



# Civil Resolution Tribunal

Date Issued: December 2, 2022

File: SC-2022-001207

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sexsmith v. Hingley Construction Ltd.*, 2022 BCCRT 1299

BETWEEN:

DENNY SEXSMITH

**APPLICANT**

AND:

HINGLEY CONSTRUCTION LTD. and  
427151 B.C. LTD. dba END OF THE ROLL CARPET & VINYL

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

## INTRODUCTION

1. The applicant, Denny Sexsmith, purchased a home in October 2020. Mr. Sexsmith says the home's former owners, who are not parties to this dispute, installed new flooring before Mr. Sexsmith moved in. Mr. Sexsmith says the former owners purchased the flooring from the respondent, 427151 B.C. Ltd. dba End of the Roll

Carpet & Vinyl (End of the Roll). Mr. Sexsmith further says the flooring was installed by the other respondent, Hingley Construction Ltd. (Hingley). Mr. Sexsmith alleges the flooring was poorly installed and seeks \$5,000 in damages from the respondents to replace the flooring.

2. Both respondents say they are not responsible for the allegedly defective flooring installation and deny they owe Mr. Sexsmith anything.
3. Mr. Sexsmith is self-represented. End of the Roll and Hingley are both represented by their respective owners.

## **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. 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.
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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Was the flooring deficiently installed?
  - b. If so, which respondent, if any, is liable for the deficiently installed flooring?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant, Mr. Sexsmith must prove their claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
10. It is undisputed that neither respondent had a contractual relationship with Mr. Sexsmith. Mr. Sexsmith says there was a 1-year warranty for the flooring. However, Mr. Sexsmith did not provide a copy of this alleged warranty in evidence. In any event, both respondents say that any warranties they provide are to the original purchaser and are non-transferrable. Mr. Sexsmith provided no evidence to the contrary. Given the above, I find no warranty applies here.
11. So, I find Mr. Sexsmith’s claim is based in negligence. Given my findings and conclusion below, I do not need to consider or address the legal concept of pure economic loss and whether Mr. Sexsmith could recover the claimed damages from the respondents.

### ***Was the flooring deficiently installed?***

12. Mr. Sexsmith says the flooring on the entire main floor of their home has creaked from “day one” and that it is “heaving” in 3 different areas in the house. As noted, Mr. Sexsmith says the flooring was improperly installed.
13. Where a party asserts deficient work, that party has the burden of proving the deficiencies (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Normally, assessing the quality of a professional’s work requires expert evidence, unless I find it is within an ordinary person’s knowledge and experience (see *Bergen v. Guliker*, 2015 BCCA 283).
14. In their submissions Mr. Sexsmith says they were told by several people that the flooring was not installed properly. However, there are no statements in evidence from these people about what they observed and how they concluded the installation was deficient. So, I give no weight to Mr. Sexsmith’s hearsay evidence.
15. Aside from Mr. Sexsmith’s assertions, there is minimal evidence before me about the alleged flooring deficiencies. This evidence includes a 4 second video in which someone steps on the floor between 2 joints and the floor makes a creaking sound. While the video shows this particular part of the flooring creaks when stepped on, I do not find this video proves that the flooring was deficiently installed. The only other objective evidence before me about the flooring issues is a repair estimate that notes “engineered flooring failure”. However, there is no explanation in this repair estimate about what the alleged flooring failure is or what caused it.
16. On balance, I cannot conclude based on the limited evidence before me that the flooring was obviously improperly installed. I find expert evidence is necessary to establish whether there are defects in the flooring installation and there is none before me. So, I find Mr. Sexsmith has failed to prove the flooring was improperly installed and dismiss their claims.
17. Given this finding, I do not need to address which respondent, if any, would be liable for the allegedly defective flooring installation.

18. 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. Since Mr. Sexsmith was unsuccessful, I dismiss their claim for reimbursement of their paid CRT fees. Neither respondent paid CRT fees. End of the Roll claims \$1,800 for time spent on this dispute as a dispute-related expense. CRT rule 9.5(5) says that compensation for time spent is not usually awarded except in extraordinary cases. I find no extraordinary circumstances exist here. So, I dismiss End of the Roll's claim for time spent. Hingley did not claim any dispute-related expenses.

## **ORDER**

19. I dismiss Mr. Sexsmith's claims, End of the Roll's dispute-related expense claim, and this dispute.

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Nav Shukla, Tribunal Member