



# Civil Resolution Tribunal

Date Issued: April 22, 2022

File: SC-2021-007864

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gault v. Hilliard*, 2022 BCCRT 466

BETWEEN:

SANDRA GAULT

**APPLICANT**

AND:

JIM HILLIARD

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. The applicant Sandra Gault hired the respondent Jim Hilliard to paint her kitchen and bathroom cabinet doors. Ms. Gault says Mr. Hilliard admitted he used the wrong primer, which she says resulted in 9 doors (about half the work) being

discoloured. She says despite his 3 efforts to fix the doors, they remain discoloured. Ms. Gault claims \$1,500, which is a 50% refund of the \$3,000 she paid.

2. Mr. Hilliard says he could not have known the affected doors had grease that penetrated the finish as they did. He denies using the wrong primer or saying that he did. He says he offered to try a “more robust process” after his 3<sup>rd</sup> attempt at repainting them, but Ms. Gault refused. Mr. Hilliard says he owes nothing.
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). CRTA section 2 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. CRTA section 39 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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.

## **ISSUE**

8. The issue in this dispute is whether Mr. Hilliard is responsible for the doors' admittedly discoloured hue, and if so, is Ms. Gault entitled to the claimed \$1,500 partial refund.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Ms. Gault must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Ms. Gault did not provide any final reply submission, despite having the opportunity to do so.
10. The photos in evidence show certain cupboard doors with a pinkish hue coming through the white or ivory paint colour. There are 9 affected doors and these represent 50% of the \$3,000 painting contract. None of this is disputed.
11. I find the discolouration is an obvious defect in that I accept the parties never intended this colour as the finished product. The issue in this dispute is whether Mr. Hilliard is responsible for the discolouration. As noted above, he says it results from the doors being heavily penetrated with grease, which he says he could not have known before working on the doors. More on this below.

12. Ms. Gault submitted a March 9, 2022 quote from Gen/X Painting, for \$1,312.50. The quote describes preparation (including degreasing) and painting work on 16 doors/drawers. There is no mention of the doors having been coated with an incorrect primer.
13. In support of his position, Mr. Hilliard says if he had failed to use the correct primer, as Ms. Gault alleges, the pinkish hue would be present on all the doors and on all sides, not just on the exterior of some doors. This is supported by a March 7, 2022 statement from Taylor Cross, a sales representative and “coating specialist” with E.Roko Distributors Ltd. I infer this is someone Mr. Hilliard buys paint from. Mr. Hilliard also says the affected doors are all around the kitchen and bathroom areas, which I accept as it is not disputed. I find Ms. Gault has not proved Mr. Hilliard failed to use the correct primer, because she submitted no opinion in evidence from a painter that he did, even though she refers to having received that information from a “paint specialist.” Ms. Gault also said she conducted “a lot of internet research” that showed Mr. Hilliard used the wrong primer but submitted none of that research. I place no weight on Ms. Gault’s unsupported assertion the wrong primer was used.
14. That said, I find that given the Gen/X Painting quote, and Mr. Hilliard’s own prior offer to try a 4<sup>th</sup> time, that the affected doors likely could be properly prepared and painted, without the discolouration.
15. With that, I have considered whether Mr. Hilliard ought to have been able to identify and rectify the issue, which again he says was excessive grease, in his 3 painting attempts. He does not explain how he now knows the issue was excessive grease but could not discern that problem earlier. Mr. Hilliard only says that if he had been given the chance to try a 4<sup>th</sup> time, he would have used a “more robust process” for degreasing. He does not explain why he did not try that on the 2<sup>nd</sup> or 3<sup>rd</sup> attempt.
16. The difficulty for Mr. Hilliard is this. I have found the discolouration defect in the paintwork proven. I find the burden shifts to him to establish that the defect was not his fault, since he is the party asserting it. I find he has not done so. Apart from his own submission, he submitted no evidence that the discolouration’s likely cause

was excessive grease. He also submitted no independent opinion from another painter that he could not have known the grease was there. I find the latter particularly important, since as noted Mr. Hilliard tried 2 extra times to paint the doors to remove the discolouration, unsuccessfully. And yet Mr. Hilliard also admits that if he used a “more robust process” the discolouration would be removed. He does not explain why he did not identify that issue or employ that process earlier, other than to say he used the “standard” preparation approach.

17. In short, I find the doors’ paintwork is obviously defective, given the discolouration. I find Mr. Hilliard has not proved he is not responsible for that defect, because he has not proved the cause was excessive grease that he could not have known about or rectified in any of his 3 painting attempts.
18. I turn then to Ms. Gault’s claim for \$1,500 in damages, which is based on the parties’ \$3,000 contract and ½ the doors being affected. I do not accept \$1,500 is Ms. Gault’s loss. This is because Ms. Gault’s own \$1,312.50 quote from Gen/X Painting was to prepare and repaint 16 cupboards/drawers, not just 9. So, I allow \$735 in damages, based on roughly 9/16 of the quote.
19. There is no evidence Ms. Gault has already had the doors repainted again. So, I do not allow any pre-judgment interest under the *Court Order Interest Act*.
20. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Ms. Gault was partially successful, I order Mr. Hilliard to reimburse her ½ her paid \$125 in CRT fees, which equals \$62.50. No dispute-related expenses were claimed, and so I make no order for them.

## **ORDERS**

21. Within 21 days of this decision, I order Mr. Hilliard to pay Ms. Gault a total of \$797.50, broken down as \$735 in damages and \$62.50 in CRT fees.
22. Ms. Gault is entitled to post-judgment interest, as applicable.

23. 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.
24. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

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Shelley Lopez, Vice Chair