



Civil Resolution Tribunal

Date Issued: December 18, 2019

File: SC-2019-005150

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Blue Mountain Kitchens Inc. v. Sadet*, 2019 BCCRT 1421

B E T W E E N :

BLUE MOUNTAIN KITCHENS INC.

APPLICANT

A N D :

SUSAN SADET

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about a contract for cabinets. The applicant, Blue Mountain Kitchens Inc., says that the respondent, Susan Sadet, has not paid in full for the cabinets it provided and installed. The applicant asks for an order that the respondent pay it the outstanding \$3,235.28. The respondent admits that she has

not paid the full price of the cabinets, but says that the applicant did not provide her with the cabinets or quality of installation she expected.

2. The applicant is represented by an 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* (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 must pay the applicant the \$3,235.28 it claims.

EVIDENCE AND ANALYSIS

8. The parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will only refer to what is necessary to provide context to my decision.
9. In September of 2018, the respondent contacted the applicant about cabinets for a residential property. One of the applicant's employees collaborated with the respondent about the design. The applicant produced a computerized mock-up of the design, as well as detailed drawings that showed the measurements.
10. The applicant and respondent reached an agreement for the purchase and installation of cabinets. A September 26, 2018 purchase order did not list measurements, but listed colours, materials and other specifications for the cabinets. The purchase order stated the total contract price was \$8,547.91, and contemplated the payment of a deposit (which the respondent paid) and subsequent payments at specified intervals.
11. Unfortunately, the installation of the cabinets did not proceed smoothly. The respondent contacted the applicant with concerns about the timing of the installation. She was also unhappy with cleanliness and the applicant's installer. The problem was compounded when the applicant's installer told the applicant that the job was complete when in fact it was not. The applicant tried to address these concerns by arranging for a new installer to complete the work.
12. When the applicant contacted the respondent to request the outstanding payment for the job, the respondent raised additional concerns about its work. The applicant says it tried to address these concerns, but the respondent never responded to its request for a final walk-through to identify any deficiencies.

13. The applicant says it completed the work contemplated by its agreement with the respondent. The applicant says its invoice 20356 (with a balance of \$854.79) and invoice 20357 (with a balance of \$2,380.49) remain unpaid, and asks for an order that the respondent pay it \$3,235.28.
14. The respondent says that the applicant did not complete the work as she expected. She says that the applicant did not install kitchen cabinets all the way to the ceiling, did not provide a space for a microwave, and left a large empty space above the refrigerator. The respondent also says that the applicant's installer made a large mess by cutting wood inside the home, which required her to hire cleaners and repaint. According to the respondent, she hired a contractor to address the applicant's deficiencies. The respondent admits that she cut off contact with the applicant, and says that she is disappointed in its conduct, does not trust it, and does not want its employees on her property anymore. Although she stated that she may take the applicant to court to seek compensation for overpayment, stress and wasted time, the respondent did not file a counterclaim.
15. There does not appear to be any dispute about the amount of the original contract or the amounts the respondent has paid already. As noted, at issue is the outstanding amount of \$3,235.28. I must consider whether the respondent has established that she 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 an equitable set-off). The respondent bears the burden of proof, on a balance of probabilities, in this regard.
16. The respondent identified a number of items in the kitchen cabinetry that do not meet her expectations, including the height of the cabinets and spaces for appliances. She provided a number of images of the project and communications with the applicant about her concerns. As noted above, the purchase order does not contain measurements. The evidence before me includes the 2 drawings produced by the applicant: the computer-generated mock-up drawing and the design drawing with detailed measurements.

17. The respondent says the mock-up drawing is what she agreed to. However, neither drawing contains a specific statement about whether the cabinets would reach the ceiling. The design drawing shows that the upper cabinets would be 35" in height, which is lower than the 40" the applicant says would be required to reach the ceiling. The mock-up drawing shows the tops of the cabinets in one view, and a space above the upper cabinets in another view. I find that the drawings show standard upper cabinets that do not extend to the ceiling. This is consistent with the images of the finished kitchen, which show moldings installed at the ceiling line, with the cabinets ending below this level. I find that the applicant installed the cabinets as shown on the drawings, and as contemplated by the parties' agreement.
18. Turning to the microwave issue, the design drawing identifies spaces for a range, a dishwasher and a refrigerator. The mock-up drawing shows appliances in these spaces. The drawings do not show a space for a microwave, or a microwave itself. I find that the agreed-upon design did not contemplate a specific space for a microwave.
19. There is no dispute that there is a gap between the top of the refrigerator and the overhead cabinet. While no measurement was provided, from my view of the image of the finished cabinetry, the gap appears to be approximately 2 feet high. The applicant says it designed the cabinets to leave as large a space as possible to accommodate the refrigerator selected by the respondent.
20. The parties disagree about whether the respondent provided the refrigerator measurements in a timely manner. In a September 26, 2018 email message, the parties discussed the width of the refrigerator, but not the height. In that same message, the applicant advised the respondent that the cabinets had been ordered but that a change could be made if the necessary information was received "right away". There is no indication in the evidence before me about when or whether the respondent provided new information about the height of the refrigerator that she purchased. Based on the evidence before me, I find that the applicant installed the cabinetry as agreed.

21. The applicant also made submissions about a vanity being in the wrong place. Her concern appears to be about the length of the countertops, which is not part of the applicant's scope of work. I find that the respondent has not established that the applicant failed to install the vanity in accordance with their agreement.
22. The applicant admits that there were some deficiencies in the respondent's cabinets, and says that deficiencies are a normal part of every project. I accept that the applicant was willing to identify and address deficiencies in its work, but that the respondent decided not to allow it to determine the extent of any deficiencies or perform any additional work. I do not find the respondent's position to be reasonable in the circumstances. In addition, the respondent says that she paid to have another contractor fix the applicant's deficiencies, but did not provide invoices or other evidence to support this claim. I find that the respondent has not established that she incurred expenses to address deficiencies in the applicant's work.
23. The respondent also raised concerns about the timing of the cabinet installation. The parties' agreement did not specify a time frame for the installation of the cabinets. The respondent has not shown that the delays were excessive or caused by the applicant rather than other aspects of the construction process. While the respondent may have preferred a different time frame, I do not find that she has established that the applicant failed to install her cabinets in a timely manner or that she experienced any losses as a result of the timing of their installation.
24. The respondent says that the applicant's installer left a mess in the home, and she provided images of wood dust inside several cabinets. Her larger concern appears to be a large pile of construction debris and packaging and dust throughout the home. The image of this pile does not identify where this debris was left, but it does not appear to be in the kitchen or other areas where the installer was working. While I accept that the dust inside the cabinets was from the installation process, I am not satisfied that the presence of debris or dust elsewhere has been shown to be associated with the applicant's installer. In addition, the respondent has not provided evidence of expenditures for cleanup or repainting. I do not find that the

respondent has proven that the mess was left by the applicant or that she incurred costs to clean it up.

25. Based on the evidence before me, I find that the respondent has not proven that she is entitled to a set-off of damages against the amount owing to the applicant. Accordingly, the respondent is responsible to pay the applicant the outstanding amount of \$3,235.28.
26. In addition, I find that the applicant is entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from January 14, 2019 (the date of the applicant's demand for payment), this equals \$58.59.
27. 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 \$200.00 in tribunal fees.

ORDERS

28. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,493.87, broken down as follows:
 - a. \$ 3,235.28 under the agreement,
 - b. \$58.59 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$200.00 in tribunal fees.
29. The applicant is entitled to post-judgment interest, as applicable.
30. 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.

31. 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.

Lynn Scrivener, Tribunal Member