



Civil Resolution Tribunal

Date Issued: October 13, 2023

File: SC-2022-010271

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kavouris v. Thomas*, 2023 BCCRT 873

B E T W E E N :

ELIZABETH KAVOURIS

APPLICANT

A N D :

TIMOTHY THOMAS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. The applicant, Elizabeth Kavouris, hired the respondent, Timothy Thomas, to install engineered hardwood flooring in her home. She says he did so incorrectly, causing damage to the flooring during installation and ongoing deterioration. So, Ms. Kavouris claims \$5,000 from Mr. Thomas for the cost of removing and replacing the damaged floors.

2. Mr. Thomas denies his flooring installation work was substandard. He says any issues with the flooring are due to structural issues with Ms. Kavouris' house. I infer Mr. Thomas asks that I dismiss Ms. Kavouris' claims.
3. The parties are each self-represented.

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.
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 and an oral hearing is not necessary.
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.
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 Mr. Thomas' flooring installation work substandard?
 - b. If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Ms. Kavouris must prove her claims on a balance of probabilities (meaning “more likely than not”). I have considered all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
10. In the latter half of 2021, Mr. Thomas installed engineered hardwood and tile flooring in Ms. Kavouris’ home. Ms. Kavouris says soon after, she noticed cracks, chips and holes in the wood floors as well as an area around the second floor hallway landing that was uneven. She says as time passed, she noticed further degradation around the areas that were chipped and cracked as well as on the landing. Ms. Kavouris says the damage is due to Mr. Thomas’ substandard installation work. She says that she has asked Mr. Thomas to remedy the issues in accordance with the floor inspector’s recommendations, discussed in detail below, but Mr. Thomas refused.
11. At law a contractor is required to perform its work to a reasonable standard (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). The law does not require perfection. Generally, expert evidence is required to prove whether a professional’s work fell below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry, which I find includes hardwood flooring installation. Exceptions to this general rule are when the work is obviously substandard, or the deficiencies relate to something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112). Ms. Kavouris’ evidence includes photographs of some of the problem areas which I find show floorboards that are cracking and splitting at the boards’ edges. While I find these photographs show obvious deficiencies, I find expert evidence is required to determine whether the cracking and splitting board edges are due to substandard installation work or something else, such as defects in the flooring itself.
12. Ms. Kavouris relies on an October 24, 2022 inspection report by Reuben Mitchell, a flooring inspector who inspected the hardwood flooring in Ms. Kavouris’ home to

determine the damage's cause. A copy of the report and a letter setting out Reuben Mitchell's recommendations to remedy the damage are in evidence. These documents list a National Wood Floor Association (NWFA) "CP" number for Reuben Mitchell which I infer stands for "certified professional". Reuben Mitchell also listed the following credentials: CI, CSF, CWFI, which I infer means that they are a certified installer, certified sand & finisher, and certified wood flooring inspector with the NWFA. I find the report and recommendation letter sufficiently set out Reuben Mitchell's qualifications as required by CRT rule 8.3(2). So, I accept Reuben Mitchell's report and recommendation letter as expert evidence in this dispute about the flooring's cause of damage and recommendations for repair.

13. In their report, Reuben Mitchell said that they found 52 damaged board edges in the living room, 4 damaged board edges in the bedroom, and 4 damaged board edges on the upper floor when they inspected the hardwood floor. Reuben Mitchell's report says that they used magnets to locate the fasteners used to secure the wood flooring. They say that they found a fastener located at every spot where the board edges were damaged. They also looked closely at the damaged board edges and saw splinters and crushed edges. The report notes that the crushed edges often had a repeating pattern, consistent with a nail gun or tool.
14. Reuben Mitchell says they used a steel ruler to measure the width and position of the damage and found several areas that had the same damaged edge pattern consistent with the width of a floor nail gun. They then examined 17 square feet of remaining uninstalled flooring and found no edge damage on any of those floorboards.
15. Reuben Mitchell also measured the evenness of the hallway bump and found it to be uneven 3/8" over 12". After setting out the manufacturer's installation instructions and the NWFA's installation guidelines, Reuben Mitchell concluded that the damage to the floorboard edges they found occurred during installation due to incorrect or improper use of a nail gun or other tools. They further concluded that the bump or "high spot" in the upstairs hallway exceeded the manufacturer and industry standards for flatness, and that it was the installer's responsibility to ensure the subfloor was

acceptable before installing the flooring. So, Reuben Mitchell concluded that the floorboard damage and bump in the hallway were all installation related deficiencies.

