



Civil Resolution Tribunal

Date Issued: January 14, 2020

File: SC-2019-007262

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bayik v. Advance Flooring Inc.*, 2020 BCCRT 49

BETWEEN:

MURAT BAYIK

APPLICANT

AND:

ADVANCE FLOORING INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about repayment of a holdback.
2. The applicant, Murat Bayik, says his business, Baymur Flooring (Baymur), did a contract flooring job for the respondent, Advance Flooring Inc. (Advance). Mr. Bayik

says Advance held back \$2,500 and now refuses to return the money. Mr. Bayik seeks \$2,500, the amount of the holdback.

3. Advance says the holdback amount is kept for one year to ensure good workmanship. It also says that because there were issues with Baymur's floor installation within the one year, Mr. Bayik is not entitled to the holdback's return.
4. The applicant is self-represented. The respondent is represented by an employee.

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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
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. 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

9. The issue in this dispute is whether the applicant is entitled a return of his \$2,500 holdback from the respondent.

EVIDENCE AND ANALYSIS

10. 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.
11. On March 8, 2017, Mr. Bayik and Advance entered into a subcontracting agreement that Mr. Bayik would provide floor installation services on behalf of Advance. Among other things, clause 5.7 of the contract provides that Mr. Bayik's workmanship and the materials used must be free from defects for at least one year after installation. Further, if any deficiencies arose during that time, clause 5.7 states that Mr. Bayik is required to immediately remedy them. The clause further states that if the complaining customer does not want Mr. Bayik or his company to return to fix the deficiencies, Advance may arrange for another subcontractor to attend and remedy them, and any amounts paid will be charged back to Mr. Bayik.
12. Clause 5.7 and Schedule B set out that, for every project, Advance would retain a \$2,500 holdback for 1 year, in the event any deficiencies arose. After one year, in the absence of any deficiencies, the holdback was to be returned to Mr. Bayik.
13. The parties agree that Mr. Bayik or Baymur installed flooring at customer KZ's home on October 19, 2017. That same day, KZ signed an Installation Customer Approval, and the comments note "very good!". However, the evidence is that in January 2018, KZ complained about an issue with her floors, including sinking in some areas and peeling planks.

14. On May 1, 2018, an inspection was completed by Ed Labelle at Park Avenue Floor Services Ltd. Mr. Labelle noted KZ moved into the home in December 2017 after having the floors redone in October 2017, and noticed deficiencies. Upon inspection, Mr. Labelle noted some damaged floor areas, including damage to the tongue and groove in the kitchen, raised planks caused by debris under the planks, poor transitions near the fireplace causing a “hump” in the floor, and two dips in the flooring causing movement, one in the hallway near the master bedroom and one in the powder room. Mr. Labelle concluded the issues were installation-related, and not a result of a product defect.
15. In response, Mr. Bayik says Mr. Labelle’s report is “invalid” because it does not include a document number, the company’s address or phone number, Mr. Labelle’s signature, or a cost estimate to remediate the found issues. However, Mr. Bayik does not argue Mr. Labelle’s report findings are incorrect.
16. For the following reasons, I accept the evidence of Mr. Labelle. Although Mr. Labelle does not specifically state his qualifications in the report, it states he is an inspector for a floor services company. Advance says it hired a certified inspector to provide a report on KZ’s floor issues, and I infer Mr. Labelle was that inspector, and that he has some knowledge about, and expertise in, floor installation services. Additionally, on balance, I find Mr. Labelle’s inspection report is consistent with KZ’s complaints, and indicate workmanship errors by the floor installers that required repair. I do not accept Mr. Bayik’s argument that Mr. Labelle’s report is “invalid”.
17. On August 20, 2018, KZ’s floors were completely ripped up, leveled, and new flooring installed by a different subcontractor, FF. Although Advance says the total cost to repair KZ’s floor was \$7,890.46, the invoices in evidence total \$7,766.79. There is no explanation for the difference, but for the purpose of this decision nothing turns on it.
18. In any event, sometime before April 23, 2019, Mr. Bayik followed up with Advance about the return of the \$2,500 holdback for KZ’s project. In an April 23, 2019 email, an Advance employee notified Mr. Bayik about the chargeback for the errors in KZ’s

project, and that because the repair costs exceeded the holdback, there was no holdback to return.

19. Mr. Bayik says the holdback should be returned to him because KZ signed off on the project being done to their satisfaction, because he was not told about KZ's deficiencies, and because he was not given the opportunity to correct them himself, or have someone correct them on his behalf. In response, Advance says although KZ signed the Installation Customer Approval form, sometimes it takes time for deficiencies to become apparent, as they did in this case, which is why it offers a one year installation warranty. Advance also says KZ did not want Mr. Bayik or Baymur to remedy the work and so, according to its contract with Mr. Bayik, it had another subcontractor perform the repairs. For the reasons that follow, I agree with Advance's interpretation of the contract and dismiss Mr. Bayik's claim.
20. Based on the terms of the parties' signed contract, I find Advance is entitled to keep the \$2,500 holdback. I say this because I have found the original installation by Mr. Bayik and/or Baymur was substandard such that it required extensive repair within the 1 year warranty period. Although Mr. Bayik says he should have been notified about the complaint, there is no contract term that requires notification. Advance says that KZ refused to have Mr. Bayik or Baymur return to her home, and I accept that, given the extensive deficiencies. So, under the parties' contract, Advance was entitled to hire someone else to fix them, which they did. As a result, Advance was entitled to keep the \$2,500 holdback under the terms of the agreement, and charge the remainder of the repair costs back to Mr. Bayik. For reasons unknown to me, Advance did not charge Mr. Bayik for the remaining repair cost, and did not counterclaim for that amount in this dispute. In any event, I find Mr. Bayik is not entitled to the \$2,500 holdback's return, and I dismiss his claim.
21. 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

he is not entitled to reimbursement of his paid tribunal fees. No dispute-related expenses were claimed.

ORDER

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

Andrea Ritchie, Vice Chair