



# Civil Resolution Tribunal

Date Issued: November 29, 2022

File: SC-2022-002877

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Frankling v. S.C. Restorations Ltd. dba Stutters Restorations*,  
2022 BCCRT 1286

B E T W E E N :

ISOBEL FRANKLING

**APPLICANT**

A N D :

S.C. RESTORATIONS LTD. DBA STUTTERS RESTORATIONS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about damaged personal belongings. The applicant, Isobel Frankling, rented a basement suite from AY. In February 2022, the basement suite flooded and AY arranged with her insurers to have the flood damage repaired. The insurers undisputedly appointed the respondent, S.C. Restorations Ltd. dba Stutters Restorations (Stutters). Miss Frankling says AY assured her that she would be contacted before any restoration work was done. However, Miss Frankling says Stutters entered her suite without her permission and failed to safeguard her belongings. Miss Frankling claims \$4,487 in damages. AY is not a party to this dispute.
2. Stutters says its client AY authorized it to do the work and gave them access to the basement suite. Stutters says it is not its responsibility if AY failed to communicate with Miss Frankling. Stutters also says when it entered the suite Miss Frankling's belongings had already been piled on the couch. Stutters denies responsibility for any damage to Miss Frankling's goods, apart from \$50 each for a picture frame and a mirror that it admits to damaging.
3. Miss Frankling is self-represented. Stutters is represented by an employee or principal.

## **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. 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. Miss Frankling alleges in her submissions that Stutters verbally abused her, which Stutters denies. There is no recognized tort of harassment in BC (see *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473). In any event, Miss Frankling claims no remedy for the alleged verbal abuse, so I make no findings about it.

## **ISSUES**

9. The issues in this dispute are a) the nature and extent of any duty Stutters owed Miss Frankling with respect to her personal belongings and b) to what extent, if any, has Miss Frankling proved the claimed \$4,487 in damages.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Miss Frankling must prove her claim on a balance of probabilities (meaning "more likely than not"). I have read the parties' submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.

11. The flood in Miss Frankling's rented basement suite occurred on February 3, 2022. She left the suite that day, before Stutters arrived and inspected the flood damage later that day. Stutters completed its work on around February 9. Miss Frankling returned to the suite on February 12, 2022. This dispute is primarily about the concrete and flooring dust on Miss Frankling's personal belongings after Stutters' work.
12. As noted above, Stutters' contract was undisputedly with Miss Frankling's landlady, AY. AY is not a party to this dispute. So, Miss Frankling's claim against Stutters is based in negligence.
13. To prove liability in negligence, Miss Frankling must show that Stutters owed her a duty of care, that it breached the standard of care, that Miss Frankling sustained a loss (damages), and that Stutters' breach cause the loss (see: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
14. In Stutters' contract with AY, it expressly says it does not include "contents manipulation, pack out, reset and storage". The contract also noted that AY had rented the suite out "partially furnished". To address the flood damage, Stutters undisputedly had to tear out baseboard and flooring, remove wet drywall, and set dehumidifiers.
15. It is undisputed that Stutters owed the basement suite's occupant (Miss Frankling) a duty of care. In the context of this significant flood, I find the applicable standard was to reasonably avoid damaging Miss Frankling's belongings. However, as discussed below, I find it unproven the standard of care extended to Stutters proactively tarping or covering Miss Frankling's belongings for free, or to stop work to ask Miss Frankling about her belongings, which is essentially what Miss Frankling argues it should have done.
16. I turn to the evidence of the suite's condition after the flood and before Stutters' arrival. Miss Frankling submitted photos that she says show the basement suite "before work started". These photos show a significant amount of various belongings piled on the

floor on one side of a room with another pile of belongings on one end of a sectional sofa.

17. Miss Frankling submitted a video showing that after her return on February 12 the belongings she had left behind were covered in dust. Other photos she submitted show her belongings largely piled in the same manner as they were before Stutters did its work. I accept Stutters had to move some of the belongings in order to remove the flooring, which is shown in the photos. However, I also accept Stutters' submission that most of the goods were already piled before Stutters arrived, since as noted this is shown in Miss Frankling's own "before work" photos.
18. Apart from the admitted damage I address below, I find Miss Frankling's claim must fail. First, I do not agree with her that Stutters was obligated to offer to pack or remove her belongings, when its client AY had not asked or paid Stutters to do so. While Miss Frankling essentially argues Stutters should have covered her belongings before working, in context I find this unproven. I say this given the amount of goods piled around the basement suite that Stutters had to work around to do its contracted restoration work. Again, AY gave Stutters access to the suite. Further, I find Stutters' correspondence with AY following Stutters' inspection, that "the costs associated with contents will be invoiced at the completion of repairs", supports Stutters' position that it had expected the suite to be cleared for it to do the flooring restoration work. While Miss Frankling says AY failed to advise her before Stutters started work, that is a matter between Miss Frankling and AY. I find Stutters is not responsible for that failure. I find Stutters reasonably concluded that it was authorized to proceed with the goods openly piled as they had been left before Stutters arrived.
19. Second, apart from some dust and the admitted damage discussed below, I find Miss Frankling has not proved Stutters damaged her belongings beyond the flood damage. Third, I find Miss Frankling has not proved the claimed value of the goods. She submitted no detailed description of the items or their value, and no proof they could not be repaired or cleaned as opposed to full replacement. On the latter point, while I acknowledge Miss Frankling referred to a family member's health concerns about

dust, Stutters also submitted evidence the goods could be cleaned. Miss Frankling submitted no evidence to the contrary. I find by leaving her goods openly piled, Miss Frankling reasonably should have expected that there would be some restoration-related debris. Again, while Miss Frankling says AY failed to advise her work was going to begin, that is not Stutters' responsibility.

20. Next, I acknowledge the parties had an exchange in March 2022 about coverage for the dust. In particular, Miss Frankling emailed Stutters about the dust and sought compensation. Stutters' representative responded asking Miss Frankling to provide details and indicated that Stutters would assist. In this dispute, Stutters explains that it misunderstood and erroneously believed Miss Frankling had left the belongings in error and that she had property insurance coverage, and so its offer was to assist with her insurance claim. In the context of the parties' emails, I accept that explanation. I find Stutters' offer of assistance in that context does not mean Stutters was negligent in its approach to the restoration work.
21. Finally, as noted Stutters admits accidentally breaking a child's small dinosaur mirror and a small picture frame. Stutters offered in its Dispute Response to pay Miss Frankling \$50 each for these 2 items. Miss Frankling submitted no evidence to support any other value. I order Stutters to pay \$100 in damages. I dismiss the remainder of Miss Frankling's claims for reimbursement.
22. The *Court Order Interest Act* (COIA) applies to the CRT. However, there is no evidence Miss Frankling has already replaced the picture frame and dinosaur mirror, so I make no order for pre-judgment interest under the COIA.
23. 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. Miss Frankling was largely unsuccessful, and the \$100 I have allowed was offered at the outset of this proceeding, before Miss Frankling paid the fee for this decision. I exercise my discretion and allow reimbursement of \$62.50 in CRT fees, which is half the intake fee and nothing for the decision fee. Stutters did not pay fees and neither party claims dispute-related expenses.

## **ORDERS**

24. Within 21 days of this decision, I order Stutters to pay Miss Frankling a total of \$162.50, broken down as \$100 in damages and \$62.50 in CRT fees.
25. Miss Frankling is entitled to post-judgment interest, as applicable. I dismiss the balance of Miss Frankling's claims.
26. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Shelley Lopez, Vice Chair