Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lewin v. 0911186 B.C. Ltd. dba Absolutely Floored*, 2021 BCCRT 1095

B E T W E E N :

AMANDA LEWIN and STEVEN DARBY

APPLICANTS

A N D :

0911186 B.C. LTD. DBA ABSOLUTELY FLOORED

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about allegedly defective carpet and flooring installation. The applicants, Amanda Lewin and Steven Darby, hired the respondent, 0911186 B.C. Ltd. dba Absolutely Floored (AF), to install new carpet and hardwood flooring in their home. The applicants say that hardwood floor mouldings, or “nosings”, fell apart, and that the carpet was not installed properly. They also say that the carpet material was

defective, and although the carpet manufacturer provided replacement carpet for free, AF did not install the replacement or agree to the applicants' terms for delivery, and it remains in AF's possession. So, the applicants say they then had a different installer replace the allegedly defective carpet with a different carpet. The applicants claim a $2,259 refund from AF for the carpet material and installation, $1,466 for allegedly faulty stair mouldings, and $1,275 for moulding replacement labour, which totals $5,000.

2. AF denies that the stair nosings were faulty and says that the applicants did not permit delivery of the replacement carpet, which it says remains available at AF's premises. AF says it completed the work as agreed and owes nothing.

3. Ms. Lewin represents the applicants in this dispute. AF is represented by an employee or principal.

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.

ISSUES

8. The issues in this dispute are:

    a. Was AF's staircase flooring installation defective, and if so, does AF owe the applicants $2,741 or another amount in damages?

    b. Did AF fail to deliver and install the carpet adequately, and if so, does AF owe the applicants a refund of $2,259 or another amount?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, which means proving it is more likely than not that their position is correct. 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. The undisputed evidence is that the applicants hired AF to install new flooring in much of their home. A September 9, 2019 AF invoice shows that the work included purchasing and installing carpet and hardwood flooring, levelling floors, providing transitions, baseboards, "custom nosings", and other work, for a total price of $27,020.17. The invoice only listed itemized prices for some of the work, such as $2,567.98 for suppling and installing the carpet, and said the total price was otherwise "as per spreadsheet." Neither party submitted a spreadsheet into evidence. I find the

only direct, documentary evidence of the agreed work and its price is the September 9, 2019 invoice.

Does AF owe the applicants $2,741 for defective hardwood flooring work?

11. The applicants claim that AF's floor mouldings were defective. From the parties' submissions and other evidence, I find that these mouldings were floor "nosings", which are joints where different sections of flooring meet at an angle on the outer edges of stairs. The parties agree that constructing such nosings on the applicants' stairs was part of the agreed work, and that AF built the nosing joints from flooring material. The invoice and other evidence do not show the cost of the "custom nosing" work, although the invoice included a $262.50 "add on" for "extra nosing and labour". The invoice also said that all labour was warranted for 2 years after the installation was completed, but there was no explicit warranty for materials. AF does not deny that it would correct any sub-standard work within 2 years under its warranty.

12. The applicants say that AF's floor nosing work is faulty and needs to be re-done. Specifically, they say that the nose joints are weak, and that the hardwood flooring material has started to chip at the joints. AF denies that the nose joints are faulty. AF says that the chips shown in submitted photos are damage from abuse by other tradespeople, and that it is not responsible for alleged mistreatment of the floor joints. AF says it offered to provide 3 replacement nosings as a goodwill gesture, but the applicants say they refused because AF did not agree to install the replacement nosings or to address the other nosings.

13. The issue before me is whether the stair nosings were built to an acceptable quality standard under the parties' agreement (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). If not, then AF may be liable for the cost of repairing any sub-standard nosings.

14. I find photos submitted by the parties show close-up views of some small chips at the nosing joints on stairs, as well as a hairline gap along the length of one nosing joint. The applicants say that all 15 of AF's nosing joints are defective and should be

replaced, but the photos only show portions of a few steps. The state of most nosing joints is unclear on the submitted evidence. I find that I cannot determine, based on the photographs and ordinary knowledge and experience, what caused the chips and hairline gap, whether the nosing joints were of reasonable quality, and whether poor nosing work contributed to the chips and gap. I find that these are technical subjects that require expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283).

