



Civil Resolution Tribunal

Date Issued: August 24, 2021

File: SC-2021-002432

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Inner-City Flooring Sales & Installation Inc. v. Fey*, 2021 BCCRT 931

B E T W E E N :

INNER-CITY FLOORING SALES & INSTALLATION INC.

APPLICANT

A N D :

AMBER FEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This is a dispute about payment for renovation work. The respondent, Amber Fey, hired the applicant, Inner-City Flooring Sales & Installation Inc. (ICF), to install flooring, baseboards, and door casings. ICF says that Ms. Fey did not pay for all of the work, and claims \$2,455.60 that it says remains outstanding. Ms. Fey says that

ICF did not complete the agreed work and did a poor job of what it did complete. She says ICF refused to give her a discount, so she owes nothing more.

2. Each party is self-represented in this dispute.

JURISDICTION AND PROCEDURE

3. 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.
4. 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. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions
5. 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.
6. 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

7. The issue in this dispute is whether ICF completed its work to an acceptable standard, and if so, does Ms. Fey owe ICF \$2,455.60 or another amount?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, as the applicant ICF must prove its claims on a balance of probabilities. I have read all the parties' submitted material but refer only to the relevant evidence and arguments needed to explain my decision.
9. At the outset, I note that each party accuses the other of hostile behaviour. I find nothing in this dispute turns on that alleged behaviour. Further, the parties' submissions address online reviews of ICF's installation work for Ms. Fey and others. I find nothing turns on those online reviews as they do not prove the quality of ICF's work for Ms. Fey.
10. There is no written contract between the parties in evidence. However, it is undisputed that Ms. Fey hired ICF to supply, level, and install flooring, and to supply, install, and caulk baseboards and door casings, in a relative's home as shown in a submitted February 9, 2021 invoice. The home has since been sold. The invoice showed that the agreed work totalled \$6,989.76, and that the balancing owing was the claimed \$2,455.60. It is undisputed that ICF largely completed the work shown on the invoice, although the parties disagree about whether ICF installed and caulked the baseboards and door casings properly. Ms. Fey has not paid the outstanding \$2,455.60.
11. I find the parties' agreement contained an implied term that ICF's installation work would be of reasonable quality (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). Ms. Fey says that ICF refused to discount the amount owing by \$500 to \$700 for allegedly deficient work. ICF denies its work was deficient. Given that Ms. Fey alleges that ICF's work was unsatisfactory, I find she bears the burden of proving that ICF's work was deficient.

12. ICF performed its work over a few days beginning on February 16, 2021. Ms. Fey says that ICF did not use enough levelling compound when installing the floor, which led to alleged problems with the baseboards. However, among the numerous submitted photos, I see no obvious problems with the installed floors. Further, as noted below, there is no expert evidence before me in this dispute, which I find is required to prove whether the floors were insufficiently leveled. On the evidence before me, I find ICF's flooring work was not deficient. I also find Ms. Fey does not request specific relief for flooring defects, and that her claims focus on ICF's allegedly deficient installation of baseboards and door casings.
13. First, Ms. Fey says she requested "modern" door casings rather than the flat stock ICF provided and charged her for, which ICF denies. I find that Ms. Fey did not object to the door casings' style in the weeks following their installation, and the evidence does not show that she requested a different type of door casing. I find she does not now seek to have the door casings replaced because they are the wrong style. Rather, she takes issue with the quality of ICF's installation work. I find the parties agreed to flat stock door casings, which ICF used and charged Ms. Fey for.
14. Second, it is undisputed that ICF agreed to caulk any gaps in the new baseboards and door casings that it installed, but not to prime or paint those items. It is also undisputed that after ICF's staff member, M, said he had completed the work, Ms. Fey complained to ICF that some of the baseboards and door casings were installed incorrectly and had not been caulked. M performed repairs on his work around February 20, 2021.
15. In a written statement, Ms. Fey's brother, RA, said he helped M correct the deficiencies. RA said he has over 30 years experience in "construction", and that M's work was of poor quality, primarily because the baseboards and door casings were positioned and installed incorrectly. However, RA indicated that the repairs corrected those issues, except for some "large" gaps at the cut joints that M refused to repair.
16. Several of the photos in evidence showed baseboards and door casings before they were caulked and painted. ICF says, and Ms. Fey does not directly deny, that most

of those photos showed the baseboards and door casings before M returned to repair them. I find that although M initially installed some of those items incorrectly, he later corrected their positions. On the evidence before me, I find that there were some gaps behind some of the baseboard joints, but that the baseboards' outside edges generally appeared gap-free. ICF says that it is best to make such cuts, which leave no gap on the outside edge, because any gaps behind the baseboard joints can be masked by caulking and painting. ICF submitted photos of the home's real estate listing, after the baseboards and door casings had been caulked and painted. None of the photos show any obvious unrepaired gaps in the baseboards or door casings.

