



# Civil Resolution Tribunal

Date Issued: November 17, 2021

File: SC-2021-002852

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mann v. Kirby*, 2021 BCCRT 1218

BETWEEN:

NICK MANN

**APPLICANT**

AND:

MICHAEL KIRBY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

### INTRODUCTION

1. The applicant, Nick Mann, hired the respondent, Michael Kirby, to install tile in his home. Mr. Mann says that Mr. Kirby's work was so bad that he had to hire someone else to tear it out and start again. Mr. Mann says that Mr. Kirby agreed to reimburse Mr. Mann a paid \$1,000 deposit, the cost of replacement materials, and the cost to

remove the resulting waste. Mr. Mann says that these costs add up to \$4,503.91. He asks for an order that Mr. Kirby pay this amount.

2. Mr. Kirby denies that his agreement to pay Mr. Mann is legally binding. He also says that he only agreed to anything because Mr. Mann intimidated and threatened him. Finally, he says that his work was to a reasonable standard considering his level of experience. He asks that I dismiss Mr. Mann's claims.
3. The parties are each self-represented.

## **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. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Mr. Kirby agree to repay the deposit and pay any other costs associated with retiling the rooms?
  - b. If so, was Mr. Kirby under duress when he agreed?
  - c. Did Mr. Kirby install the tiles to a reasonable standard?
  - d. What, if anything, are Mr. Mann's proven damages?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mr. Mann as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The relevant facts are mostly undisputed. Mr. Mann initially hired Mr. Kirby to do stonework outside of his home in 2019. Mr. Mann was impressed with the work, so on February 20, 2021, he asked Mr. Kirby if he also did tile work. Mr. Kirby said that he did, as long as it was not too intricate. After reviewing photos of the tiles, Mr. Kirby decided he could do the job. Mr. Mann hired him to tile in 2 bathrooms and 2 laundry rooms at a cost of \$2,800, which covered Mr. Kirby's time and materials except for tiles and grout, which Mr. Mann supplied.
11. Mr. Kirby started the work on March 2, 2021. On March 3, 2021, Mr. Mann paid a \$1,000 deposit, with the remaining cost due on completion. Based on the parties' text messages in evidence, Mr. Mann was initially happy with Mr. Kirby's work.

12. This changed on March 16, 2021. Mr. Kirby was not working that day, so the following interactions were all by text message. Mr. Mann asked Mr. Kirby how he planned to fix the uneven tiling on the tub. By this time, Mr. Kirby had nearly completed the first bathroom and had done some work on a laundry room floor.
13. Mr. Kirby responded that he was “not that good of a tiler yet” and was clearly “having issues”. Mr. Mann told Mr. Kirby to pick up his tools the next day. Mr. Mann said that he would have to hire someone else to rip out everything Mr. Kirby had done and start again. Mr. Mann asked Mr. Kirby to return the down payment. Mr. Kirby responded several hours later that he would return the \$1,000.
14. The next day, before picking up his tools, Mr. Kirby texted Mr. Mann to tell him that he should give Mr. Kirby the “bill for the demo and the tile” so that Mr. Kirby could pay it. Later that day, Mr. Mann texted Mr. Kirby photos showing that the new tilers had to remove some drywall as part of the demolition. Mr. Kirby agreed to pay for that too. Again, none of this is disputed.
15. On March 24, 2021, Mr. Mann texted Mr. Kirby that he would owe Mr. Mann around \$2,000, including the return of the \$1,000 deposit. At this point, Mr. Kirby told Mr. Mann that he no longer agreed to pay anything. Mr. Kirby said that Mr. Mann had intimidated him into accepting responsibility for the costs, referring to “subtle threats”.
16. The first question before me is whether Mr. Mann and Mr. Kirby reached an agreement about Mr. Kirby’s returning the deposit and paying other costs. Mr. Kirby argues that he did not sign any legal documents and, in any event, he “never promised anything”.
17. It is not necessary to sign a document to form a binding contract. Parties can form a contract through their correspondence as long as it shows that they intend to be bound by clear terms. See *Crosse Estate (Re)*, 2012 BCSC 26, at paragraph 30. I find that the parties’ text messages on March 16 and 17, 2021, show that they agreed that Mr. Kirby would refund the deposit and pay certain costs associated

with removing the tiles Mr. Kirby had installed. As for Mr. Kirby's suggestion that he did not promise anything, I find that the text messages clearly show otherwise. I find that there was nothing conditional or ambiguous about his agreement.

