



Civil Resolution Tribunal

Date Issued: September 22, 2022

File: SC-2022-001304

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kinghorn v. K. & S. Railings Ltd.*, 2022 BCCRT 1046

BETWEEN:

RAQUEL KINGHORN

APPLICANT

AND:

K. & S. RAILINGS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about deck railing for a newly-renovated balcony. The applicant, Raquel Kinghorn, hired the respondent, K. & S. Railings Ltd. (K&S), to supply and install the railing. Ms. Kinghorn alleges that K&S's installation work was deficient. She says K&S breached a contractual warranty by charging her for now-completed

repairs. She claims \$800 for a combination of a partial refund and to cancel K&S's repair fee. Ms. Kinghorn has not paid the repair fee.

2. K&S denies liability. It says Ms. Kinghorn breached the warranty by allowing other individuals remove the railings. K&S did not counterclaim for the repair fee or other amounts.
3. Ms. Kinghorn represents herself. K&S' director, David Robertson, represents it.
4. For the reasons that follow, I refuse to resolve Ms. Kinghorn's claims in connection with the unpaid repair invoice. I dismiss her remaining claims.

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.

Claims for Declaratory Relief about the Repair Invoice

9. Evidence indicates that K&S invoiced Ms. Kinghorn \$575 plus GST, or \$603.75, for reinstalling the railing and replacing the glass panel. Ms. Kinghorn says she has not paid this invoice. Given this, I find she is seeking a declaration that she does not need to pay this amount.
10. The CRT's small claims jurisdiction is set out in section 118 of the CRTA. It does not include declaratory relief. Section 10(1) of the CRTA says that the CRT must refuse to resolve a claim that it considers to be not within its jurisdiction. So, I must refuse to resolve Ms. Kinghorn's claim for declaratory relief in connection with the \$603.75 invoice for installing the railing and replacing the glass panel.
11. I will consider whether Ms. Kinghorn is entitled to a refund of the balance of her claim, which equals $(\$800 - \$603.75) \$196.25$.

ISSUE

12. The issue in this dispute is whether Ms. Kinghorn sustained any loss and whether any remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, Ms. Kinghorn as the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
14. The background facts are largely undisputed. In an October 22, 2020 written proposal, K&S offered to install and supply deck railing to Ms. Kinghorn for \$5,785.50.

The proposal shows the planned railing included metal posts and glass panels. Ms. Kinghorn accepted and after K&S completed the work, it invoiced her for \$5,785.50 on November 25, 2020. A receipt shows Ms. Kinghorn paid this amount the same day by credit card.

15. K&S provided a separate sheet detailing the terms of its warranty. It said K&S warranted that under normal use, the railings were guaranteed to be free from defects for a period of 5 years for all aluminum and welded components. I find it likely these terms are part of the parties' contract, and that they apply to the railings in this dispute. I reach this conclusion in part because the November 2020 invoice says that K&S warranted its work to be free from material and workmanship defects for 60 months from the date of install. I find this consistent with the terms in the warranty sheet.
16. In February 2021, a building inspector and professional engineer found the deck and deck railing did not meet the requirements of the BC Building Code. Submissions indicate that at some point after this, Ms. Kinghorn advised K&S about these issues, and asked K&S to remove the railings then reinstall them after she finished remediating other parts of the balcony. The submissions also indicate this remediation work included work about balcony construction but the evidence before me lacks any specifics.
17. It is undisputed that K&S returned and removed the railings on September 22, 2021. Text messages show that Ms. Kinghorn finished the balcony remediation asked K&S to return on November 1, 2021, to reinstall the railing and replace a broken glass panel and bracket. K&S did so on December 16, 2021. K&S then invoiced Ms. Kinghorn \$575 plus GST for reinstalling the railing and replacing the glass panel. The invoice is dated August 12, 2021, but I find this date is inaccurate and does not reflect when it was sent. The text messages show that K&S first sent it to Ms. Kinghorn on December 17, 2021. Ms. Kinghorn expressed surprise at the time and disagreed in the text messages that she should pay it.

Did Ms. Kinghorn sustain any loss?

18. I find that the primary difficulty with Ms. Kinghorn's claim for a partial refund is that there is no indication she suffered any loss. As noted above, K&S reinstalled the railing. This included replacing a glass panel. While it invoiced her for the work, as noted above, I have refused to resolve her claim for declaratory relief in connection with the repair invoice. Ms. Kinghorn did not explain why she is entitled to a refund of \$196.25, which is the balance of her claim.
19. Given the above, I find Ms. Kinghorn has not proven any damages. So, I find I must dismiss her remaining claim for the partial refund.
20. 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.
21. Ms. Kinghorn did not prove the claimed damages. So, I dismiss her claims for reimbursement of \$125 in CRT fees. Ms. Kinghorn also claims \$420 for reimbursement of consulting with an expert for 2 hours. However, Ms. Kinghorn did not support this claimed amount with evidence, such as a receipt or invoice. So, I dismiss it as well because she was both unsuccessful and because it is unsupported by evidence.

ORDERS

22. I refuse to resolve Ms. Kinghorn's claim under section 10(1) of the CRTA for declaratory relief in connection with the \$603.75 invoice for installing the railing and replacing the glass panel.

23. I dismiss Ms. Kinghorn's remaining claims and this dispute.

David Jiang, Tribunal Member