



# Civil Resolution Tribunal

Date Issued: May 4, 2022

File: SC-2021-006815

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kartinen (dba Interlake Hardwoods) v. Gabriel*, 2022 BCCRT 524

**B E T W E E N :**

BRIAN JD KARTINEN (Doing Business As INTERLAKE  
HARDWOODS)

**APPLICANT**

**A N D :**

KEITH GABRIEL

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about payment for flooring installation services. The applicant, Brian JD Kartinen (dba Interlake Hardwoods), installed flooring for the respondent, Keith Gabriel, and Mr. Gabriel's spouse MG. Mr. Kartinen claims a \$4,003.85 balance owing, which he says Mr. Gabriel and MG refused to pay.
2. Mr. Gabriel says Mr. Kartinen failed to install the vents as part of the original job, and says the overall work was delayed and deficient. Both parties allege harassment by the other.
3. Mr. Kartinen is represented by a family member. Mr. Gabriel is 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, 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.
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.
8. As noted above, both parties allege the other behaved in a harassing way, with police being called. Mr. Gabriel also alleges Mr. Kartinen (or Mr. Kartinen's crew member) physically threatened him but provided no proof of this and filed no counterclaim. There is no recognized tort of harassment in BC and Mr. Kartinen claims no remedy for it in any event. So, I make no findings about the alleged harassment in my analysis below about the claimed debt for flooring work.

## **ISSUE**

9. The issue in this dispute is whether Mr. Kartinen's flooring work was defective and whether Mr. Gabriel owes Mr. Kartinen \$4,003.85 for his services.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Mr. Kartinen must prove his 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 Mr. Kartinen chose not to provide any final reply submissions, despite having the opportunity to do so.
11. The parties' initial contract is dated April 11, 2019, between Mr. Kartinen's business Interlake Hardwoods and Keith Gabriel and MG. It totalled \$11,913.21, with \$6,243.21 for materials and \$5,670 for labour to remove existing "parkay" flooring and install, sand, and finish the new flooring. The listed materials described red oak planks and a finish and a sealer. There is no mention of vents.

12. Mr. Gabriel (or MG) paid \$6,243.21 by cheque on May 25, 2019, as an agreed advance for materials. In January 2020, Mr. Kartinen issued what Mr. Gabriel describes as an interim bill and adjustment. In it, the materials total is \$1,746.85 and the labour is discounted from \$5,940 to \$4,940, for a total of \$6,933.85. There is an annotation in a different pen colour noting a February 5, 2020 payment of \$3,500, with \$3,433.85 as the balance owing. On March 1, 2020, Mr. Kartinen issued an invoice for \$570, for 2 vents (\$400) and labour to finish and install them (\$170). The \$3,433.85 and \$570 together total the claimed \$4,003.85.
13. Mr. Gabriel does not dispute the above calculations and I accept \$4,003.85 is the balance owing, subject to any deductions for deficiencies and my analysis of the parties' dispute over whether vents were included in the original work. As discussed below, Mr. Gabriel also argues Mr. Kartinen's work was delayed, incomplete, and deficient.
14. The evidence shows Mr. Kartinen began work on the floor somewhere around May 2019. Mr. Kartinen says he completed the job in a timely manner, within 10 days. He says Mr. Gabriel and MG were happy with his work at the time. I do not accept Mr. Gabriel's unsupported assertion that Mr. Kartinen unreasonably delayed the work, and in any event the parties' contract did not specify an end date. Mr. Kartinen says, "some small remediation had to be addressed (1 HR)". I do not know what "1 HR" means, but apart from Mr. Gabriel's arguments that do not specify anything about "1 HR", there is no evidence before me it was not remedied and so I find nothing turns on it.
15. Next, Mr. Kartinen says the parties later discussed ordering fresh air vents, which I find is supported by screenshots of Mr. Kartinen's March and June 2019 daily planner entries in evidence. I do not accept Mr. Gabriel's unsupported assertion that Mr. Kartinen agreed to make vents for Mr. Gabriel (for free) rather than buy them and charge them to Mr. Gabriel. I find the weight of the evidence supports a conclusion that Mr. Gabriel only later agreed to hire Mr. Kartinen to install the vents,

which led to Mr. Gabriel's March 2020 invoice for \$570. In any event, Mr. Gabriel admits he ultimately agreed to have Mr. Gabriel buy the vents.

16. Mr. Gabriel argues that in the spring of 2020 the flooring was still incomplete, which based on his submissions I find refers to alleged deficiencies. He argues the floor in one area was "so short of the wall a ¾" baseboard would not cover it", the sanding was uneven and cracks were appearing in the floor. He says the cold air returns (vents) Mr. Kartinen's crew member installed were not placed correctly. However, Mr. Kartinen submitted no supporting evidence about these alleged deficiencies, such as photos or video, and no statement from another flooring installer about Mr. Kartinen's work.
17. As noted, Mr. Gabriel says that Mr. Kartinen's flooring installation was deficient, so I find he claims a set-off based on the law about deficiencies. When a customer alleges that a contractor's work was below a reasonably competent standard, the customer must prove the deficiencies: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61. 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.
18. Here, apart from his own arguments Mr. Gabriel provided no evidence at all about the deficiencies. Again, there are no photos and no statement from any expert or anyone other than Mr. Gabriel about the flooring. I find expert evidence is required to establish the alleged deficiencies. While Mr. Gabriel says he has installed hardwood himself, I do not accept his own opinion as expert evidence since as a party to the dispute he is not neutral. Mr. Gabriel also argues he has 2 estimates to finish the floor that he could submit but does not explain why he did not submit them in the CRT's evidence submission process. Parties are told to submit all relevant evidence. I find the alleged deficiencies unproven.

19. Given I have found deficiencies unproven, I find Mr. Kartinen is entitled to the claimed \$4,003.85 balance owing.
20. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Kartinen is entitled to pre-judgment interest under the COIA on the \$4,003.85. Calculated from March 1, 2020 (a date I consider reasonable in the circumstances, bearing in mind the CRT's mandate that includes proportionality), this interest equals \$59.16.
21. 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 Mr. Kartinen was successful, I allow his claim for reimbursement of \$200 in paid CRT fees. No dispute-related expenses were claimed.

## **ORDERS**

22. Within 21 days of this decision, I order Mr. Gabriel to pay Mr. Kartinen a total of \$4,263.01, broken down as follows:
  - a. \$4,003.85 in debt,
  - b. \$59.16 in pre-judgment interest under the COIA, and
  - c. \$200 in CRT fees.
23. Mr. Kartinen is entitled to post-judgment interest, as applicable.
24. 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.
25. 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