



Civil Resolution Tribunal

Date Issued: December 31, 2019

File: SC-2019-006089

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kensit v. Chris Steven Harland (dba Chris's Carpet and Upholstery Cleaning)*, 2019 BCCRT 1451

BETWEEN:

CHRISTINE KENSIT

APPLICANT

AND:

CHRIS STEVEN HARLAND (Doing Business As CHRIS'S CARPET
AND UPHOLSTERY CLEANING)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a missing rug.

2. The applicant, Christine Kensit, says she gave multiple rugs to the respondent, Chris Steven Harland (Doing Business As Chris's Carpet and Upholstery Cleaning), for cleaning and one was not returned. The applicant seeks \$425, which she says is "for the rug". The respondent says every rug that was on the invoice was returned.
3. Both parties are 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. 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, he said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.
6. 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.

7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make 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

8. The issue in this dispute is whether the applicant is entitled to compensation for an allegedly missing rug.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that sometime in April 2019 the respondent picked up various rugs from the applicant's home for cleaning. Specifically, the applicant says she gave the respondent three pure wool Oaxaca 2 foot x 5 foot area rugs, a 2 foot x 9 foot hallway runner, and a 1 foot x 5 foot table runner. The applicant says when the respondent returned the rugs, she was missing one of her 2x5 wool rugs.
11. In contrast, the respondent says all rugs that were given to him were returned and checked by the applicant. He says the applicant did not complain to him about a missing rug until two months after the job was completed. The applicant did not say in her submissions when she first contacted the respondent about the missing rug.

12. In any event, the respondent produced an April 22, 2019 invoice which lists the following for cleaning: one 1x7 wool runner, two 2x5 wool runners, one 2x5 synthetic runner, and one 1x9 synthetic rug. The respondent says the applicant only gave him two 2x5 wool rugs, and that everything on the invoice was returned to the applicant on May 13, 2019. The respondent says the applicant moves often, and perhaps she misplaced the rug during a move. The applicant did not respond to that submission.
13. As noted above, the applicant has the burden of proving her claim on a balance of probabilities. The applicant did not provide any evidence in support of her claim, other than her statement that she gave the applicant three 2x5 wool rugs and only received two back. Meanwhile, the respondent says, and the invoice notes, that only two 2x5 wool rugs were given for cleaning. On the evidence before me, I find the applicant has not proven she is missing a rug. As a result, I dismiss the applicant's claim for compensation for the missing rug.
14. Even if I had found the respondent failed to return the rug, I would not have awarded the applicant's claimed compensation in any event. Although she claimed \$425 "for the rug", she did not provide any evidence supporting the rug's claimed value, such as a receipt for the missing rug or a quote to replace the rug.
15. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was not successful, I find that she is not entitled to reimbursement of her paid tribunal fees. Neither party claimed dispute-related expenses.

ORDER

16. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair