



Civil Resolution Tribunal

Date Issued: August 10, 2021

File: SC-2021-001915

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *CTM Hitech Tile Installation Ltd. v. Harper*,
2021 BCCRT 875

BETWEEN:

CTM HITECH TILE INSTALLATION LTD.

APPLICANT

AND:

HUGH HARPER

RESPONDENT

AND:

CTM HITECH TILE INSTALLATION LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant and respondent by counterclaim, CTM Hitech Tile Installation Ltd. (CTM), installed tiles in the respondent and applicant by counterclaim Hugh Harper's home.
2. Mr. Harper paid CTM a \$2,500 deposit but did not pay the remaining \$2,187.38 invoice after CTM completed the job. In its claim, CTM seeks payment of the outstanding \$2,187.38 balance.
3. Mr. Harper agrees CTM completed the tile work. However, Mr. Harper says he owes nothing more because CTM allegedly damaged his new carpet perimeter by leaving grout stains and residue.
4. In the counterclaim, Mr. Harper says he had to pay \$2,429.20 to install baseboard trim to cover the alleged damage. Mr. Harper asks that I set off the full unpaid invoice (\$2,187.38) against the trim's cost (\$2,429.20) and an order that CTM pay him the \$241.82 difference.
5. CTM denies the carpet is permanently stained or otherwise damaged by grout. It says it is entitled to be paid for its tile work and denies that it is responsible to pay for Mr. Harper's new trim.
6. CTM is represented by its owner. Mr. Harper is self-represented.
7. For the reasons that follow, I find Mr. Harper has not proven the carpet is damaged. I find Mr. Harper must pay CTM the outstanding \$2,187.38 invoice and I dismiss Mr. Harper's counterclaim.

JURISDICTION AND PROCEDURE

8. 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.

9. 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.
10. 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.
11. 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.

ISSUES

12. The issues in this dispute are:
 - a. Did CTM damage Mr. Harper's carpet?
 - b. If so, is Mr. Harper entitled to withhold payment on the invoice balance, plus receive \$241.82 in damages for the trim?

EVIDENCE AND ANALYSIS

13. In this civil proceeding, as the applicant CTM must prove its claims on a balance of probabilities (meaning "more likely than not"). Mr. Harper carries the same burden on

the counterclaim. 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.

14. It is undisputed that the parties entered into a contract for CTM to supply and install tile around a fireplace and bar in Mr. Harper's home. On August 4, 2020, Mr. Harper paid CTM a \$2,500 deposit. CTM completed the tile installation between October 8 and 15, 2020 and invoiced Mr. Harper \$2,187.38 more for the job. Mr. Harper has not paid the invoice balance.
15. Mr. Harper agrees the invoice amount is correct and does not dispute the quality of the tile work itself. However, Mr. Harper says he does not owe the invoice balance because CTM allegedly damaged his new carpet.
16. Mr. Harper describes the damage as tile grout stains in several areas of the new carpet, plus grout chunks that adhered to the carpet fibers. He says the "entire perimeter of the fireplace is compromised".
17. CTM says it had taped and used drop clothes during installation and did not damage the carpet.
18. By way of background, just prior to CTM finishing the job, Mr. Harper complained to CTM about discolouration from grout on his new carpet. CTM's installer vacuumed the carpet on its last day on site. CTM's owner then attended and inspected the carpet after it was vacuumed. CTM's owner states that he could see no visible staining or discolouration. However, Mr. Harper insisted that there was grout damage to the carpet. CTM's owner said he could not see the damage but offered to professionally clean the carpet at CTM's expense. Mr. Harper rejected CTM's offer and insisted at the time that CTM replace the entire carpet, which is undisputed.
19. CTM again offered to pay to professionally clean the carpet, which Mr. Harper rejected. Mr. Harper says he had no obligation to accept a "substandard solution" or "cheap fix" that is not 100% guaranteed just to save CTM money. He says the only acceptable solution was to install custom baseboard trim around the perimeter of the entire living room carpet to cover the alleged damage.

20. In the counterclaim Dispute Notice, Mr. Harper originally asked for \$5,000 for “all costs associated with the replacement of his carpet; to be determined”. In argument, Mr. Harper revised this amount to \$2,429.20 for reimbursement of the baseboard trim. Mr. Harper says CTM is responsible for the trim cost because he had not envisioned adding trim to his living room design and only added it to hide the alleged carpet damage. As noted, Mr. Harper wants the \$2,429.20 set off against CTM’s invoice, with the \$241.82 difference paid to him.
21. As there is no dispute over the tile work itself, I find CTM is entitled to be paid its invoice balance subject to a set off for the alleged carpet damage.
22. Mr. Harper carries the burden to prove he is entitled to a set off on a balance of probabilities: see *Wilson v Fotsch*, 2010 BCCA 226 and *Dhothar v. Atwal*, 2009 BCSC 1203. Mr. Harper also carries the burden on the counterclaim that he is entitled to reimbursement for the trim.
23. I have closely reviewed all the photographs and videos submitted by the parties. I cannot tell from the photographs that the carpet is stained by grout. This is because the carpet fibers are multicolored and some of the fibers are similar to the grout colour. I cannot see any obvious staining. Instead, I find the carpet looks new and undamaged.
24. However, the photographs do show a few small chunks of grey grout on the carpet fibers. While I accept the grout chunks remained after regular vacuuming, Mr. Harper never attempted to professionally remove the grout. I find it was not reasonable for Mr. Harper to reject CTM’s multiple offers to pay for professional carpet cleaning and insist it pay for new baseboards instead. Had the professional cleaning been unsuccessful, this would have been some evidence that the grout was permanent. No such evidence exists. I find Mr. Harper has not established the grout permanently adhered to the carpet.
25. As Mr. Harper has not proven the grout was permanent or that the carpet was otherwise damaged, I find he has not established that he needed to install baseboard

trim to cover anything. I find CTM is not responsible for Mr. Harper's choice to install baseboard trim around the perimeter of his living room.

26. I considered whether Mr. Harper is entitled to a set off for the reasonable cleaning cost of his new carpet on a judgment basis. However, Mr. Harper did not pay to professionally clean the carpet and rejected CTM's offer to pay to professionally clean it. In these circumstances, I find Mr. Harper is not entitled to any set off.
27. I find Mr. Harper must pay CTM the outstanding invoice amount of \$2,187.38 and I dismiss Mr. Harper's counterclaim.
28. I find that the parties had no agreement on interest and so the *Court Order Interest Act* applies. I find Mr. Harper is entitled to pre-judgment interest on the \$2,187.38 debt from the October 15, 2020 invoice due date to the date of this decision. The interest equals: \$8.09.
29. 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.
30. As CTM is the successful party, I find CTM is entitled to reimbursement of the \$125 it paid in CRT fees. CTM claimed no dispute-related expenses. As Mr. Harper was unsuccessful on the counterclaim, I find he is not entitled to any reimbursement.

ORDERS

31. Within 30 days of the date of this order, I order Mr. Harper to pay CTM a total of \$2,320.47, broken down as follows:
 - a. \$2,187.38 in debt for the invoice balance,
 - b. \$8.09 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.

32. CTM is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
33. I dismiss Mr. Harper's counterclaim.
34. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.
35. 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.

Trisha Apland, Tribunal Member