



Civil Resolution Tribunal

Date Issued: February 24, 2021

File: SC-2020-007716

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Keung v. Vancouver Woodcarving Inc.*, 2021 BCCRT 221

BETWEEN:

TIM KEUNG

APPLICANT

AND:

VANCOUVER WOODCARVING INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about allegedly incomplete and poor cabinet building and installation.

2. The applicant, Tim Keung, hired the respondent, Vancouver Woodcarving Inc. (VW), to custom build and install kitchen cabinets and bedroom shelving. Mr. Keung says VW's work was incomplete and contained multiple defects. Mr. Keung also says he paid VW to fix the deficiencies, but VW did not finish the job or do the repairs. Mr. Keung claims reimbursement of \$1,800 from the amount he paid VW.
3. VW acknowledges that there were deficiencies in the millwork. VW says it offered to repair the defects but Mr. Keung refused the offer. VW says it agreed to Mr. Keung's request to reduce its overall price to compensate him for the deficiencies. VW says Mr. Keung made a final payment on the cabinet work and the parties agreed to terminate the contract. VW says it owes Mr. Keung no money.
4. Mr. Keung represents himself. VW is represented by QC, an employee or owner.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT 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. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is whether VW failed to provide the millwork agreed to and, if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this one the burden is on Mr. Keung, as the applicant, to prove his case on a balance of probabilities. I have reviewed all the evidence provided but only refer to that necessary to explain my decision.
11. I find VW's August 12, 2020 quote sets out the parties' agreement. VW agreed to provide custom kitchen cabinets, hardware, handles, and bedroom shelving for \$24,450 plus tax. The quote says all doors are to be walnut veneer stained, and that the price includes installation. The quote included specific items to be included with the cabinetry. The quote said a 40% deposit was required upon signing, followed by a 50% payment on delivery, and the 10% balance after installation and the homeowner's inspection.
12. Mr. Keung paid VW a 40% deposit of \$8,980 on August 12, 2020. VW installed the cabinets and shelving in September 2020. At that time Mr. Keung told VW he was not satisfied with the work. None of this is disputed. As discussed further below, VW agrees its work was deficient.
13. Mr. Keung says VW's work is deficient and incomplete. The burden on proving deficiencies is on the person alleging them, here Mr. Keung (see *Lund v. Appleford*, 2017 BCPC 91).

14. Mr. Keung provided photographs of the kitchen cabinets. Based on those photos I find colour differences between the cabinet doors, the drawer faces, and the framework between the cabinet doors. I also find a corner kitchen cabinet does not fit in the corner space. I accept VW's cabinet construction and installation is deficient in these ways, as they are mistakes that are easy to see. In other words, I find assessment of these deficiencies is within ordinary knowledge and does not require expert evidence.
15. However, I do not accept Mr. Keung's claim that the cabinets are not level, as he provided no photos or other supporting evidence. I also do not accept Mr. Keung's claim that the bedroom shelving installation was "unacceptable" as he provided no description of the alleged deficiency or any supporting evidence.
16. Mr. Keung also says VW's job is incomplete. He says VW did not install a 36" corner cabinet, a "magic corner", and a pull-out spice basket. I accept these items were specifically included in the August 12, 2020 quote. As VW does not dispute that it failed to provide those items, I accept Mr. Keung's statement and find those missing items are also deficiencies.
17. VW agrees that its work was deficient but says it was not given the chance to fix the deficiencies. It says "D" spoke with Mr. Keung in September 2020 and offered for VW to fix the defects but that Mr. Keung refused. VW says that, instead, Mr. Keung asked for a discount on the millwork's price.
18. The parties agree that VW deducted \$1,300 for the uninstalled items, for a total price of \$21,150. VW then reduced the price by a further 30% for the deficient work.
19. VW says that both parties verbally agreed to end the contract with Mr. Keung's final payment of the remaining \$6,825 owing on the millwork.
20. Mr. Keung says he spoke with QC in September 2020. Mr. Keung agrees that he refused to let VW fix the deficient bedroom shelving but says VW agreed to fix the kitchen millwork defects it "could handle". Mr. Keung says QC asked Mr. Keung to

pay \$1,000 for VW to make these repairs. Mr. Keung says he attempted to contact VW several times up to November 2, 2020, but no one ever returned to fix the defects.

21. Based on VW's September 22, 2020 invoice I find VW charged Mr. Keung a "final payment" of \$6,825. The invoice contains no notes about defects or further repair work. However, that final payment is consistent with handwritten numbers on the August 12, 2020 quote submitted by VW. The notes show " $22450 - 1300 = 21150 \times 0.7 + 1000$ ". By my calculations, this equals \$15,805. Taking into account Mr. Keung's earlier deposit of \$8,980, that left a final balance of \$6,825. So, I find VW deducted \$1,300 plus a further 30% less \$1,000 from its original \$24,450 quote and that Mr. Keung ended up paying a total of \$15,805 plus tax.
22. I disagree with Mr. Keung that the \$1,000 note on the August 12, 2020 quote shows that VW agreed to repair some deficiencies. First, VW denies it. Second, the notes on the quote do not mention repair work or deficiencies. Third, Mr. Keung says the \$1,000 for repair work was agreed to by QC in October 2020 yet the deductions and the calculation must have occurred in September 2020, given the final invoice date of September 22, 2020.
23. On balance, I find Mr. Keung has failed to prove that VW failed to repair some deficiencies, as agreed. I find it more likely that the parties agreed to a deduction in VW's overall price to account for all the uninstalled items and deficiencies as a final resolution of the matter.
24. In his submissions Mr. Keung claims an additional \$600 for a corner cabinet he says VW failed to install. Based on the handwritten notes on the August 12, 2020 quote, I find VW agreed to deduct the corner cabinet's cost as part of the \$1,300 deduction provided. So, I find Mr. Keung has already been compensated for the corner cabinet.
25. Mr. Keung says \$1,300 is not enough to cover the costs of the incomplete work. However, he provided no evidence of the cost of completing the job, such as estimates or invoices from other companies. Nor did Mr. Keung provide any evidence of repair costs to support his argument that VW's 30% deduction, less \$1,000, was

insufficient to fix the identified defects. Without any evidence to the contrary, I find the price reduction VW provided was sufficient to compensate Mr. Keung for the incomplete work and defects in the millwork. On balance, I find Mr. Keung has failed to prove that he is entitled to any reimbursement from VW.

26. As Mr. Keung was unsuccessful in his claim, I find he is not entitled to reimbursement of any CRT fees or dispute-related expense, under section 49 of the CRTA and the CRT rules. As the successful respondent, VW did not claim reimbursement of any dispute-related expenses.

ORDER

27. I dismiss Mr. Keung's claims and this dispute.

Sherelle Goodwin, Tribunal Member