



Civil Resolution Tribunal

Date Issued: May 17, 2021

File: SC-2020-009431

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Harding v. 0747630 B.C. Ltd. dba End of the Roll*, 2021 BCCRT 522

B E T W E E N :

MARK HARDING

APPLICANT

A N D :

0747630 B.C. LTD. doing business as END OF THE ROLL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Mark Harding, purchased stair runner carpet and installation service from the respondent, 0747630 B.C. Ltd. doing business as End of the Roll (End of the Roll).

2. Mr. Harding says after 5 failed installation attempts, he remains dissatisfied with the installation. He wants End of the Roll to remove the carpet and give him a full refund. Mr. Harding represents himself.
3. End of the Roll concedes that the installation attempts had issues, but says it has now addressed all the deficiencies. It also says Mr. Harding bears some responsibility because some of the alleged deficiencies resulted from his instructions. End of the Roll is represented by an employee or principal.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. 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

8. The issue in this dispute is whether End of the Roll installed Mr. Harding's stair carpet to a professional standard, and if not, what remedy is appropriate?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil dispute, Mr. Harding must prove his 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.
10. In late 2019 or early 2020, Mr. Harding purchased carpet from End of the Roll for \$2,124.75 including installation.
11. The January 28, 2020 work order did not provide a lot of detail or contractual terms but said the carpet was to be installed on 15 stairs, which is not disputed. The staircase in question had 10 steps followed by a landing to facilitate a 90-degree right turn, then 5 more steps. The carpet ran down the middle of the stairs, with exposed wood on either side.
12. Mr. Harding says the stair runner was to be 3 pieces. One piece would cover the top 5 steps. The first 10 steps and landing would be covered by 2 pieces, each having a bound end, stretching to a mid-point where 2 unbound ends would meet on the stairs. This would allow the appearance of a single piece of carpet with bound sides and ends. Mr. Harding does not say that the parties agreed that the stair runner would consist of 3 pieces, and it is not explicit in the work order. End of the Roll says it is common for stair runners to be installed in several pieces. I find the number of pieces was not an essential term of the contract. However, the unchallenged evidence is that at the initial installation, the carpet arrived in 3 pieces, an issue I return to below.

13. The parties agree that there were installation missteps, and I find it is unnecessary to detail the history. What is in dispute is whether the carpet is now installed to a reasonable standard. Generally, in a contract for professional services, it is an implied term of the contract that the services will be performed to a reasonably competent standard: see *Demosten v. E.M.J. Construction Ltd.*, 1995 CanLII 1142 (BC SC).
14. Mr. Harding provided photos of each step on the stairs, showing the installation in detail, and identifying alleged deficiencies. In general, where an allegation of deficient work is based on a claim that the work fell below the required professional standard, and the subject matter is outside ordinary knowledge, expert evidence is required to prove the deficiency. Other times, a breach of the standard may be so obvious that it does not require expert evidence: *Bergen v. Guliker*, 2015 BCCA 283.
15. I find that some alleged deficiencies are minor and easily remedied, such as staples remaining in the stairs. Others relate to subject matter that is outside ordinary knowledge. These include the distance between the carpet and the wall, and the fact that Mr. Harding can slide his fingers under the carpet in various places. Without expert evidence, I am unable to conclude that these issues indicate a breach of the professional standard for carpet installers.
16. Two alleged deficiencies are more obvious. The first is that where the tread meets the riser of stair 6, a bound edge is visible. Mr. Harding says this shows that the carpet was installed incorrectly, stretched up to the landing wall and cut at the top. Instead, he says the carpet should have been stretched from a bound edge on the landing to meet the unbound edge of the carpet coming up from the bottom of the stairs, creating a seamless look. End of the Roll says the carpet was done with binding in the center at Mr. Harding's request, as documented in emails.
17. On review of the emails, I find that End of the Roll either misunderstood or now mischaracterizes Mr. Harding's request. Mr. Harding said that the carpet should be "bound on all sides". From the context I find he clearly wanted all visible perimeter edges to be bound. He did not say he wanted bound edges in the middle of the stairs. I find it more likely that the bound edge on the stairs was an installation error, which

is consistent with Mr. Harding's emails to End of the Roll. I find it is within ordinary knowledge that a stair runner should not have a visible bound edge partway up the stairs. So, I find End of the Roll's carpet installation fell below a professional standard.

18. The second significant alleged deficiency is that the left bound edges do not align at stair 10. Mr. Harding's photos show that the left bound edge of the runner coming down the riser of stair 10 is misaligned by 1 cm from the left bound edge of the runner coming across the tread of stair 9. The misalignment is easily visible in photos. Based on the emails and Mr. Harding's evidence, I find that this happened because End of the Roll's installers attempted to fix an issue with the landing carpet without redoing the entire upper stair carpet. This meant the lower stairs involved 3 pieces of carpet and 2 seams where the original installation attempt involved 2 pieces of carpet and 1 seam. While this would not be an issue if the seams were not noticeable, the 1 cm misalignment is noticeable. I find it shows the installation fell below a professional standard.
19. End of the Roll says Mr. Harding is partially to blame for the installation problems because he did not like the first and most-experienced installer and asked for a different installer. I find this is not determinative because End of the Roll did not have to agree to send a different installer. As well, any installer End of the Roll employed should be able to complete the job to a reasonable standard.
20. End of the Roll says it has ordered double the material Mr. Harding originally paid for and has paid multiple installers for labour. It says Mr. Harding will never be satisfied.
21. I find that how much End of the Roll spent trying to correct its installation errors has no bearing on whether it breached the contract. The question is whether End of the Roll installed Mr. Harding's carpet to a reasonable professional standard. Based on the deficiencies identified above, particularly the visible bound edge partway up the stairs and the 1cm misalignment, I find the carpet installation work fell below the standard of a reasonably competent carpet installer.

22. So, what is the appropriate remedy? Mr. Harding says the carpet runner needs to be removed and completely replaced. He says it will cost more than the reimbursement he is requesting, but he did not provide a quote for removal and replacement.
23. Although some sections of the carpet have minimal issues, such as the upper 5 stairs, I agree that removing and replacing the entire carpet is likely necessary. This is because it is not clear that other suppliers can supply the same carpet that End of the Roll supplied. Also, End of the Roll does not say the issues identified can be easily repaired, or repaired at all.
24. Damages for breach of contract are intended to put the innocent party in the position they would have been in if the contract has been performed. I find Mr. Harding has been deprived of substantially all of the contract's benefit. I find that the best measure of damages in these circumstances is a full refund. I order End of the Roll to refund Mr. Harding \$2,124.75.
25. The *Court Order Interest Act* applies to the CRT. Mr. Harding is entitled to pre-judgment interest on the \$2,124.75 refund from January 28, 2020, the date of purchase, to the date of this decision. This equals \$26.00.
26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Mr. Harding is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

27. Within 14 days of the date of this order, I order End of the Roll to pay Mr. Harding a total of \$2,275.75, broken down as follows:
 - a. \$2,124.75 as a refund for the carpet,
 - b. \$26.00 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$125.00 in CRT fees.

28. Mr. Harding is entitled to post-judgment interest, as applicable.
29. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a notice of objection to a small claims dispute.
30. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Micah Carmody, Tribunal Member