



# Civil Resolution Tribunal

Date Issued: April 26, 2022

File: SC-2021-007437

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kerr v. Joyce (dba The Reno King)*, 2022 BCCRT 483

BETWEEN:

CARRIE KERR

**APPLICANT**

AND:

TOM JOYCE (Doing Business As THE RENO KING)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about allegedly defective apartment renovations.
2. The applicant, Carrie Kerr, hired the respondent, Tom Joyce (doing business as The Reno King), to renovate her apartment in the fall of 2019. Ms. Kerr claims deficient installation of laminate floor, electrical outlets, bathroom tile, and other items. She

also claims Mr. Joyce, his employees and contractors, failed to protect and damaged her property and that the renovation took longer than agreed. Ms. Kerr claims a total of \$5,000 in damages.

3. Mr. Joyce says Ms. Kerr did not tell him about any electrical deficiencies and did not allow him to fix the alleged floor deficiencies. Mr. Joyce also says he gave Ms. Kerr a \$3,000 customer satisfaction refund to resolve this matter, and that Ms. Kerr's complaints were resolved through the Better Business Bureau (BBB).
4. Each party represents themselves.

## **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 the renovations were deficient,
  - b. Whether the dispute was already resolved by either the \$3,000 refund or the BBB complaint and,
  - c. What is the appropriate remedy, if anything.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one the applicant Ms. Kerr must prove her claim on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and weighed the evidence, but only refer to that necessary to explain my decision.
11. Ms. Kerr submitted an August 23, 2019 estimate from Reno King, as well as an undated and unsigned contract between Ms. Kerr and Reno King which say that together, they make up the parties’ entire contract. The documents show that the renovation included work in the kitchen, both bathrooms, painting the entire apartment, renovating 2 bathrooms, removing and replacing all flooring, installing ceiling fans, closet doors, a hot water tank, and new appliances. As Mr. Joyce does not dispute the documents, I accept they accurately reflect the parties’ agreement, even though the submitted contract is not signed.
12. Based on Ms. Kerr’s submitted invoices, I find she paid over \$70,000 for the renovation. I further find the renovation occurred between approximately mid-September and the end of December, 2019.

13. In general, where an allegation of deficient work is based on a claim that the work fell below the required professional standard, and the subject matter is outside ordinary knowledge, expert evidence is required to prove the deficiency. Other times, a breach of the standard may be so obvious that it does not require expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283).

### ***Were the Renovations Deficient?***

14. It is undisputed Mr. Joyce hired sub-contractors for the painting, plumbing and electrical work. Based on the parties' agreement, I find Mr. Joyce is responsible for the sub-contractors' work.

15. Ms. Kerr says the painting job was deficient, even after the sub-contractor returned to fix the deficiencies. She submitted 1 photo showing a very small amount of dark paint showing through the new gray paint in a corner. Ms. Kerr submitted no evidence of any further paint deficiencies. I find the proven paint deficiency barely noticeable and insignificant. Given Ms. Kerr provided no evidence of any paint repair costs or expenses, I find she has not proven her damages for alleged painting deficiencies.

16. Ms. Kerr says Mr. Joyce incorrectly installed replacement electrical outlets, including gluing them. She submitted an April 11, 2020 invoice for \$203.70 from PTX Electric Ltd. which she says was the cost to fix those outlets. The invoice does not explain what the cost was for, and Ms. Kerr provided no supporting evidence such as photos or an expert opinion, showing the outlets were installed improperly or glued. I find her December 11, 2019 email to Mr. Joyce, in which she identifies the outlets as a deficiency is not evidence that the outlets were installed incorrectly or required repair.

17. Ms. Kerr also submitted an April 9, 2021 PTX Electric Ltd. invoice for \$127.58 to fix the stove plug outlet. The invoice notes the wire connections were loose but does not explain whether that was likely caused by improper electrical outlet installation during the renovation more than 1 year prior. Mr. Joyce denies his sub-contractors installed the outlet incorrectly, or at all. I find electrical wiring is outside ordinary knowledge and so requires expert evidence. Given the delay in finding the outlet issue, and the

lack of evidence linking the issue to the renovation, I find Ms. Kerr's claim for the stove outlet repair unproven.

18. I also find Ms. Kerr's claim about deficient bathroom tile reinstallation unproven. While she provided photos showing faint black lines over the tiles, she provided no evidence that the lines resulted from any installation error by Mr. Joyce or his sub-contractors. I find bathroom tile installation is outside ordinary knowledge and so requires expert evidence, which is absent here.
19. Based on Ms. Kerr's photos, I find some of the laminate wooden floor planks installed by Mr. Joyce are cracked or split. Ms. Kerr also says the floor is uneven, with several bumps and dips over the surface of the floor. Based on the parties' agreement, I find the renovation's scope of work specifically included levelling the floor before installing the laminate planks.
20. Ms. Kerr provided a December 28, 2021 estimate from Alan Dick, salesperson at Exclusive Floors. In the estimate Mr. Dick wrote there were "noticeable areas with deflection" that would require levelling. He also wrote that the vinyl floor planks were installed over 6 mm cork underlay, which was not recommended by the original floor supplier. In a December 30, 2021 estimate Mr. Dick further explained that there seemed to be no floor levelling under the laminate, allowing the planks to move and break.
21. Although Mr. Dick did not provide his qualifications, I find he is qualified to provide an opinion on floor installation under the CRT rules, as he is employed by a flooring company as a salesperson. Further, Mr. Joyce did not dispute either Mr. Dick's qualifications, or the opinions he provided. Neither did Mr. Joyce deny that he used a non-recommended underlay or failed to level Ms. Kerr's floors before installing the vinyl planks. Given the obvious defects in Ms. Kerr's photos and Mr. Dick's opinions, I find the flooring installation was deficient.
22. Despite Mr. Joyce's arguments to the contrary, I find he was provided an opportunity to remedy the flooring deficiencies. I find Ms. Kerr first reported the issue to Mr. Joyce

in her January 16, 2020 emailed list of deficiencies. Ms. Kerr says the parties met on January 24, 2020 to review the deficiencies, which Mr. Joyce does not dispute. So, I find Mr. Joyce had time to address the issue prior to the onset of the COVID-19 pandemic.