15. The applicants submitted as expert evidence an undated letter from "Amir" of WPD Construction Ltd. Amir provided contact information but no last name. The letter said that Amir had installed and repaired many types of flooring for 8 years, including stair nosings. He provided no other qualifications, such as education or training. AF does not directly comment on Amir's letter or his qualifications. On balance, under CRT rule 8.3 I find that Amir is likely qualified by experience to provide an expert opinion on floor nosing construction. However, I do not find his letter particularly persuasive, for the following reasons.

16. Amir described how he builds nosings, and said that AF used a different technique. However, he did not directly say that AF's technique would inevitably result in poor nosing joints, although he said that the stair nosing construction appeared to be weak and that "the stair nosing joint is failing from end to end." Amir did not say what he meant by "failing", or how he determined that nosing joints appeared to be weak. He did not confirm whether his opinion was based on a personal inspection, or photos, or something else. He did not say how many of the nosing joints were failing or damaged, and did not provide any photos or measurements to explain his findings. Amir also said that there were no scratches or other signs suggesting that anything was dropped on the nosings, but did not specifically rule out other potential causes of joint failure or chipping. Overall, I find that AF's letter indicates that at least one stair nosing joint was somehow "failing" because of inadequate construction, which is consistent with the photo of a hairline gap in one of the joints. I find the letter is insufficient to prove that faulty AF work caused any other stair nosing defects.

17. AF submitted an undated letter from Allan Sieben, a regional account manager with Boa-Franc, a flooring manufacturer. Mr. Sieben did not explain whether he had any education, training, or experience in building floor nosings, so I find the evidence fails to prove he is qualified to provide an expert opinion under the CRT's rules. Further, Mr. Sieben said he had inspected "the nosings" made by AF and found them to be of comparable quality to his company's nosings. However, he did not describe whether the inspected nosings were the applicants'. I give Mr. Sieben's letter no evidentiary weight.

18. Having weighed the available evidence, I find that the applicants have met their burden of proving that one stair nosing, showing a hairline gap, was unsatisfactory. However, I find the applicants have not provided evidence proving the cost of the floor nosings or the cost to replace or repair a defective nosing. It is not clear how the applicants arrived at the claimed $1,275 for staircase labour and $1,466 for mouldings, for replacing or refunding the allegedly faulty nosings. AF says that the cost of replacing 3 stair nosings would be $317 plus tax. On a judgment basis, I allow the applicant's claim for $150 in stair nosing damages.

Did AF fail to deliver and install the carpet adequately and as agreed?

19. It is undisputed that AF installed about 400 square feet of carpet in the applicants' home. As noted, the September 9, 2019 invoice price of the carpet and installation was $2,567.98 including tax, plus $105 for new tack strip not including tax, which totals $2,685.58. AF says the carpet and installation totaled $2,674.84, which is slightly less than the invoice price. The applicants do not directly dispute this total, so I find the original carpet and installation charges were $2,674.84.

20. The applicants say that AF installed this original carpet incorrectly, and that the carpet material needed replacement because it was defective. AF disagrees that the carpet was defective, but says it processed a manufacturer "satisfaction" warranty claim for the applicants. It is unclear what the alleged defects were, although the parties' submissions indicate they related to soiling from the applicants' pet dog. The manufacturer undisputedly provided replacement carpet to AF at no charge.

21. AF says it did not want to do further work for the applicants, so the parties agreed to a $500 credit as compensation for the applicants hiring someone else to install the warranty replacement carpet. So, AF says the total paid by the applicants was $2,174.84 after the credit. The applicants confirm they agreed to a $500 credit for reinstallation labour, but they say there was no agreement about removing and disposing the defective carpet. The applicants say they initially held back $2200 from AF for its carpet work. The applicants now claim a $2,259 refund for all of AF's carpet work, because they say AF never installed non-defective carpet, and they later paid another installer to purchase and install alternative carpet. There is no evidence showing the actual or estimated cost of this alternative carpet installation.

