



Civil Resolution Tribunal

Date Issued: June 4, 2021

File SC-2020-008926

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gall v. Donnelly dba Donnelly Skylights*, 2021 BCCRT 611

BETWEEN:

DAVID WRAY GALL

APPLICANT

AND:

LARRY DONNELLY (Doing Business As DONNELLY SKYLIGHTS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about roof repairs. The applicant, David Wray Gall, hired the respondent, Larry Donnelly (dba Donnelly Skylights), to replace skylights on his home. Mr. Gall says that Mr. Donnelly did not install the skylights correctly, causing a leak and roof damage. Mr. Gall says that Mr. Donnelly refused to honour

its warranty and he hired another contractor to repair the roof. Mr. Gall claims \$858.74 in repair costs.

2. Mr. Donnelly denies the claim. Mr. Donnelly says he installed the skylights correctly and that the roof damage is unrelated to his work.
3. Both parties are self-represented.

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. The CRT 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 CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
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 Mr. Donnelly owes Mr. Gall \$858.74 for roof repairs.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Gall must prove his claim on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. It is undisputed that Mr. Gall hired Mr. Donnelly to replace 2 skylights on his home in 2017. Mr. Donnelly installed the skylights on Mr. Gall's home on November 23, 2017 and warrantied the skylights for 10 years against leakage from improper installation.
11. Mr. Gall says that workers noticed that his roof was sagging while cleaning his gutters on September 14, 2020. Mr. Gall says he asked Mr. Donnelly for a warranty repair but he refused, which Mr. Donnelly does not dispute.
12. Mr. Gall says he contacted his insurance company and an adjuster, DS checked the roof. DS sent a September 19, 2020 letter saying the roof damage was not covered by insurance.
13. Mr. Gall hired S&S Roofing (S&S) to fix the roof. S&S sent a September 28, 2020 invoice for \$858.74 for the repairs. Mr. Gall claims that Mr. Donnelly is responsible for the repair costs under the warranty.

Warranty

14. As discussed above, Mr. Donnelly gave Mr. Gall a 10-year warranty against leakage from improper installation. I find that this warranty is an enforceable contract and Mr.

Donnelly is responsible for resulting leak repair costs under the warranty if he installed the skylights improperly.

15. Mr. Donnelly's November 23, 2017 warranty form also has a "Limited Warranty Summary" heading. Under this heading, the form says that there is a 10-year warranty for defective skylights, roof windows and flashing. The form does not say that Mr. Donnelly warranties these parts and the form refers to the manufacturer's website for more information. Based on the wording of the parts warranty, I find that this is a summary of the manufacturer's warranty, not a warranty from Mr. Donnelly. Since the manufacturer is not a party to this dispute, I make no findings about that warranty.
16. So, did Mr. Donnelly improperly install the skylights?
17. Skylight installation is generally outside the knowledge and experience of an ordinary person. I find that determining whether Mr. Donnelly properly installed the skylight requires an expert opinion (see *Bergen v. Guliker*, 2015 BCCA 283).
18. DS, the insurance adjuster, provided opinions about the roof's condition. DS says they have worked as an adjuster for 30 years dealing with contractor liability claims and they hold a Red Seal as a journeyman carpenter with 20 years of experience. I am satisfied that DS has sufficient experience to provide an expert roofing opinion as required under CRT rule 8.3.
19. DS says the roof sheathing was rotten below the skylight. They say that the flashing at the base of the skylight was not properly installed. DS says the flashing was lifted and unsealed, allowing water to enter and cause rot. DS also says the skylight was fastened to rotting framing members.
20. SS, a principal or an employee of S&S also provided an undated statement about the roof condition. S&S says they found a lack of caulking over fastener penetrations. SS said they exposed the roof deck and found water damage below the skylight and around a vent. SS also provided photographs which appear to show significant roof deterioration.

21. Mr. Donnelly agrees with DS's opinion that the roof damage was caused by improperly installed flashing. However, Mr. Donnelly says he did not install the flashing. Mr. Donnelly says he removed the old skylights and placed the new skylights on the existing 2' x 6' curb. Mr. Donnelly says that pre-existing flashing is located on the outside of the curb and unrelated to his work. Since Mr. Gall does not dispute this, I accept that the flashing was pre-existing and there is no expert evidence before me that Mr. Donnelly should have secured the pre-existing flashing when he installed the skylights. So, I find that the condition of the flashings is not included in Mr. Donnelly's warranty.
22. Mr. Donnelly disagrees with DS's statement that the skylight was fastened to rotting framing members. Mr. Donnelly says that DS could not determine whether there was rot on the curb without removing the skylight, and there is no evidence showing that DS did so. Further, DS inspected the roof almost 3 years after Mr. Donnelly installed the skylights in 2017. Mr. Donnelly says the curb was not rotten when he installed the skylights and he says the photographs show that the curb was still in good condition and showing no sign of rot when S&S repaired the roof. Mr. Donnelly also says, and Mr. Gall does not dispute, that S&S re-installed the skylight on the same curb when it repaired the roof. Based on the above, I find that the evidence does not show that Mr. Donnelly installed the skylight on a rotten base.
23. For the above reasons, I find that Mr. Gall has not proved that Mr. Donnelly installed the skylights improperly.
24. Further, since the evidence does not show that the skylight parts provided by Mr. Donnelly failed, I find that Mr. Donnelly did not breach the implied warranty of quality and durability in section 18 of the *Sale of Goods Act*.
25. For the above reasons, I dismiss Mr. Gall's claim.
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.

Since Mr. Gall was not successful, I dismiss his claim for CRT fees. Mr. Donnelly did not claim reimbursement of dispute-related expenses.

ORDER

27. I dismiss Mr. Gall's claim and this dispute.

Richard McAndrew, Tribunal Member