



Civil Resolution Tribunal

Date Issued: August 20, 2021

File: SC-2021-001826

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Keith v. TM TILEMART Ltd.*, 2021 BCCRT 915

BETWEEN:

BONNIE KEITH

APPLICANT

AND:

TM TILEMART LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Bonnie Keith, hired the respondent, TM TILEMART Ltd. (TM), to install quartz countertops and remove a tile backsplash in her kitchen. Ms. Keith says during the installation TM damaged her floors and kitchen island and failed to dispose of some garbage. She also says it overcharged her for removing the backsplash. Ms. Keith seeks \$1,000 as damages or a refund.

2. TM denies the claim and says Ms. Keith still owes it \$2,000 for the job. TM filed no counterclaim for the alleged debt.
3. Ms. Keith is self-represented. TM is represented by an employee or officer.

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.

Preliminary Issue

8. In the Dispute Response, TM stated that it had come to a full and final settlement of this dispute with Ms. Keith's spouse. However, TM provided no documents confirming the settlement nor said anything more about it in argument. Ms. Keith also said nothing about a settlement. As neither party submitted evidence of an enforceable settlement agreement, I find the issues in this dispute were not already settled.

ISSUES

9. The issues in this dispute are:
 - a. Does TM owe Ms. Keith anything to repair her flooring and island and to dispose of garbage?
 - b. Does TM owe Ms. Keith any refund for the backsplash?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Keith must prove her claims on a balance of probabilities (meaning "more likely than not"). 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.
11. The parties agree that Ms. Keith hired TM to perform some work on Ms. Keith's kitchen. In January 2020, TM supplied the materials and performed the labour to replace Ms. Keith's granite countertop with quartz, lower her kitchen island "eating bar", and remove a tile backsplash. Ms. Keith paid for this work subject to the holdbacks discussed below.

Does TM owe Ms. Keith anything to repair her flooring, island and remove garbage?

Flooring

12. Ms. Keith says TM's installers damaged her recently refinished wood floors during the countertop installation. She says she provided TM with photographs of the flooring damage and "this speaks for itself". I find she means the photographs dated February 1, 2021 discussed below. Ms. Keith says the "majority of the damage" was because TM cut the quartz too large and her stove would not initially fit into the space. She says the installers eventually got the stove into place. I infer Ms. Keith might mean TM damaged the floors by moving the stove into place but she does not specifically say this. Ms. Keith also says TM had just 2 men installing very heavy quartz but does not then describe how TM's installers allegedly damaged her floors in the process.
13. TM says only that it told Ms. Keith she had to cover her floors and it does not know if the flooring was damaged before or after its installation. Ms. Keith says she supplied moving blankets but the area that TM's installers damaged was covered by its own sheets.
14. I reviewed the close-up photographs Ms. Keith submitted of some damaged floorboards. The photographs are dated over a year after TM's installation. They show older wood floors with multiple scratches and some dark patches that look like water damage. None of the individual photographs are explained. They also do not show the floorboards in relation to the rest of the room. I cannot tell just from looking at the photographs where the floorboards are located or what caused the damage. So, while I agree the flooring is damaged, I find Ms. Keith has not proven it was TM's installers who caused the damage. I dismiss Ms. Keith's claim over the flooring.

Island

15. Ms. Keith says TM damaged her kitchen island's wood front when cutting it down to countertop height and then left it disassembled. Ms. Keith provided no photograph of the dismantled island. However, TM does not dispute it. It says nothing about the

island in its submissions or the Dispute Notice. As it is not refuted, I accept TM damaged the island and left it dismantled as alleged.

16. As mentioned, TM says Ms. Keith already held back \$2,000 from the amount she owed it for its work. Ms. Keith says she only held back about \$1,000. Based on the paid invoices, I find Ms. Keith held back \$840 for this job and \$126.44 for the tile job discussed below.
17. There is no information before me, such as a repair quote, to assess the cost to repair or reassemble the island. The evidence does not establish that it would be more than \$840. Because of the holdback, I find Ms. Keith has not proven that she suffered any additional loss.
18. I find TM does not owe Ms. Keith anything more for the damage it caused to her island and I dismiss this aspect of her claim.

Garbage

19. Next, Ms. Keith's unrefuted evidence is that TM left some of the old granite and some gyprock garbage on site after the job. She submitted no invoice showing she paid anything to dispose of it or evidence showing how much garbage was left behind. So, I find Ms. Keith has not proven that she paid, or will have to pay, anything to remove the garbage. I find Ms. Keith has not proven that she suffered any loss and I dismiss her claim over the garbage.

Does TM owe Ms. Keith any refund for the backsplash?

20. Based on the signed January 12, 2021 quote, I find the parties agreed to a fixed labour price of \$1,200 for TM to remove and install a backsplash in Ms. Keith's home, plus \$879.60 for TM to supply glass tiles. I find this tile work was distinct from the quartz work described above, which was quoted separately.
21. Ms. Keith says that after TM removed the backsplash, she decided she no longer wanted TM to install the new glass tiles because she was unhappy with TM's work.

Ms. Keith ended the contract and hired a different contractor to install the glass tile backsplash.

22. The parties had no agreement about what would happen if one party ended the contract early.
23. After Ms. Keith ended the contract, TM charged Ms. Keith $\frac{1}{2}$ the fixed labour price (\$600) for its labour in removing the backsplash, plus \$879.60 for the glass tiles. Ms. Keith says she only paid TM so it would supply her with the glass tiles.
24. Ms. Keith argues that TM should not have charged her \$600 to remove the backsplash because it was only about 2 hours of labour. Ms. Keith also says the new contractor quoted \$1,000 for just the tile installation. She argues it does not make sense that TM charged her \$600 for the demolition alone. She says TM should have only charged her about \$200 ($\$1,200 - \$1000 = \200) for the backsplash removal.
25. I find Ms. Keith was required to pay TM based on the agreed terms of the parties' contract. I find the number of labour hours TM spent to remove the tiles is irrelevant on this fixed price contract. I also find the fact that a different contractor quoted \$1,000 to install the backsplash is not determinative of the amount Ms. Keith owed or agreed to pay TM to remove the old tiles.
26. In the circumstances, I find Ms. Keith was required to pay TM for the work it performed up to the date she unilaterally terminated the contract. The invoice shows Ms. Keith already held back \$126.44 on this tile job. Without more evidence, I find Ms. Keith has not proven she should have paid less. I dismiss Ms. Keith's claim about the alleged overcharge.

Fees and Dispute-Related Costs

27. 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. As the unsuccessful party, I find Ms. Keith is not entitled to any reimbursement.

28. TM did not pay any CRT fees or claim any dispute-related expenses.

ORDER

29. I dismiss Ms. Keith's claims and this dispute.

Trisha Apland, Tribunal Member