



Civil Resolution Tribunal

Date Issued: March 5, 2020

File: SC-2019-007880

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hallmark Carpets (93) Ltd. v. Kenan Kilic (dba Keenan Associates Home Services)*, 2020 BCCRT 259

B E T W E E N :

HALLMARK CARPETS (93) LTD.

APPLICANT

A N D :

KENAN KILIC (Doing Business As KEENAN ASSOCIATES HOME SERVICES)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This is a dispute about replacing floors in a home. The applicant, Hallmark Carpets (93) Ltd., hired the respondent, Kenan Kilic (Doing Business As Keenan Associates Home Services), to replace floors in the home of the applicant's customer, Donna

King. The applicant says the respondent did not install the new floors properly and as a result flooring material must be removed and replaced.

2. The applicant claims \$1,771.83 for replacement flooring materials, \$525 in legal fees for attempting to remove a lien on Ms. King's home, \$288.75 in independent flooring inspector fees, and \$500 for "time and harassment." Together with a claimed \$150 tribunal fee, these amounts total \$3,235.58, although the applicant calculated the sum as \$3,241.00. The applicant also seeks an order for the respondent to cease "harassing and contacting" Ms. King.
3. The respondent says he performed the agreed-upon flooring work to an adequate standard, so does not owe the applicant anything. The respondent denies harassing Ms. King.
4. The respondent withdrew his counterclaim against the applicant for unpaid labour and materials costs for the flooring work he performed. The respondent sought to recover those unpaid amounts from Ms. King in a separate tribunal dispute (Dispute SC-2019-010514).
5. The applicant is represented by an employee or principal, who also represents Ms. King in Dispute SC-2019-010514. The respondent is self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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 only. Despite some minor differences in the parties' interpretation of evidence and characterization of events, I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

8. 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.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
10. As noted above, the same person represents both the applicant in this dispute, and Ms. King in Dispute SC-2019-010514 with the respondent. The respondent is a self-represented party in both disputes. The parties in both disputes submitted all their evidence for both disputes to Dispute SC-2019-010514's claim file only. All those parties later agreed in writing to copy the evidence to this dispute's claim file, and to include their arguments in Dispute SC-2019-010514 as arguments here. I find the representatives of both parties have had an opportunity to provide and review evidence and to make arguments about this dispute.

ISSUE

11. The issue in this dispute is whether the respondent's flooring work was deficient, and if so, how much he owes the applicant for replacement materials and other expenses.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proving its claim, on a balance of probabilities. I have read all the parties' evidence and submissions, but I

have only addressed the evidence and arguments to the extent necessary to explain my decision.

13. This dispute is about whether the respondent's flooring work was of acceptable quality. The parties agree that the applicant hired the respondent to replace the floors in Ms. King's home. The applicant alleges the respondent's work was deficient. I infer the applicant made a claim against the respondent because the applicant hired the respondent and intends to rectify the respondent's allegedly deficient work. Aside from a work order that outlines the work to be performed, there is no written contract in evidence that sets out the required specifications of the flooring work.
14. Where deficient work is alleged, the burden of proof is on the party asserting the defects. In this case, the applicant must prove on a balance of probabilities that the respondent breached his agreement with the applicant by failing to provide flooring work that was of reasonable professional quality (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124).
15. The applicant submitted several photos it says show defects in the flooring installed by the respondent. I find the photos show paint or primer splattered on flooring, cracked paint or primer, gouged and scratched flooring, gaps in flooring joints, and flooring with missing and broken sections. The respondent says one of the photos was not taken in Ms. King's home, but he did not identify which one. The respondent also says most of the photos were taken before the flooring work was finished. It is not clear whether each photo of the installed flooring was taken during or after construction, so I give less weight to the photos of the installed flooring.
16. The respondent says there was a pre-existing subfloor leveling problem that was outside of his scope of work for the project. The respondent says he is not responsible for floor deficiencies because the applicant did not provide a sufficiently level subfloor to install the flooring onto. The respondent relies on the "Floor Covering Reference/Specification Manual of Canada," which he says requires a

general contractor to provide a subfloor that is level to within 3/16 of an inch over 10 feet. However, the respondent did not supply a copy of that manual.

17. The respondent says he cannot touch work which requires third party expertise in another field. He also says that he is not a concrete forming professional. However, despite his admitted lack of expertise in concrete subfloor leveling, the respondent chose to take on the subfloor leveling work at Ms. King's home. The respondent could have refused to accept the subfloor leveling work, or could have raised concerns with the applicant about the number of additional bags of leveling compound that were required for the job, but he did not. I find that by performing the subfloor leveling work, the respondent represented he was qualified to produce a professional result.
18. The parties disagreed about the quality of the respondent's completed flooring work. It is undisputed that as a result, the parties verbally agreed to have the flooring work evaluated by an independent flooring inspector certified by the BC Floor Covering Association.
19. The inspector personally inspected the respondent's flooring work and issued a report. The respondent says he was not given a copy of the report, but it was submitted as evidence and he has had an opportunity to comment on it. Other than the appropriateness of a flooring gap around kitchen cabinets and T-molding, the respondent did not take issue with any specific aspect of the inspection report. The report indicates that the inspector has multiple flooring inspection certifications. I find the inspector has special expertise in the installation and inspection of flooring, and I accept his report as reliable expert evidence under the tribunal's rules.
20. The inspection report noted Ms. King's comments that she had paid extra for floor leveling, and that she noticed problems with the installation right away. The inspector observed unevenness in the subfloor, gaps between the flooring and walls, gaps and unevenness between sections of flooring, and fractured and deformed joints. The inspector recorded ambient atmospheric conditions and tested the floor and subfloor for moisture. He tested the floor for flatness, expansion space,

and continuous spans. The inspector also considered the flooring material manufacturer's installation instructions.

