



# Civil Resolution Tribunal

Date Issued: April 24, 2020

File: SC-2019-010456

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *101266444 Saskatchewan Ltd v. Windmill Home Services Limited dba  
Windmill Flooring, 2020 BCCRT 445*

**B E T W E E N :**

101266444 SASKATCHEWAN LTD

**APPLICANT**

**A N D :**

WINDMILL HOME SERVICES LIMITED DBA WINDMILL FLOORING

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This dispute is over alleged non-payment of \$4,000 for carpet installment services.

2. The applicant, 101266444 Saskatchewan Ltd, was a flooring installer under a sub-contract with the respondent, Windmill Home Services Limited dba Windmill Flooring. The applicant says that the respondent owes it \$4,000 for installation services.
3. The respondent disputes the claim. The respondent says the applicant is not entitled to the claimed \$4,000 because the applicant damaged the client's new carpet. The parties agree that the applicant "stained" the client's carpet by using a dolly to move furniture over it.
4. The applicant is represented by the company principal. The respondent is represented by an employee.
5. For the reasons below, I dismiss this dispute.

## **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, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy

dispute resolution, I decided I can fairly hear this dispute through written submissions.

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. As a preliminary issue, the applicant objects to the admissibility of the client's email describing his version of events. The applicant argues that the statement is not signed and has no other "element associated with the client's identity". I find the statement and the photographs in evidence are consistent with it being written by the client. I accept the statement in evidence as the client's recount of events. However, I put no weight on the opinion contained within the statement that the dolly wheels "burned" the carpet fibers. The respondent has not shown that its client has the expertise to form this opinion. At any rate, I find the real issue with the carpet is the permanence of the stain.
10. 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.

## **ISSUES**

11. The issues in this dispute are:
  - a. Is the applicant responsible for causing the stain?
  - b. What is the nature of the carpet stain?
  - c. Must the respondent pay the applicant the claimed \$4,000 for its installation services?

## EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proving its claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. The parties agree that the applicant “stained” the client’s white carpet by rolling a dolly over it. The applicant says its workers removed most of the stain with soap and water except one “small line”. It says it was willing to further clean the carpet to the client’s satisfaction, but the respondent would not allow it to return. The respondent refused because the applicant was not a professional cleaner and the client did not want the applicant to return.
14. Based on the applicant’s own photograph taken after it attempted to remove the stain, I find that the dark stain was more than a “small line”. While I cannot tell its exact size, the photographs in evidence show a noticeable dark stain on the client’s white carpet.
15. The respondent says the stain is permanent. The applicant disagrees. The respondent says its professional cleaners were not able to remove the stain, so it had to reduce the client’s bill. I find the permanence of the stain is supported by the client’s text and statement in evidence. They both say the stain remained after the parties’ cleaning attempts. My finding is also supported by the respondent’s billing records. These records show the respondent reduced the client’s \$10,580.72 bill by \$4,000 due to the stained carpet.
16. I reject the applicant’s argument that the \$4,000 reduction was only to protect the respondent’s business relationship with its carpet supplier. The supplier was not a party to the client’s invoice reduction. I find the reduction was clearly for the permanent damage to the client’s new carpet.
17. The applicant argues that it is not responsible for the stain because it was caused by the client’s dolly. The applicant says it only borrowed the dolly to move furniture, it did not know the dolly would stain the carpet, and it was never “offered” drop

sheets. I find it is no excuse that the dolly was borrowed or that drop sheets were not “offered”. The applicant is a professional carpet installer. I find it should have reasonably used something to protect the white carpet when moving furniture along it with a dolly. I find the applicant is responsible for the permanent carpet stain.

18. The parties agree that the contract allowed the respondent to holdback payment if the applicant caused damage during the installation. The applicant does not say whether the \$4,000 holdback was its entire pay. The evidence does not show how much the respondent owed the applicant in total if it had not stained the carpet. The signed contract in evidence shows the respondent paid the applicant on a commission basis. However, the commission percentage is not shown on the contract copy in evidence. Therefore, I cannot assess whether the applicant is entitled to partial payment of the claimed \$4,000.
19. As mentioned above, the applicant bears the burden of proof on this claim. Considering it permanently damaged the carpet, I find the applicant has not proven that it is entitled to the claimed \$4,000 or any portion of it, for its installation services. I dismiss the applicant’s claim for \$4,000.
20. 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. Since the applicant was the unsuccessful party, I find it is not entitled to its claimed tribunal fees. Neither party claimed any other dispute-related expenses.

## **ORDER**

21. The applicant’s claims and this dispute are dismissed.

---

Trisha Apland, Tribunal Member

