



Civil Resolution Tribunal

Date Issued: April 21, 2022

File: SC-2021-006901

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Miller v. Interior Turf Farm Ltd.*, 2022 BCCRT 463

BETWEEN:

MARK MILLER and PAMELA MILLER

APPLICANTS

AND:

INTERIOR TURF FARM LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about turf for a residential yard.
2. The applicants, Mark Miller and Pamela Miller, purchased 1,750 square feet of turf grass from the respondent, Interior Turf Farm Ltd. (Interior Turf), in May 2020. The turf did not survive the following winter, and Interior Turf agreed to replace it. The

Millers say that Interior Turf admitted it had sold them an inferior product, so they say Interior Turf should also be responsible for their costs to remove the dead turf and plant the new turf. The Millers claim \$76.65 for a power rake rental, \$91.84 for a sod cutter rental, \$392 for additional topsoil, \$67.71 for a rototiller rental, \$26.10 for a lawn roller rental, \$58.70 for mileage, and \$300 for labour, for a total of \$1,013.

3. Interior Turf denies that it sold the Millers an inferior turf product and says the Millers' grass could have died for any number of reasons that it is not responsible for. Interior Turf says it offered to replace the dead turf as a gesture of good will. It says it should not have to pay for any of the Millers' claimed expenses.
4. The Millers are self-represented. Interior Turf is represented by its owner, Jared Pastoor.

JURISDICTION AND PROCEDURE

5. 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.
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. 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.
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.

ISSUES

9. The issues in this dispute are:
 - a. Whether Interior Turf is responsible for the Millers' lawn dying, and
 - b. If so, to what extent does Interior Turf owe the Millers \$1,013 for claimed expenses, if any?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicants, the Millers must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
11. In early 2020, the Millers completed some retaining wall renovations, during which all of the grass in their backyard was damaged. The Millers say the existing grass was removed and they leveled the yard with a truckload of topsoil. They say that they initially intended to seed the yard with grass seed, but due to windy conditions and concern about losing the topsoil, they decided to purchase turf instead.
12. It is undisputed that Interior Turf delivered 1,750 square feet of turf to the Millers on May 20, 2020. Interior Turf's May 19, 2020 invoice in evidence describes the product only as "Turf/sqft" and shows the Millers paid a total of \$1,016.50. The Millers say they installed the turf themselves the same evening it was delivered.

13. The Millers say the turf immediately started thriving. They provided photographs of their backyard showing that the grass appeared to be growing well through the end of August 2020. The Millers say a lawn service company, NL, did at least 3 “applications” to the lawn in 2020, including a winter fertilizer before it snowed. The March 19, 2020 invoice from NL shows only payment of what I infer is an annual \$270.30 fee for lawn services. It does not describe what the services included or what the “applications” were that the Millers refer to.
14. The Millers say that in spring 2021, after the snow melted, they realized the turf had not survived the winter. I find the photographs in evidence taken on April 11, 2020 show the grass in the backyard generally appears to be dead.
15. It is undisputed that the Millers talked to Mr. Pastoor over the phone about the dead grass on April 26, 2021. Mr. Pastoor says that Interior Turf had run out of turf from its own farm when the Millers placed their order in May 2020. So, Interior Turf sold the Millers turf that had been grown at a third-party farm, WT, in the Lower Mainland. Mr. Pastoor admits that he told the Millers during their April 26, 2021 conversation that other customers who had received the WT turf also reported it had died over the winter. It is undisputed that Interior Turf offered to replace the product for free.
16. The evidence shows that the Millers decided to also replace all of the grass in their front yard at the same time, so that it looked consistent. In an April 28, 2020 text message, Mr. Miller asked Interior Turf to include an extra 500 square feet of turf at no cost, to help “offset” their efforts and costs. Interior Turf declined to supply the Millers with extra turf for free and stated it was doing what it was able “to make this right”, but it was already going to be “out thousands of dollars because of this issue from the other farm”.
17. Interior Turf says that while “a handful” of the WT lawns it supplied to customers died over the winter, most of them survived. It also says that later in the spring, it discovered that some of the turf harvested from its own farm had also died over the winter. Interior Turf says that it offered to replace the few dead lawns, essentially as a business decision, to keep customers happy. However, it says it explained to the

Millers that nobody knew the true cause of the grass dying, as it could have resulted from insufficient topsoil, inconsistent watering habits, mowing it too low in the fall, applying excessive nitrogen, or any number of uncontrollable environmental factors.

18. As noted, the Millers bear the burden of proving Interior Turf is responsible for their expenses to remove the dead turf and install new turf. I find this means the Millers must establish that the grass Interior Turf supplied was of inferior quality or durability, such that Interior Turf is responsible for its failure to survive the winter. However, the Millers did not provide any expert evidence about the cause of their lawn dying. They also did not provide a statement from NL about the Millers' lawn care. The Millers rely solely on their allegation that Mr. Pastoor told them the WT turf included a strain of grass that was not hardy enough to survive an Okanagan winter, which Mr. Pastoor denies.
19. I find the fact that the Millers were not the only customers whose WT turf died over the winter, is insufficient to prove the turf was an inferior product. I accept Interior Turf's evidence that new grass can die for many different reasons. Even if Mr. Pastoor expressed the possibility that the WT turfs were less hardy, I find he was likely only speculating about potential explanations for the grass dying. However, I find that speculative statement alone does not prove the Millers' lawn died because the WT turf was unsuitable for the Okanagan climate.
20. On balance, I find the Millers have not proven Interior Turf is responsible for their lawn dying. So, I find it is unnecessary to address their claimed expenses. I dismiss the Millers' claims.
21. 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. The Millers were unsuccessful and so I dismiss their claim for CRT fees.

ORDER

22. I dismiss the Millers' claims, and this dispute.

Kristin Gardner, Tribunal Member