



# Civil Resolution Tribunal

Date Issued: October 1, 2021

File: SC-2021-000382

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lee (dba Neo Interiors) v. Cui*, 2021 BCCRT 1055

BETWEEN:

TAE HO LEE (Doing Business As NEO INTERIORS)

**APPLICANT**

AND:

LIAN YU CUI

**RESPONDENT**

AND:

TAE HO LEE (Doing Business As NEO INTERIORS)

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. The applicant and respondent by counterclaim, Tae Hoe Lee (Doing Business As Neo Interiors), did home renovation work for the respondent and applicant by counterclaim, Lian Yu Cui. Mr. Lee claims \$4,500, which represents the final 10% payment for the work under the parties' \$45,000 contract. Each party is represented by a family member.
2. Ms. Cui says she did not pay the final 10% because of various deficiencies in the work. In the counterclaim, Ms. Cui seeks \$3,972.15 for a professional painter to repaint, \$800 for damaged sliding mirrors, and \$150 for a new door lock and building fob after Mr. Lee undisputedly refused to return her keys.
3. Ms. Cui also seeks orders that Mr. Lee remove and reinstall the kitchen cabinets and kitchen backsplash. She gave a value of \$50 to each claim and told Civil Resolution Tribunal (CRT) staff that she did so to remain with the CRT's small claims monetary limit of \$5,000. Despite this, the total counterclaimed amount is \$5,022.15. I find Ms. Cui has agreed to abandon her claim to any amounts over \$5,000.
4. Mr. Lee says Ms. Cui approved of the kitchen cabinet change. He says the backsplash and painting work met his contractual obligations. He denies damaging the mirrors.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT's formal written reasons. 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.

6. 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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.
7. 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.
8. 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.
9. After the stated deadline for evidence submission, Ms. Cui submitted additional relevant evidence in the form of quotes for repainting and repair costs. Mr. Lee had the opportunity to respond to the late evidence, so I find there is no prejudice to him in admitting it. Bearing in mind the CRT's flexible mandate, I admit the late evidence, and where relevant I discuss it below.

## **ISSUES**

10. The issues in this dispute are:

- a. Is Mr. Lee entitled to the final payment of \$4,500?
- b. Is Ms. Cui entitled to specific performance of the contract or damages?
- c. What damages has Ms. Cui proved?

## **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil dispute, Mr. Lee must prove his claim on a balance of probabilities, meaning more likely than not. Ms. Cui has the same burden to prove her counterclaim. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. Mr. Lee did not provide any evidence, despite having the opportunity to do so.
12. Ms. Cui hired Mr. Lee to renovate her apartment. A September 17, 2020 quote formed the basis of the parties' contract. As noted, the quote put the total renovation cost at \$45,000. Ms. Cui says she does not have to pay the final 10%. She alleges that some parts of the renovation were not what she requested, the renovation was incomplete, the work quality was poor, and Mr. Lee damaged 2 mirrors.
13. An owner has the right to end a contract where the contractor has breached the contract in such a substantial or fundamental way that it amounts to a "repudiation" or rejection of the contract. In such circumstances, the contract is at an end and both parties are excused from further contractual obligations. Work that is alleged to be poor quality or defective generally does not amount to a repudiation and instead may entitle an owner to damages: *Lind v. Storey*, 2021 BCPC 2.
14. As stated in the quote, Mr. Lee was required to paint various areas, install new flooring and baseboards, completely renovate the primary bathroom, do some work another bathroom, install new kitchen cabinets, sink, faucet, rangehood, tile backsplash, lighting, quartz countertops, and flooring. This was the substance of the contract and Mr. Lee undisputedly provided these things. I find the alleged deficiencies, discussed below, were not so fundamental as to go to the root of the contract. As such, Ms. Cui

did not have the right to treat the contract as having been repudiated by Mr. Lee and to refuse to make the final payment.

15. As the contract remains binding on the parties, Ms. Cui remains liable for the \$4,500 balance, subject to my findings on her counterclaim. The burden to prove a breach of contract for substandard work is on Ms. Cui as the party alleging the breach: see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287.

### ***Kitchen cabinets***

16. The quote identifies the kitchen cabinets as white Ikea cabinets. It is undisputed that Mr. Lee installed cabinets that were not from Ikea.
17. Ms. Cui says this amounts to a fraudulent misrepresentation. A misrepresentation involves a false statement of fact. There is no evidence that Mr. Lee did not intend to install Ikea cabinets when he prepared the quote. Mr. Lee says in the course of his work he discovered that Ikea cabinets would not fit so he confirmed verbally with Ms. Cui that he would use different cabinets before he installed them. Ms. Cui denies giving approval. However, that does not make Mr. Lee's original promise to provide Ikea cabinets a misrepresentation. I find what Ms. Cui really alleges is that Mr. Lee breached the contract by failing to provide Ikea kitchen cabinets as promised.
18. Ms. Cui provides no evidence that the cabinets she received were of lesser quality or value than Ikea cabinets. She says the Ikea name was important to her because of Ikea's 25-year warranty and ease of replacement. However, she provided no evidence that Ikea provides a 25-year warranty, or any warranty at all. Ms. Cui also provided no evidence that the Ikea cabinets would be easier to replace than others. Although Ms. Cui provided several photos of alleged deficiencies relating to other issues, she did not provide any photos of the kitchen cabinets. I infer that she was satisfied with the cabinets, other than the name brand. Given that Ms. Cui has not established any compensable difference between the cabinets she wanted and the cabinets she received, I find Ms. Cui has not proven any damages relating to the cabinets. As a result, it is not necessary to determine if the cabinet change was a

breach of contract as Ms. Cui alleges or an agreed-upon modification as Mr. Lee suggests. I dismiss this claim.