18. I turn then to Mr. Kirby's argument that he only agreed to pay anything because of the emotionally charged situation. Mr. Kirby says that Mr. Mann was aggressive and intimidating throughout their dealings. He says that he wanted to avoid conflict and his texts to Mr. Mann were his attempt to de-escalate the situation. He says that once he had the chance to reflect on the situation, he realized he owed Mr. Mann nothing. For his part, Mr. Mann denies doing anything intimidating or threatening.
19. As Mr. Mann points out, a party cannot back out of a contract just because they regret it. However, Mr. Kirby's arguments raise the law of duress, although he does not use that term. Duress is a defence to the enforceability of a contract and can include physical threats or economic pressure. To prove physical duress, Mr. Kirby must prove that Mr. Mann physically compelled him to agree, threatened to harm him or a close relative, or threatened to imprison him. See *Ferguson v. Ferguson*, 2008 BCSC 151, at paragraph 56. In this dispute, there is no suggestion of any economic pressure.
20. Mr. Kirby's evidence about Mr. Mann's allegedly threatening or intimidating behaviour is vague. I find that the parties' written communications were all cordial and there is nothing in them to suggest that Mr. Mann did anything threatening or intimidating. Mr. Kirby does not allege any threats of physical harm. I find that he has not proven duress.
21. I therefore find that Mr. Kirby and Mr. Mann had a binding agreement that Mr. Kirby would reimburse the \$1,000 deposit plus the cost of the old tiles, removing and disposing of the old tiles, and replacing some drywall. For this reason, I find that I do not need to address whether Mr. Kirby's work fell below a reasonable standard.
22. As mentioned above, Mr. Mann claims a total of \$4,503.91, of which \$1,000 is the deposit. He does not explain how he arrived at the remaining \$3,503.91 claim. He

provided a \$3,950.74 invoice for all the tiles he bought for Mr. Kirby to install. However, as discussed above, Mr. Kirby had only installed tiles in 1 bathroom and 1 laundry room. Mr. Mann does not explain which tiles from the invoice had to be removed. He did provide invoices that he says were for replacement tiles, which total \$1,194.61, although it is not clear to me that all of these tiles were replacements. On a judgment basis, I find that Mr. Kirby must pay Mr. Mann \$1,000 for tiles. Mr. Mann also provided an invoice for \$331.94 in grout and other supplies that Mr. Kirby used. I find that Mr. Kirby must pay Mr. Mann for these supplies.

23. Mr. Mann did not provide any objective evidence to show how much he paid to remove and dispose of the old tiles or repair the drywall. He says that he paid the new contractor \$1,500 cash to remove and dispose of the old tiles and \$3,000 to install the new tiles, which I infer included repairing drywall. Mr. Mann says that he has bank statements showing withdrawals of these amounts but did not provide them despite being asked to provide evidence to support his damages claim. On a judgment basis, I award Mr. Mann \$1,000 for the removal and disposal of the old tiles and the drywall repair.
24. I therefore order Mr. Kirby to pay Mr. Mann a total of \$3,331.94 in damages.
25. The *Court Order Interest Act* (COIA) applies to the CRT. I find that Mr. Mann is entitled to pre-judgment interest on the deposit from March 16, 2021, on the supplies and damaged tiles from March 17, 2021, and on the demolition and disposal costs from April 1, 2021. This equals \$9.89.
26. 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. Mr. Mann was partially successful, so I find he is entitled to reimbursement of half of his \$175 in CRT fees, which is \$87.50. Mr. Mann did not claim any dispute-related expenses. Mr. Kirby did not claim any dispute-related expenses or pay any CRT fees.

## ORDERS

27. Within 30 days of the date of this order, I order Mr. Kirby to pay Mr. Mann a total of \$3,429.33, broken down as follows:
- a. \$3,331.94 in damages,
  - b. \$9.89 in pre-judgment interest under the COIA, and
  - c. \$87.50 for CRT fees.
28. I dismiss Mr. Mann's remaining claims.
29. Mr. Mann is entitled to post-judgment interest, as applicable.
30. 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.
31. 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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Eric Regehr, Tribunal Member