21. In most of the areas the inspector randomly tested, he found the subfloors were not as flat as required for the flooring material. He also found the flooring was installed without required expansion space in many areas, and without required T-molding. The inspector noted shiny discolourations that may have been caused by rubber mallets during installation, by solvents or glue, or by a manufacturing defect.
22. The inspector concluded that the most likely source of the floor's unevenness was from the subfloor not being made adequately flat before installing the flooring on it. He also concluded that the fractured and deformed parts of the floor were most likely due to improper flatness and expansion space, and the method the respondent used to secure the flooring ends together. The inspector noted that some of the discolourations may have developed during installation, or because defective flooring planks were installed, although it was possible the discolourations occurred after installation. The respondent did not purchase the flooring planks, but the inspector said products of questionable quality should not have been installed. I find the inspector's report is strong evidence that the respondent failed to install the flooring and subflooring with reasonable professional quality.
23. The respondent argues that because subfloor leveling was beyond his expertise, and required more leveling compound than initially expected, he is not responsible for the quality of that subflooring work, for the floors being unlevel, or for the quality of the flooring installed on the subfloor. I disagree. The respondent could have refused the subflooring work, or flagged concerns about the amount of leveling required with the applicant, but he did not. By proceeding with the subfloor leveling, he accepted that job and represented that he would produce a professional result. For the flooring work to be of reasonable professional quality, I find the respondent was required to adequately level the subfloor, and to avoid installing flooring on an unlevel subfloor. The respondent did neither.

24. Having weighed the evidence, I find the respondent's flooring work was deficient. I find the subfloor needs further leveling, which requires the present flooring to be removed. Given the respondent's statement that he is not a concrete forming professional, I place little weight on his argument that he was not given an opportunity to rectify his deficient flooring work. I find he lacked the expertise to correctly level Ms. King's subfloor, a major component of the flooring work. Given the inspector's observations of fractured, deformed, and discoloured flooring, I find the installed flooring material is not salvageable. Therefore, I find the respondent is liable for the cost of replacing the flooring.
25. The applicant claims \$1,771.83 for replacement flooring materials. However, the applicant has not yet purchased replacement materials, and did not provide a quotation for the cost of replacement materials. The applicant submitted an invoice for the original flooring materials installed by the respondent, which showed they cost \$1,649.63. I find the applicant has not provided sufficient proof that replacement flooring materials would cost more than the original materials, so I find the respondent owes \$1,649.63 for replacement flooring materials.
26. The applicant also claims \$288.75 for the cost of the flooring inspection and report. There is no evidence showing that either party agreed to pay for inspection costs. The inspection was conducted as part of the parties' dealings before either one of them applied for dispute resolution with the tribunal, so I find it is not a dispute-related expense. I considered whether the inspection was a reasonable, compensable cost arising from the respondent's breach of the flooring work contract. However, there is no invoice or receipt in evidence showing the applicant paid or owes the inspector any amount. Therefore, I dismiss the applicant's claim for the inspection and report fee.
27. The applicant claims \$525 in legal fees it paid for attempting to removing a lien on Ms. King's home. First, I find builders liens and associated legal fees are within the jurisdiction of the BC Supreme Court, given the *Builders Lien Act*. Second, the tribunal does not normally reimburse legal fees except in extraordinary

circumstances, which is not the case here. Given the tribunal's lack of jurisdiction over builders liens, under section 10 of the CRTA I refuse to resolve the applicant's claim for those lien-related legal fees.

28. The applicant also claims \$500 for "time and harassment," without indicating how much of that amount is for "time" versus "harassment." There is no evidence of how much time the applicant claims to have spent on this dispute, or what that time was worth. In addition, the tribunal does not generally award compensation for time spent on a dispute, which is consistent with its rule against reimbursing legal fees except in extraordinary circumstances. I dismiss the applicant's non-specific claim for time spent on this dispute.
29. Turning to harassment, the applicant seeks an order for the respondent to cease "harassing and contacting" Ms. King. Such an order is known as injunctive relief, and the tribunal does not have jurisdiction to make such an order, as it does not fall within section 118 of the CRTA. Further, harassment is not a recognized tort in BC. Also, I find it would be inappropriate to make an order about the respondent's future contact with Ms. King, who is not a party to this dispute. I dismiss the applicant's claim of an unspecified amount for harassment, and I decline to grant the request for an order to cease harassing and contacting Ms. King.
30. The *Court Order Interest Act* (COIA) applies to the tribunal. However, the applicant has not yet replaced the flooring and corrected the respondent's deficient work, and there is no evidence it has paid any labour or materials costs for those tasks. So, I make no order for pre-judgment interest.
31. 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. At the outset, the applicant sought a \$150 "small claims fee," which I infer referred to the first tribunal fee paid. In total, the applicant claims a total of \$200 in paid tribunal fees. The applicant was largely successful, so I order the respondent to reimburse the applicant \$200 for tribunal fees. As discussed above, I make no order for dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,849.63, broken down as follows:
- a. \$1,649.63 in damages for the cost of replacement flooring materials, and
 - b. \$200 for tribunal fees.
33. I refuse to resolve the applicant's claim for builders lien-related legal fees. I dismiss the applicant's other remaining claims.
34. The applicant is entitled to post-judgment interest, as applicable.
35. 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.
36. 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.

Chad McCarthy, Tribunal Member