



Civil Resolution Tribunal

Date Issued: June 6, 2022

File: SC-2021-007405

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Threlfall v. DMC Surfaces Outlet Inc.*, 2022 BCCRT 658

B E T W E E N :

ROBERT THRELFALL

APPLICANT

A N D :

DMC SURFACES OUTLET INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about payment for vinyl plank flooring installation. The applicant, Robert Threlfall, says that he installed vinyl plank at two properties for the respondent, DMC Surfaces Outlet Inc. (DMC), but has not been paid. Mr. Threlfall claims \$3,469.13 for the unpaid work.

2. DMC does not deny that Mr. Threlfall installed the vinyl plank at the two properties but says his work was defective.
3. Mr. Threlfall is self-represented. DMC is represented by its owner.

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). 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.
5. 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. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. 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.
6. 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.
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.

Preliminary Issue

8. In its submissions, DMC refers to discussions between the parties during the CRT's facilitation stage, including settlement discussions. Mr. Threlfall also references a settlement offer. CRTA rule 1.11 says that communications made attempting to settle claims by agreement in the tribunal process are confidential and must not be disclosed during the tribunal decision process. CRTA rule 1.11 exists to encourage settlement by allowing parties to make admissions without fear that those admissions will end up as evidence in a later hearing. However, if the parties agree, settlement discussions from the CRT's facilitation stage may be disclosed. Here, I have no evidence of such an agreement between the parties. So, given the confidential nature of discussions between parties during the CRT's facilitation stage and the absence of an agreement between the parties to disclose such information, I have not considered these discussions in reaching my decision.

ISSUE

9. The issue in this dispute is what amount, if any, is Mr. Threlfall entitled to for his vinyl plank installation work at both properties?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant, Mr. Threlfall, must prove his claims on a balance of probabilities. I have read all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision. I note DMC provided submissions but did not submit any evidence, despite having the opportunity to do so.
11. It is undisputed that Mr. Threlfall installed vinyl plank for DMC at two properties. Mr. Threlfall says that he was in the middle of completing the vinyl plank installation at the first property when, on July 13, 2021, he and DMC's owner had a disagreement and Mr. Threlfall left the job. Mr. Threlfall says that at this point, he had spent 22.5 hours repairing and preparing the framing grade plywood to receive the vinyl plank

and that he had installed 1,633.1 square feet of vinyl plank. He says he is owed \$3,014.13 for this work, based on his hourly rate of \$55 for the preparation work and \$1.00 per foot for the installation, plus 5% GST. Mr. Threlfall says he expected to receive payment from DMC on July 31, 2021 but was never paid. Mr. Threlfall says the remaining \$455 owing relates to the second job, discussed later.

12. Mr. Threlfall says he followed up with DMC about this payment several times and it was months before DMC raised the issue of alleged deficiencies in his work. DMC's Dispute Response and submissions do not specify the alleged deficiencies at the first property. However, based on Mr. Threlfall's submission and evidence, I find that DMC's issue is with alleged gaps between the planks installed by Mr. Threlfall. Mr. Threlfall says his work was not faulty. Rather, he says the alleged gaps occurred after his work was done because DMC insisted on doing the installation before the property's HVAC system was running. Mr. Threlfall says that without a functioning HVAC system, the planks shrank due to the unstable temperature, causing the gaps.
13. Mr. Threlfall also says that he has not been paid for work he did at a second property. He says that after the job's completion, the owner was unhappy with small ridges in the vinyl plank installed on the stairs so he returned to the property and fixed the problem. Mr. Threlfall says that he is still owed \$455 for his work at the second property and that he should have been paid on August 17, 2021. In its submissions, DMC says that the second property's owners remain unhappy with Mr. Threlfall's work. DMC says that Mr. Threlfall did not install the vinyl plank on the stairs as he was instructed to do and that there were also deficiencies on the main floor.
14. DMC says that it has always told Mr. Threlfall that he will be paid when the deficiencies at both properties are completed and the cost of fixing the deficiencies will be deducted from the amounts owing.
15. As the party alleging deficient work, DMC bears the burden of proving that Mr. Threlfall failed to perform the work in a reasonably professional manner (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Further, expert evidence is normally required to assess the quality of a professional's work (see *Bergen v.*

Guliker, 2015 BCCA 283 at paragraph 124). However, expert evidence is not required when a deficiency is non-technical and within an ordinary person's knowledge and experience, or when the defects are obviously substandard (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).

16. As mentioned, DMC provided no evidence in this dispute. Mr. Threlfall's evidence includes photographs and a video that he says are from the first property's second-floor vinyl plank installation which was done by someone else. He says that these photographs and video show that there were similar issues with the second-floor installation as DMC alleges with his work and that the lack of a functioning HVAC system is the cause. DMC disputes this and says you cannot tell what property the photographs and video are from. I find that expert evidence would be required to determine the cause of the alleged deficiencies at the first property and there is none here.
17. For the second property, though DMC says that there were deficiencies on the main floor and that the homeowners are still unhappy, DMC has not explained what alleged deficiencies Mr. Threlfall is responsible for.
18. Since there is no evidence before me about the alleged deficiencies in Mr. Threlfall's work at either property, I find DMC has not proven that Mr. Threlfall failed to perform the work in a reasonably professional manner. So, I find Mr. Threlfall is entitled to payment for his vinyl plank installation work at both properties.
19. I must now decide the appropriate amount of Mr. Threlfall's damages for the unpaid work. Neither party provided a written contract, quote, or other evidence about how much DMC would pay Mr. Threlfall for his work. There are also no invoices in evidence. However, DMC does not dispute Mr. Threlfall's calculations for the amounts owed, but rather only argues that the cost to fix the alleged deficiencies should be deducted from those amounts. Since DMC has not proven any deficiencies, I find that Mr. Threlfall is entitled to the \$3,014.13 he claims for the unpaid work at the first property and the \$455 he claims for the second property for a total of \$3,469.13.

20. The *Court Order Interest Act* applies to the CRT. Mr. Threlfall is entitled to pre-judgment interest on the \$3,014.13 from July 31, 2021, which I find to be the date DMC should have paid him by, to the date of this decision, being \$11.53. He is also entitled to pre-judgment interest on the \$455 from August 17, 2021, which I find to be the date DMC should have paid him by, to the date of this decision, being \$1.64. So, DMC must pay Mr. Threlfall a total of \$13.17 in pre-judgment interest.
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. I see no reason in this case not to follow that general rule. I find Mr. Threlfall is entitled to reimbursement of \$175 in CRT fees. Mr. Threlfall did not claim any dispute-related expenses.

ORDERS

22. Within 21 days of the date of this decision, I order DMC to pay Mr. Threlfall a total of \$3,657.30, broken down as follows:
 - a. \$3,469.13 in damages for the unpaid work,
 - b. \$13.17 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
23. Mr. Threlfall 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 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.

Nav Shukla, Tribunal Member