



Civil Resolution Tribunal

Date Issued: May 3, 2022

File: SC-2021-007670

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Owen v. Flores*, 2022 BCCRT 520

BETWEEN:

GLENN OWEN and LOIS OWEN

APPLICANTS

AND:

ARACELI FLORES and A & A SPARKLES CLEANING SERVICE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about damage to a Miele stove top hob (the stainless steel base). The applicants, Glenn Owen and Lois Owen, hired the respondent Araceli Flores,

who does business as the named respondent A & A Sparkles Cleaning Service, to clean their home. The Owens say Mrs. Flores damaged their stove top. The Owens claim \$1,600 for the stove top's replacement.

2. Mrs. Flores says she began cleaning for the Owens in October 2016 and always used "non-aggressive" cleaning solutions and products, including on their older stove top. She says the first time she cleaned the stove top it was especially greasy but nothing particularly unusual for a kitchen. She says the stove top's decals were already fading at that time. Mrs. Flores says around 3.5 years later, Ms. Owen asked her to use only liquid soap and Mrs. Flores did so.
3. Mr. Owen represents the applicants. Mrs. Flores is self-represented.
4. For the reasons that follow, I dismiss the Owens' claim.

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). 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.
6. 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, both parties of this dispute call into question the credibility, or truthfulness, of the other. 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.

7. 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.
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.
9. I note Mr. Owen mentions in his submissions some technical difficulties in uploading his arguments. However, elsewhere he does provide his written argument and he also uploaded a volume of supporting evidence. Bearing in mind the CRT's mandate that includes speed, efficiency, and proportionality, I find it unnecessary to seek further argument from Mr. Owen and am satisfied he had the reasonable opportunity to present the applicants' case.

ISSUE

10. The issue in this dispute is whether Mrs. Flores damaged the Owens' stove top, and if so, to what extent if any must she pay the claimed \$1,600 for its replacement.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicants the Owens must prove their 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.
12. In a jointly submitted Statement of Facts, the parties agree:
 - a. The Owens employed Mrs. Flores between 2016 and 2021.
 - b. During her work for the Owens, Mrs. Flores used a homemade mixture of "Dawn" dish soap and "Comet" to clean the kitchen.

- c. The Owens did not specify what product to use or not to use on the Owens' Miele stove top.
 - d. Sometime in 2019, the Owens asked Mrs. Flores to use only Dawn dish soap to clean the stove top, which Mrs. Flores complied with.
 - e. In October 2016, Mrs. Flores noticed the stove top's decals "wearing off" and advised the Owens.
13. I pause to note that the named respondent A & A Sparkles Cleaning Service is not a properly named party. I say this because it is not a legal entity, not being a partnership or a corporation. Nothing turns on this since Mrs. Flores was also named as a respondent and because I have dismissed the Owens' claim below.
14. The Owens say they bought the stove top in October 2012. The Owens also say Miele manufactured the stove top for 2 years with decals and later applied them by an embossing process. The Owens further say there is no warranty, as it expired on October 22, 2017. The Owens' stove top had decals when Mrs. Flores cleaned it.
15. Photos in evidence show the decals at issue are icons to identify which burner was linked to which knob. Photos show the decals on the stove worn away. The Owens submitted a receipt showing they bought a new hob from Miele on September 13, 2021, for \$1,550.57.
16. There are 3 problems that result in my concluding the Owens' claim must fail.
17. First, it is clear from the Owens' own evidence, including the Statement of Facts and a copy of their letter to Mrs. Flores in evidence, that the Owens were aware of the hob's decal damage since October 2016, when Mrs. Flores pointed it out to them. The Owens did not file their application with the CRT until October 6, 2021. Under the *Limitation Act* (LA) which applies to the CRT, the Owens had a 2-year limitation period to start their claim after they discovered it. The evidence shows the Owens always believed Mrs. Flores was responsible for the stove damage. This means that the Owens needed to start their claim by October 2018 to be in time. Yet, the

Owens decided to essentially take a wait and see approach. I find their decision to do so did not suspend the running of time. With that, I find their claim is out of time.

18. Second, even if the Owens' claim was in time, I find it unproven Mrs. Flores was negligent. Generally, expert evidence is required to prove a professional's or trade's work was below a reasonable standard: *Bergen v. Guliker*, 2015 BCCA 283. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard: *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.
19. While Mrs. Flores attempted to negotiate with the Owens by offering to obtain and replace the stove top's decals, I find she never admitted the damage was her responsibility. I accept Mrs. Flores owed a duty of care to her clients, the Owens. At issue is the standard of care, and whether Mrs. Flores' use of a combination of dish soap and Comet (an abrasive cleanser) on the stove top fell below the applicable standard. On balance, I cannot say it did, given a stove top undisputedly gets greasy with use. The fact that it took years for the decals to wear off, even if it was the Comet that caused them to wear off, supports this conclusion. The Owens did not submit any opinion from a professional cleaner that using Comet on a stainless steel stove top was below the standard of care. So, I find it unproven Mrs. Flores was negligent.
20. Third, the Owens claim \$1,600 for the hob's replacement. Yet, the evidence shows Mrs. Flores was willing to replace the decals, which is what the 2012 model stove top had before Mrs. Flores started cleaning it in 2016. In a text message, the Owens believed the replacement decals would not last but I find that belief unsupported. I find they are not entitled to a new replacement stove top just because they did not want replacement decals. While the Owens also say Mrs. Flores never offered the decals until after they ordered a new hob, that does not change my conclusion that they unreasonably pursued a replacement hob rather than investigating decal replacements.
21. Given my conclusions above, I find the Owens' claim must be dismissed.

22. 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 the Owens were unsuccessful, I dismiss their claim for reimbursement of CRT fees. The respondents did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

23. I dismiss the Owens' claim and this dispute.

Shelley Lopez, Vice Chair