17. Ms. Fey says that M did not caulk the baseboards and door casings as agreed, so Ms. Fey's unidentified painter had to complete the caulking. ICF says that M caulked the baseboards and door casings as agreed, when he repaired his other work. ICF admits that it previously offered Ms. Fey a \$150 discount for the amount she said she paid her painter for extra caulking, plus a \$150 "goodwill" discount, but withdrew that offer when evidence showed she had not paid the painter for caulking. The only painter evidence before me is an email excerpt from Ms. Fey showing a \$150 charge from an unidentified person for "prime all raw edges on new doors and door casing" (reproduced as written). I find that charge was for priming, not caulking.
18. The parties differ on who completed the caulking work. I find it is unclear on the evidence before me whether Ms. Fey's painter actually caulked anything. Regardless, submitted photos show that the agreed caulking was completed, and I find the evidence does not show that Ms. Fey paid her painter anything for caulking.
19. Ms. Fey says that the baseboards and door casings were not straight, the joints were not aligned well, and there were large baseboard gaps, although she does not deny that the gaps were caulked and painted. ICF says the drywall was uneven and the baseboards and door casings followed the drywall, but the joints appeared fine after caulking and painting. I find the submitted photos do not show any obvious deficiencies after caulking and painting were completed, apart from a paint crack in one baseboard joint. However, as further explained below, I find the evidence before

me does not show the likely cause of the paint crack, including whether it was caused by substandard ICF work. I also find the evidence fails to show the cost of repairing what appears from the photo to be a minor paint deficiency.

20. I find that whether ICF's baseboard and door casing work was of reasonable quality and met industry standards is a subject outside of ordinary knowledge and experience that requires expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124).
21. I find there is no expert evidence before me. RA's witness statement says that M's work was of poor quality, left "large" gaps in the baseboards, and did not use enough nails. However, I am not satisfied that RA, who is Ms. Fey's brother, was sufficiently neutral to give an expert opinion in this dispute. I find RA's written statement advocates for Ms. Fey's position, which is inconsistent with CRT rule 8.3(7). Regardless, I find RA does not say what size of gap or how many nails would have been acceptable, and his statement provides no useful evidence on the acceptable standards for baseboard or door casing installation. I find Ms. Fey has not met her burden of proving, through required expert evidence, that ICF's work was below standard.
22. The parties agree that ICF said it would re-do any baseboard and door casing work that an independent, third party review determined was substandard. However, no third party review was performed, and ICF said it would not pay for repainting any re-done work in any event. So, Ms. Fey says she did not authorize ICF to re-do any work, and she felt a discount was more appropriate. Further, Ms. Fey admits that she was willing to pay \$2,155.60, which was the \$2,455.60 invoiced balance minus ICF's previously offered \$300 discount for the painter's alleged caulking work, which ICF withdrew. She does not further explain why she did not make a payment of \$2,155.60.
23. On the evidence before me, I find ICF performed the agreed flooring, baseboard, and door casing work. I find the evidence fails to show that this work was incomplete or otherwise failed to meet industry standards. In particular, I find the evidence does not

show that Ms. Fey paid her painter for any caulking work, or that the caulking was left incomplete or was below an acceptable standard. I allow ICF's claim for \$2,455.60.

CRT FEES, EXPENSES, AND INTEREST

24. The *Court Order Interest Act* (COIA) applies to the CRT. I find ICF is entitled to pre-judgment interest on the \$2,455.60 owed by Ms. Fey from March 19, 2021, the date Ms. Fey refused ICF's payment demand, until the date of this decision. This equals \$4.81.
25. 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 not to follow that general rule. I find ICF was successful, so it is entitled to reimbursement of the \$125 is paid in CRT fees. No CRT dispute-related expenses were claimed.

ORDERS

26. Within 30 days of the date of this order, I order Ms. Fey to pay ICF a total of \$2,585.41, broken down as follows:
 - a. \$2,455.60 in debt,
 - b. \$4.81 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
27. ICF is entitled to post-judgment interest, as applicable.
28. 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.

29. 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.

Chad McCarthy, Tribunal Member