22. The warranty replacement carpet has been in AF's warehouse since December 2019. The applicants do not directly deny that on August 21, 2020, they told AF not to deliver the replacement carpet to them unless AF committed to installing it without visible seams and to replacing all the stair nosings. AF says the parties agreed that another company would install the replacement carpet for the $500 credit, so it disagreed with those terms and the carpet remains undelivered. The documentary evidence does not show what the applicants actually paid AF for the carpeting, although text messages show that they searched for a different replacement carpet installer.

23. I find it persuasive that the applicants claim $2,259, and elsewhere say the carpet charges totalled $2,200. I find these are similar amounts to the $2,174.84 AF says included the $500 discount. I also find these amounts are largely consistent with a $500 discount off the original $2,685.58 invoice price and $2,674.84 total price for AF's carpet work. So, on the evidence before me, I find it likely that the parties agreed to a $500 credit on the price of AF's carpet work in return for the applicants not requiring AF to install the warranty replacement carpet or to remove and dispose of the old carpet. I find it likely that the applicants paid AF $2,174.84 for the carpeting, including the $500 credit.

24. The applicants say that their original carpet complaint was about AF's allegedly faulty installation, and that they did not want a warranty replacement carpet. However, I find

the applicants now claim that the carpet was defective, as well as incorrectly installed. The applicants submitted no evidence showing that they declined the manufacturer's replacement carpet, or asked AF not to obtain it, or that there was a delivery charge. I find that the replacement carpet remains available to the applicants at no charge. I find that the applicants chose to purchase alternative new carpet, despite a free replacement carpet being available to them through AF. So, I find AF provided satisfactory carpet as agreed, and is not responsible for refunding the carpet's cost.

25. Turning to AF's carpet installation, the applicants submitted photos showing some seam lines on installed carpet in a hallway and another room, as well as a small brown spot they say is a burn mark. However, the applicants admit that AF replaced the hallway carpet with hardwood. On balance, I find the evidence does not prove that AF both caused and failed to correct the other installation deficiencies. In particular, I find that the cause of any seam lines, and the nature and cause of the alleged burn mark, are technical subjects requiring expert evidence to prove. The parties submitted no expert evidence about carpet.

26. Further, given my finding that the applicants agreed to be responsible for the replacement carpet installation in return for the $500 credit, I find this released AF from its obligation to correct any deficiencies in the original carpet installation.

27. Overall, I find the evidence does not prove that AF failed to provide non-defective carpet to the applicants as agreed. I also find that the parties agreed AF was not required to install the warranty replacement carpet, or to correct any installation deficiencies, in exchange for a $500 credit. So, I find that AF did not break the parties' agreements, and the applicants are not entitled to a refund of AF's carpet charges or the cost of replacing the original AF-installed carpet. Even if the applicants were entitled to carpet compensation, I note that they have not submitted evidence proving the amount paid to replace the AF-installed carpet, and they failed to mitigate their damages by refusing the free replacement carpet. I dismiss the applicants' claim for a $2,259 refund for AF's carpet installation work.

CRT FEES, EXPENSES, AND INTEREST

28. The *Court Order Interest Act* applies to the CRT. However, I find that the applicants have not yet repaired any stair nosings or been charged for such repairs. So, they are not entitled to pre-judgment interest on the $150 owed by AF for stair nosings.

29. Under section 49 of the CRTA, and the 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. I find the applicants were partly successful in their claims, so they are entitled to reimbursement of half the $175 they paid in CRT fees, which equals $87.50. AF paid no CRT fees, and neither party claims CRT dispute-related expenses.

ORDERS

30. Within 30 days of the date of this decision, I order AF to pay the applicants a total of $237.50, broken down as follows:

    a. $150 in damages for a defective stair nosing joint, and

    b. $87.50 in CRT fees.

31. The applicants are also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable

32. I dismiss the applicants' other claims.

33. 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.

34. 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