. The respondent says that it arranged for the repair of various deficiencies in the applicant's work, including the removal and replacement of flooring, and charged the costs back to the applicant. The respondent says its site manager attempted to set up a time for the applicant to fix its deficiencies, and sent emails and pictures to the applicant but received no response. The respondent states it has advised the applicant of all the back charges and provided it with copies of documentation.
12. There is no dispute that the respondent made deductions from some of the applicant's invoices. There is no indication that the applicant agreed to this reduction in its compensation. I must consider whether the respondent has established that it has incurred damages that could be set-off against the amounts owing to the applicant (see *Wilson v. Fotsch*, 2010 BCCA 226 for a description of the criteria for equitable set-off).
13. The respondent provided images that show gaps in flooring, uneven subfloors and a dark substance on the back of underlay material, which the respondent says is levelling compound that was still wet at the time of installation of the flooring material above it. It is not clear whether these images are the same ones the respondent says its site manager sent to the applicant. The associated email messages are not included in the evidence. Based on these images alone, I am not able to determine whether the installation problems relate to work performed by the applicant or by other contractors whose deficiencies were intended to be remedied by the applicant.
14. Further, while the respondent produced a listing of deductions on a Supplier Aged Detail document, these reductions in hours invoiced by the applicant and charged back expenses were not supported by evidence. In particular, there are no receipts or invoices relating to labour or materials required to address deficiencies attributed to the applicant.
15. I find that the respondent has not established that it incurred expenses to address deficiencies in the applicant's work such that a set-off against amounts owing to the

applicant would be appropriate. I find that the applicant is entitled to payment from the respondent in the amount of \$4,553.63 for the unpaid invoices. The applicant also claimed reimbursement of \$350 it says it spent on a legal consultation. As this claim was not supported by evidence and the tribunal generally does not order parties to reimburse legal fees, I will not make an order for this amount.

16. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from its June 16, 2019 demand for payment, this equals \$32.36.
17. 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. I find the applicant is entitled to reimbursement of \$175.00 in tribunal fees.

## **ORDERS**

18. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$4,760.99, broken down as follows:
  - a. \$4,553.63 in payment of the applicant's invoices,
  - b. \$32.36 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175.00 tribunal fees.
19. The remainder of the applicant's claims are dismissed.
20. The applicant is entitled to post-judgment interest, as applicable.
21. 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.

22. 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.

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Lynn Scrivener, Tribunal Member