



# Civil Resolution Tribunal

Date Issued: April 14, 2020

File: SC-2019-010964

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Skyview Services Ltd v. Hrynuik*, 2020 BCCRT 399

BETWEEN:

SKYVIEW SERVICES LTD

**APPLICANT**

AND:

JANET HRYNUIK

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about custom drapery. The applicant, Skyview Services Ltd, claims \$207.50, as the balance owing on its invoice to the respondent, Janet Hrynuik.

2. The respondent says the applicant's work was deficient in various ways. She says she was entitled to withhold 10% of the total invoice for "unfinished work".
3. The applicant is represented by its principal, Therese Chickloski. The respondent is 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. Bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
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. 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.
8. While in her evidence at one point the respondent says she "would prefer to return all drapes/rod for a full refund", there is no counterclaim before me. So, I will not address this request further.

## **ISSUE**

9. The issue in this dispute is whether the applicant is entitled to its \$207.50 invoice balance for custom drapery services, or, was the applicant's work deficient such that it is not entitled to further payment from the respondent.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant must prove its claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. I note the respondent makes various submissions about Ms. Chickloski's general demeanour and her relationship with her sister, who was the respondent's friend. I find these issues are not relevant to the question of whether the applicant has proved it is entitled to full payment for its drapery services, and so I will discuss them no further.
12. The respondent contacted the applicant in June 2019, looking for competitive pricing on shades for her condominium, which were paid in full and installed without incident on July 22, 2019. Around the same time in mid-July, the respondent asked about ordering the drapery at issue in this dispute, which was for her living room and bedroom. The applicant measured for the drapery in late July 2019 and gave the respondent a quote.
13. The evidence shows the respondent found the applicant's quote too high. So, on August 12, 2019, the applicant adjusted the quote down by choosing less expensive fabrics and sent an image of them to the respondent. I accept this was because the respondent expressed concern about the original quote's higher price, given the other evidence that the respondent was concerned about budget.
14. The respondent visited the applicant's showroom and selected 1 sheer fabric for the living room and 1 polyester fabric for her bedroom. The applicant denies it had any crystal finials on display, in response to the respondent's allegation that she was

told the finial would be crystal not acrylic. I accept the applicant's undisputed evidence that crystal is expensive and would have been outside the respondent's budget. On balance, and on the evidence including photos of the applicant's showroom, I find the respondent made her hardware and fabric selections based on what she saw in the applicant's showroom.

15. On July 26, 2019, the applicant sent the respondent images of 3 different pleat styles, and the respondent made her choices, which based on the photos I infer were a French pleat for the living room sheers and a wave pleat for the bedroom.
16. The applicant's August 26, 2019 invoice for the custom drapery is for a total of \$1,700. The respondent paid an \$850 deposit and then \$642.50 on December 20, 2019. This left the \$207.50 balance claimed in this dispute. I infer the August 26, 2019 date was not updated to reflect the later payment shown on the face of the invoice. The evidence otherwise shows the applicant sent the respondent its final invoice on December 5, 2019.
17. The invoice shows the respondent ultimately ordered 2 types of drapery: 1) 1 pair sheer drapery, European pleat Munich winter white, and "Tekno 25 antique silver with cap finials" (\$900), and 2) 1 pair unlined wave drapery – Solitary Natural, "Tekno 25 Antique Silver with Trans Lu Finials" (\$800).
18. The invoice says its balance is due on the installation date "with a 10% holdback if there is unfinished work". The respondent says she withheld 10% of the \$1,700 invoice and 10% of the \$375 invoice for a door blind, totaling the \$207.50 at issue. The applicant denies the respondent's allegation there was unfinished work, as discussed below.
19. The applicant installed the drapery on October 22, 2019. The respondent says there are a number of defects, and so she does not owe the applicant anything.
20. The burden is on the party alleging a defect to prove that defect (see: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91). Based on the evidence, including submitted photos, I find none of the alleged defects are proven.

21. For example, I agree there were 2 small thread pulls in one drapery, but they did not pull all the way through the fabric. I accept Ms. Chickloski easily snipped the loose threads to resolve the problem, which is not particularly disputed. While there are no photos, the applicant admits there were very slight dirt marks. I accept the applicant's evidence that it was able to easily clean these marks, which is also essentially undisputed. While the respondent says the snips may have caused other damage, she provided no proof of this.
22. Next, the photos show a sheer fabric in the living room, which I find is what the respondent ordered, based on the invoice description. While the respondent says the supplied drapes were like "surgical gauze" unlike the "stiff" sample, I find this unproven based on the evidence before me. The photo of the fabric sample does not have light behind it so it is not a direct comparison. I also do not agree with the respondent that the respondent's photo shows a curtain rod that is not "antique silver" as invoiced. Nor do the photos show a visibly uneven hem. The respondent argues the applicant's employee talked her into a less white shade for the living room drapery, but I find it was ultimately the respondent's colour choice.
23. The respondent also says the master bedroom drapes' rod was hung too low and the drapes bunched. She also says the rod is not level. However, the respondent provided no photos that support these allegations, and I reject them.
24. Next, contrary to the respondent's submission, there is no evidence before me to support a conclusion the applicant installed a pleat that was different than what the respondent chose. Rather, I find it more likely the respondent simply decided she did not like the chosen pleat after it was installed. In any event, the applicant had the pleat re-done at its own \$75 cost, at no charge to the respondent. I do not accept the respondent's submission it would only take a day to re-do the pleats. I accept the applicant offered to re-do the pleats for free because Ms. Chickloski wanted the transaction to end well, in part because of the family and friendship history.

25. Next, the respondent also complains about the prior blinds job she had fully paid the applicant for. She says the header is too white and the cord is too yellow, and neither matched the correct white blind. The respondent says the applicant should have told her that that was the only option, that there would not be a perfect colour match. I reviewed the respondent's photo and I do not find the colour scheme so 'off' that the respondent would be entitled to any set-off from the balance she owes the applicant for the drapes. The header and the cord are different materials than the blind and different transparencies, so it is not surprising there is not a perfect colour match.
26. The respondent also says the door blind is defective because it "unravels crooked", after 8 months of use. The applicant's own photo of the door shade, presumably taken around the time of installation, shows it without any visible defect. While there does appear to be one slightly misaligned panel in the respondent's submitted photo, I am not prepared to conclude that this is the applicant's responsibility, particularly given the issue arose several months after installation and the fact there is no email or text message showing the respondent complained about it before October 2019, despite communications with the applicant in the interim about the drapery.
27. In summary, I find the respondent has not shown there are any defects in the drapery service that would warrant any set-off from the \$207.50 balance owing. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant is entitled to COIA pre-judgment interest on the \$207.50, from December 5, 2019, the date the applicant sent the respondent its invoice. This equals \$1.46.
28. Under section 49 of the CRTA and tribunal rules, a successful party is usually entitled to reimbursement of tribunal fees paid and reasonable dispute-related expenses. I see no reason to deviate from that here. I find the applicant is entitled to \$125 for reimbursement of tribunal fees. No dispute-related expenses were claimed.

## ORDERS

29. Within 21 days of this decision, I order the respondent to pay the applicant a total of \$333.96, broken down as follows:
- a. \$207.50 in debt,
  - b. \$1.46 in pre-judgment COIA interest, and
  - c. \$125 in tribunal fees.
30. The applicant is entitled to post-judgment interest, as applicable.
31. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
32. 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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Shelley Lopez, Vice Chair