Civil Resolution Tribunal

Date Issued: April 14, 2020

File: SC-2019-005882

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Perry v. The Home Depot of Canada Inc.*, 2020 BCCRT 395

B E T W E E N :

NANCY PERRY

APPLICANT

A N D :

THE HOME DEPOT OF CANADA INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This dispute is about alleged overcharges for flooring material and installation.

2. The applicant, Nancy Perry, purchased flooring material and installation services from the respondent, The Home Depot of Canada Inc. The applicant claims $3,972.81 for various refunds and payments allegedly incorrectly credited, and $750

that she says the respondent offered to address its errors. In total she seeks $4,722.81. She also seeks an order that the respondent provide a complete invoice.

3. The respondent says it credited all applicable refunds and payments to the applicant's purchase. It admits to offering the applicant certain discounts, but says such offers were goodwill gestures or settlement offers that did not create rights or obligations. The respondent also says it has already provided the requested invoice.

4. The applicant is self-represented. The respondent is represented by an employee or principal.

5. For the reasons that follow, I dismiss the applicant's claims.

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 because 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 or pay money. The tribunal may also order any terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:

    a. Did the respondent fail to credit the applicant for any applicable payments or refunds?

    b. Is the applicant entitled to $750 or any amounts the respondent allegedly offered?

    c. Is the applicant entitled to an order that the respondent provide a new invoice?

EVIDENCE AND ANALYSIS

11. In a civil dispute like this one, the applicant must prove her claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

Orders, payments and refunds

12. It is undisputed that in September 2018, the applicant visited one of the respondent's retail locations to purchase flooring for her condo. She requested vinyl flooring for her kitchen and bathroom, and engineered hardwood flooring for the rest of her condo. On September 8, 2018, the respondent provided the applicant with 2 "sales orders" for the purchases. The vinyl sales order was for $1,551.53 and the hardwood sales order was for $4,616.01, totaling $6,167.54.

13. As stated in the sales orders, the respondent retained a third-party installer to measure the applicant's condo, provide a quote, and install the 2 floorings. The respondent says based on the installer's measurements it prepared a revised vinyl

sales order for $1,938.87 and a revised hardwood sales order for $6,871.72, totaling $8,810.59 (September 30, 2018 sales orders).

14. The applicant says that the respondent's staff told her she would not pay more than the original orders. It is undisputed that the September 8 sales orders were based on the square footage the applicant provided. Those orders say "final pricing is subject to physical measurements and site inspection by an authorized home depot installer." I find the September 8 sales orders were estimates subject to revision, not binding agreements. I find the applicant was aware of this, as she allowed the installer access to her condo to take measurements. I also note that the applicant was charged for only 10 cases of vinyl flooring when she originally estimated needing 13 cases.

15. The applicant says she did not see the September 30, 2018 sales orders. She also says she did not authorize the associated September 29, 2018 charge of $8,564.92 on her Home Depot credit card.

16. The respondent says the date on the sales orders reflects the dates they were "extracted and printed" rather than the date they were created or amended. While that system seems likely to cause a host of problems, I accept that explanation and find that the September 30, 2018 sales orders were created on September 29, 2018, when the applicant's credit card was charged $8,564.92.

17. I do not accept the applicant's submission that she did not see the September 30, 2018 sales orders. I rely in part on the fact that the applicant submitted copies of these sales orders with what appears to be her own contemporaneous notes on the copies.

18. The applicant says that because she never signed any agreement, the orders are "null and void". Upon review of the terms and conditions of the sales orders, I find they contemplate signature of the sales orders, yet the sales orders have no space for signatures. None of the sales orders in evidence bear the applicant's signature. While this is somewhat problematic, it is undisputed that the applicant attended the

respondent's retail store in September 2018 and agreed to the original sales orders, which were clear that they would be modified by the installer's measurements. I have found above that the applicant saw and agreed to the September 30, 2018 sales orders. On balance, I find the applicant agreed to pay the amounts owing under the September 30, 2018 sales orders. In the circumstances, I find the absence of a signature does not invalidate the parties' agreement.

19. Between September 9 and September 30, 2018, the applicant paid the respondent a total of $8,810.59, which was the amount owing under the September 30, 2018 sales order.

20. It is undisputed that on November 5, 2018, the installer delivered the applicant's vinyl, cork underlay, engineered hardwood and baseboards. At that time, the installer and the applicant discovered the hardwood flooring was unsuitable for the applicant's concrete floor and had to be exchanged for a different flooring.