### ***Painting***

19. Ms. Cui says the walls Mr. Lee painted, which I infer were in the living room and perhaps other rooms, had visible stains and flaws, fading and discolouring. Mr. Lee says this is not possible as he applied 1 coat of primer and 3 coats of paint. I find Ms. Cui's photos, which she says she took in January, speak for themselves. The photos show significant visible flaws, discolouration, and areas around fixtures that were not painted. I find expert evidence is not necessary to prove this deficiency because it is within ordinary knowledge that a professional paint job should not show such obvious defects. I accept that Ms. Cui will need to repaint substantially all the areas that Mr. Lee painted.

20. A quote from Hemlock Painting says it will cost Ms. Cui \$3,972.15 to sand, prepare and apply paint to walls throughout, as well as kitchen and bathroom ceilings. I note Mr. Lee charged \$3,500 for painting, but that excluded the kitchen ceiling and bathroom, for which the costs were factored in elsewhere in the quote. This suggests the Hemlock Painting quote is reasonable overall, and I accept it as proof of Ms. Cui's damages. I find Ms. Cui is entitled to damages of \$3,972.15 for repainting.

### ***Closet mirror door damage***

21. Ms. Cui's photos confirm damage to 2 closet mirror doors. The first is the front entrance closet, which has a small crack in a corner of the mirror. The second is the master bedroom closet, where part of the metal frame has detached from the mirror. The mirror itself is not damaged. Ms. Cui says she discovered the damage on December 8, 2020, the last day Mr. Lee worked there. Mr. Lee denies damaging either mirror door.

22. Ms. Cui says she purchased the unit in September 2020 and did walkthroughs with her inspector and realtor and did not notice any mirror damage. She did not provide copies of any inspection report. The crack in the front entrance mirror is so small that

I am not persuaded that it would be noticed on a walkthrough. I find Ms. Cui has not proven on a balance of probabilities that Mr. Lee damaged the front entrance closet mirror. I also find the damage is not significant enough to warrant replacement.

23. As for the main bedroom closet mirror door, Ms. Cui says the frame cannot be reattached to the mirror. In his Dispute Response, Mr. Lee said he told Ms. Cui about the damage before he began his work, and she was present at the time. In submissions, Mr. Lee said he phoned Ms. Cui as soon as he discovered the damage. I find this inconsistency in Mr. Lee's evidence leads me to prefer Ms. Cui's evidence. I find Mr. Lee likely damaged the main bedroom closet mirror.

24. Ms. Cui claims \$800 for the 2 mirrors. She submitted a Home Depot website screenshot showing a similar closet mirror door for \$474. On a judgment basis, I award \$400 for the bedroom closet mirror door.

### ***Door locks***

25. It is undisputed that Mr. Lee refused to return the keys to Ms. Cui's apartment. Mr. Lee submits that it is fair that he kept Ms. Cui's keys because she did not pay him in full. I disagree and I find it was reasonable for Ms. Cui to change her lock and have the fob deactivated. I find Mr. Lee is fully responsible for Ms. Cui's associated expenses, which on the evidence total \$148.50.

### ***Kitchen backsplash***

26. Ms. Cui says Mr. Lee installed a white rectangular tile without her consent, rather than black and white hexagon. The quote does not specify the backsplash pattern. However, the parties' text messages show that Mr. Lee sent Ms. Cui several photos from a tile store and she selected a black and white hexagon pattern.

27. Mr. Lee says Ms. Cui verbally agreed to change the tiles to white rectangular before he installed the backsplash. He does not say when this happened, or why it was necessary. On balance, given Ms. Cui's clear choice in the text message and the lack

of explanation, I prefer Ms. Cui's evidence and I find Mr. Lee breached the contract by installing the wrong backsplash tile.

28. Ms. Cui wants Mr. Lee to remove the backsplash and install the hexagon tiles. Mr. Lee advises against reinstalling the backsplash and says it could damage the walls. Ms. Cui disagrees, but neither party provided evidence in support. Given this uncertainty, I find ordering Mr. Lee to remove the backsplash and install a different backsplash would not be appropriate. As well, although there is no direct evidence about the cost of a backsplash installation, ordering Mr. Lee to return and reinstall the backsplash on top of \$4,520.65 in damages assessed above risks exceeding the CRT's \$5,000 small claims monetary limit.
29. That said, I accept that in order to get what she contracted for, which was a backsplash of her choice, Ms. Cui will need to pay someone to remove the backsplash Mr. Lee installed, and purchase and install a new backsplash. I am satisfied that this will cost at least \$479.35 (\$5,000 less \$4,520.65), particularly given Mr. Lee says the wall may be damaged in the process.
30. In summary, Ms. Cui has established damages of \$5,000 in her counterclaim, which I set off against Mr. Lee's \$4,500. The result is that Mr. Lee must pay Ms. Cui \$500.
31. The *Court Order Interest Act* applies to the CRT. Ms. Cui is entitled to pre-judgment interest on the \$500 from January 31, 2021, which is the approximate date I find work finished, to the date of this decision. This equals \$1.50.
32. 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. Both parties were successful in their claims and both paid CRT fees but did not claim dispute-related expenses, so I make no order.

## **ORDERS**

33. Within 14 days of the date of this order, I order Mr. Lee to pay Ms. Cui a total of \$501.50, broken down as follows:



a. \$500.00 in damages, and

b. \$1.50 in pre-judgment interest under the *Court Order Interest Act*.

34. Ms. Cui is entitled to post-judgment interest, as applicable.

35. 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.

36. 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.

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Micah Carmody, Tribunal Member