23. Based on Ms. Kerr's emails to Mr. Joyce I find she again contacted him about the worsening floor issues on March 16, 2021 and followed up again on September 10, 2021. Mr. Joyce provided no evidence of his responses to Ms. Kerr's repeated requests that he fix the floors. Although Mr. Joyce says Ms. Kerr did not want him to fix the floors because she had family at the apartment, that is not reflected in Ms. Kerr's emails. In any event, Ms. Kerr says the family was gone shortly after she met Mr. Joyce in June 2021. I find Mr. Joyce had opportunities to fix the floor deficiencies but failed to do so and so I find he must compensate Ms. Kerr for the deficiencies. More on that below.
24. Next, I find Ms. Kerr's claim that Mr. Joyce failed to properly protect her balcony, storage room, and new cabinetry must fail. First, other than her emails to Mr. Joyce noting the issues, Ms. Kerr provided no supporting evidence of any dust or damage. Second, the parties' agreement specifically says the owner is responsible for removing or protecting belongings and that Reno King is not responsible to clean up dust in areas of the house not worked on, as it was impossible to prevent dust spreading.
25. Next, I find Ms. Kerr's claim that the renovation took longer than agreed upon is unproven, as there is no time frame or end date in the parties' agreement. Further, Ms. Kerr did not prove any costs related to the alleged extra renovation time.
26. I also find Ms. Kerr has not proven her remaining claims of deficient ceiling fan, faucet, closet door or toilet installation, or of damage to her property. This is because Ms. Kerr provided no supporting evidence of deficiencies or damage, or any evidence of any repair or replacement costs.

27. In summary, I find Ms. Kerr has proven only her claim for laminate floor installation deficiencies. I dismiss the remainder of Ms. Kerr's deficiency claims as unproven.

***Was this dispute already resolved?***

28. Based on Mr. Joyce's submitted e-transfer records, I find Mr. Joyce's business paid Ms. Kerr \$3,000 as a "customer satisfaction credit" on April 3, 2020. In April 2020 emails, Mr. Joyce's employee told Ms. Kerr that the team would delay correcting the deficiencies, due to the COVID-19 pandemic. I find the emails do not support that Ms. Kerr accepted the \$3,000 payment as full compensation for the identified deficiencies, as Mr. Joyce argues. Further, it is undisputed that Mr. Joyce viewed the floor again in June 2021, which is inconsistent with the April 2020 payment being full compensation. On balance, I find the identified deficiencies were not resolved with the \$3,000 payment.

29. Mr. Joyce also says the issues were resolved through the BBB complaint process but does not explain how. Neither did he provide any supporting evidence that the dispute was resolved, such as a settlement agreement or some form of release. So, I find the BBB process did not resolve Ms. Kerr's claims.

***What is the appropriate remedy?***

30. In his December 30, 2021 estimate, Mr. Dick quoted \$3,358.21 to replace Ms. Kerr's broken floor planks, subject to product availability. Ms. Kerr says her current flooring is unavailable and she has no extra pieces. This is supported by a December 13, 2021 email from the original flooring supplier, King of Floors, saying the planks are out of stock and there was no estimated date for receiving any more. In any event, I find replacing only the broken laminate planks would not remedy the lack of levelling and incorrect underlay under the remaining flooring. So, I find it reasonable for Ms. Kerr to remove the flooring installed by Mr. Joyce, level the floor and install correct underlay before installing new floor planks.

31. In his December 28, 2021 estimate, Mr. Dick quoted \$9,961.86 to level Ms. Kerr's floor and install new laminate flooring and underlay. Even taking into account the

\$3,000 Mr. Joyce reimbursed Ms. Kerr for the deficient renovations, I find Ms. Kerr would have to spend more than the CRT's \$5,000 small claims limit to remedy the deficient floor installation. So, I award her the maximum of \$5,000 in damages.

32. There is no indication that Ms. Kerr has paid to replace her floors as of the date of this order. Under section 2(a) of the *Court Order Interest Act*, interest is not payable on costs that arise after the order, such as is the case here. So, I find Ms. Kerr is not entitled to pre-judgment interest on her \$5,000 award.
33. 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. As Ms. Kerr was successful in her claim, I find she is entitled to reimbursement of \$175 she paid in CRT fees. She claimed no dispute-related expenses.

## **ORDERS**

34. Within 30 days of the date of this order, I order Mr. Joyce to pay Ms. Kerr a total of \$5,175, broken down as follows:
  - a. \$5,000 as reimbursement for flooring deficiencies, and
  - b. \$175 in CRT fees.
35. Ms. Kerr is entitled to post-judgment interest, as applicable.
36. 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.



37. 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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Sherelle Goodwin, Tribunal Member