21. The applicant says when her hardwood flooring was returned, she should have received a refund to her credit card of $2,619.75. She says the respondent refunded that amount either to someone else's credit card or to a "ghost credit card." The respondent submits that when the applicant's hardwood was found to be inappropriate for her floors, it was exchanged for the hardwood that was later installed in her condo. It says the applicant received a credit of $2,619.79 that was automatically applied toward the new flooring. On review of the evidence, I find it confirms the respondent's explanation. The sales orders show the new flooring was in fact discounted by $103.74 in order to match the price of the flooring the applicant had originally selected. I find the applicant only paid for one flooring, which she received.

22. The applicant says the respondent overcharged her for the hardwood flooring that was installed. She says she searched the respondent's website and that type of flooring "never costs that much." She says she has seen it as low as $49.98 per case, so that is what she should be charged. The applicant did not provide any documentation of any other pricing for the hardwood flooring that was installed.

Moreover, what matters is that the applicant agreed to exchange floors and did not pay anything extra. I find the price the applicant paid for the flooring was the price applicable at the time, less the courtesy discount of $103.74.

23. The applicant refers to 2 transactions as debit card payments she made for $79.78 and $39.89. I find she misunderstands the evidence as these were refunds for "CASING VALUPAK", which I infer are baseboards that were not used in the installation.

24. The applicant says she made a payment with her debit card for $464.12 (which in submissions she corrected to $519.82 with GST). She says the respondent added the amount as a charge to her account rather than giving her a credit for the payment. The respondent submits that this charge was for baseboards that were installed in her condo. Upon review of the final sales orders and other documentation, I find the payment was properly credited to her sales order. I find nothing incorrect about the respondent's accounting of the baseboard transaction.

25. The respondent provided a table summarizing all the applicant's payments and all the final orders and refunds. Having reviewed that table, I find the applicant actually underpaid the respondent by 23 cents. I dismiss the applicant's claims about refunds and improper crediting.

Evidence and submissions not related to claims

26. The applicant provided submissions and evidence related to a number of new issues and allegations that were not included in her Dispute Notice. In particular, the applicant argues and provides evidence that the square footage of her apartment was significantly lower than the estimate provided by the third-party installer. She also alleges that the installer failed to stain the transition flooring pieces despite her being charged for that work.

27. The respondent's position is that these allegations are unrelated to the claims in her dispute notice and so the evidence relating to those allegations is irrelevant.

28. The applicant's claims as set out in the Dispute Notice relate to errors of accounting – refunds not being applied and payments not being credited. Even giving the applicant's claims in the Dispute Notice indicate a generous interpretation, they cannot be stretched to include allegations of inaccurate measurements by the installer, or failure of the installer to complete the work. In my view, the respondent reasonably took the position that those allegations were not relevant to the claims raised in this dispute. I therefore find it would be unfair to consider the installation issues. Accordingly, I have not considered the applicant's evidence related to the installer's estimates and work.

Goodwill gestures

29. The applicant says the respondent offered to pay her $750. Elsewhere in her submissions, she says the respondent identified $809.16 in errors and offered to pay that amount. The respondent admits that it offered $809.16 but denies that the offer was based on errors. It says the offer was a goodwill gesture and an attempt to resolve the dispute, not an admission of liability. The respondent says the applicant rejected all offers and continued to pursue her claims, which caused it to incur legal fees and expenses. The respondent says it is not bound to pay the settlement offer that the applicant rejected.

30. I find there is no objective evidence that the respondent identified or admitted to errors. Settlement offers are not admissions of liability. In any event, there is no dispute that the applicant did not accept the respondent's offers, so there was no binding agreement to be enforced. I dismiss this claim.

Invoice

31. The applicant seeks an order that the respondent produce an invoice confirming exactly what flooring she has, and what she paid, for insurance purposes. I find that granting this order is unnecessary given the sales order evidence both parties produced for this dispute. Regardless, such an order is considered a form of injunctive relief (an order that a party do or stop doing something) and is outside the

tribunal's small claims jurisdiction under section 118 of the CRTA. I decline to grant this remedy.

32. Under section 49 of the CRTA and tribunal rules, as the applicant was unsuccessful, she is not entitled to reimbursement of her tribunal fees and dispute-related expenses.

ORDERS

33. I refuse to resolve the applicant's claim for a new invoice. I dismiss the applicant's remaining claims and this dispute, noting that I have not considered any installation evidence or related potential claims.

Micah Carmody, Tribunal Member