



Civil Resolution Tribunal

Date Issued: November 21, 2022

File: SC-2022-001981

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stimpson v. Hourigan's Carpets & Linos Ltd.*, 2022 BCCRT 1256

BETWEEN:

MARTYN STIMPSON

APPLICANT

AND:

HOURIGAN'S CARPETS & LINOS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Martyn Stimpson, hired the respondent, Hourigan's Carpets & Linos Ltd. (HCL), to supply and install a kitchen backsplash. The parties disagree over the price of the backsplash. Mr. Stimpson undisputedly paid \$3,440.99 but says the

price was \$3,158. So, his first claim is for reimbursement of the alleged \$282.99 overpayment. In contrast, HCL says the price was \$4,305, so it says Mr. Stimpson still owes \$864.01, although it did not file a counterclaim.

2. While HCL was completing the backsplash installation, Mr. Stimpson also hired HCL to supply and install laminate flooring. Mr. Stimpson says the flooring is deficient in places. His second claim is for \$630 to hire a contractor to fix the flooring deficiencies.
3. HCL says that because Mr. Stimpson has not paid his backsplash invoice in full, the flooring installation warranty is not in effect, and it has no obligation to address any deficiencies.
4. Mr. Stimpson represents himself. HCL is represented by an employee or principal.

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. What was the agreed price for the kitchen backsplash?
 - b. Was the flooring deficient?
 - c. What remedies, if any, are appropriate?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Stimpson must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. It is undisputed that Mr. Stimpson hired HCL to supply and install a kitchen backsplash, and during that work, asked HCL to supply and install laminate flooring.
12. The parties agree that there were 3 separate work orders. Two of those work orders related to the flooring. Mr. Stimpson undisputedly paid the invoices for the flooring work orders, which totaled \$16,836.25.
13. The other work order, for the kitchen backsplash, is disputed. Mr. Stimpson says HCL gave a quote of \$3,158 including all materials and installation. Mr. Stimpson undisputedly paid a \$1,147 deposit, plus \$2,293.99 after the work was completed,

totalling \$3,440.99. So, Mr. Stimpson claims \$282.99 as the difference between the quote and what he paid.

14. In contrast, HCL says it provided an initial \$2,293.99 quote to supply the backsplash tiles only. It says at Mr. Stimpson's request HCL later provided a \$2,011.01 quote to install the backsplash. So, HCL says Mr. Stimpson still owes \$864.01.
15. Based on the evidence before me, I agree with HCL. I find HCL's May 19, 2021 invoice for \$2,293.99 was clearly "to supply" the backsplash tiles only, with no installation service indicated. Mr. Stimpson paid \$1,147 as a 50% deposit that day. He subsequently asked HCL for a quote to install the backsplash. HCL's May 25 emailed quote to install the backsplash "including all prep, grout and travel time" was for \$2,011.01. The email does not say the tiles were included in the quote. HCL said in its email that the "total after installation" was \$3,158. I agree that the wording is somewhat ambiguous. However, I find a reasonable person in Mr. Stimpson's position would have understood that the total represented the backsplash tile cost (\$2,293.99) and the installation cost (\$2,011.01) less the \$1,147 deposit. In other words, the "total" was what Mr. Stimpson had to pay "after installation," given he had already paid a deposit on the tile.
16. With that, I find Mr. Stimpson has not overpaid for the backsplash work, and I dismiss his claim. I find Mr. Stimpson still owes HCL \$864.01 for the backsplash work.
17. HCL did not file a counterclaim in this dispute. While HCL does not use this term, I find it asks me to consider a set-off of the backsplash debt against Mr. Stimpson's claim about the laminate flooring. As noted, Mr. Stimpson claims that the laminate flooring had minor defects such as large gaps between the "tiles." Mr. Stimpson seeks \$630 in damages, based on another contractor's quote to remedy the defects.
18. The law of equitable set-off was summarized in *Dhothar v. Atwal*, 2009 BCSC 1203, at paragraphs 19-24. In essence, the party relying on a set-off must show some

reason for being protected from the claim that is so clearly connected with the claim that it would be unjust to force payment without taking into consideration the “cross-claim”. The claim and the cross-claim need not arise from the same contract, and unliquidated claims (where the quantity is not readily determined) are treated the same as liquidated claims.

19. Applying that law here, I find that although the parties may have had distinct contracts for the backsplash and the flooring work, that does not preclude a set-off. I find HCL’s “cross-claim” is a liquidated claim in that it is a debt arising under contract with Mr. Stimpson. I find it would be unfair to force HCL to pay Mr. Stimpson’s claimed \$630 in damages when I have found that Mr. Stimpson owes HCL more than that amount for work done around the same time on the same home. For these reasons, I find a set-off is appropriate. It follows that I do not need to consider whether Mr. Stimpson has proved a flooring deficiency. I dismiss his claim about the flooring contract.

20. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. HCL was successful but did not pay CRT fees or claim expenses. I dismiss Mr. Stimpson’s claim for reimbursement of CRT fees.

ORDER

21. I dismiss Mr. Stimpson’s claims and this dispute.

Micah Carmody, Tribunal Member