16. In their October 24, 2022 letter, Reuben Mitchell recommended that for the small number of damaged boards in the bedroom and on the upper floor, the individual boards should be repaired or replaced “as needed” to correct the issues. For the main floor living room area, they said that it is likely not economical to repair or replace all of the damaged boards and removing and replacing the entire 246 square foot area would be the best resolution. For the uneven area in the upstairs hallway, Reuben Mitchell recommended removing the floorboards in the uneven area, correcting the uneven subfloor, and reinstalling new floorboards.
17. As noted above, Mr. Thomas says that the damaged floorboards were not caused by his installation work but rather by structural issues with Ms. Kavouris’ home. In support, he provided various pictures of Ms. Kavouris’ home’s structural beams. However, I am unable to tell from these photographs what structural issues, if any, are present or how the alleged structural issues may have contributed to the flooring damage. I find the issue of whether the home’s alleged structural issues caused the flooring damage requires expert evidence to prove, and Mr. Thomas did not provide any. The only expert evidence before me is Reuben Mitchell’s report and recommendations. So, based on Reuben Mitchell’s expert opinion, which I accept, I find it more likely than not that the flooring damage and the bump in the upstairs hallway are due to Mr. Thomas’ substandard installation and subfloor preparation work. As there is no evidence before me contradicting Reuben Mitchell’s recommendations for remedying the flooring issues, I accept that in order to fix the issues, Ms. Kavouris will likely need to remove and replace the flooring in the entire living room area, replace or repair the handful of damaged floorboards in the bedroom and on the upper floor, and remove and replace the flooring in the landing area after evening out the subfloor.
18. I turn now to the appropriate remedy. As noted, Ms. Kavouris claims \$5,000 in damages for the estimated cost of repairing and replacing the damaged flooring.

However, she did not provide a copy of an estimate outlining the cost of this work, nor is there evidence showing exactly how much she initially paid for the engineered hardwood flooring or installation. In her Dispute Notice, Ms. Kavouris did provide some estimates with breakdowns for her calculations. She says that it will cost between \$700-\$1,000 to remove and dispose of the flooring in the living room area, \$2,000 for new flooring in that area, and \$900 to install the flooring. For the hallway landing area, Ms. Kavouris says it will cost approximately \$250-350 to remove and dispose of the flooring, \$425 for new material, and \$200 for installation. Ms. Kavouris bases the removal and disposal estimates on a \$65 hourly rate. She says the cost of the flooring is based on \$8.50 a foot (though I infer she means square foot), and \$3.75 a foot (again, I infer she means square foot) for installation.

19. It would have been preferable for Ms. Kavouris to provide documentary evidence, such as an estimate from a contractor, in support of her damages claim. However, Mr. Thomas does not specifically dispute Ms. Kavouris' estimates. I also find nothing unreasonable about Ms. Kavouris' estimates based on the evidence before me. So, since Mr. Thomas does not dispute the amounts, I find it appropriate to rely on Ms. Kavouris' estimates and I award Ms. Kavouris damages based on the estimates at their lower ranges. Accordingly, I find Ms. Kavouris is entitled to \$3,600 in damages to remove and replace the flooring in the living room area and \$875 in damages to remove and replace the flooring in the hallway landing area. Ms. Kavouris did not claim any extra amounts for leveling the subfloor in the landing area, so I infer the subfloor levelling costs are included in her stated estimate. She also does not claim any amount for removing or repairing the handful of floorboards in the bedroom or on the upper floor, so I award nothing with respect to that work. In total, I find Ms. Kavouris is entitled to \$4,475 in damages for Mr. Thomas' substandard flooring work.
20. The *Court Order Interest Act* (COIA) applies to the CRT. However, there is no indication that Ms. Kavouris paid to fix the flooring as of the date of this decision. Under section 2(a) of the COIA, interest is not payable on losses that arise after the order, such as is the case here. So, I find Ms. Kavouris is not entitled to pre-judgment interest on her \$4,475 award.

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. As the successful party, I find Ms. Kavouris is entitled to \$175 for her paid CRT fees.
22. Ms. Kavouris also claims \$500 for the cost of Reuben Mitchell's inspection and report, presumably as a dispute-related expense. However, she did not provide any evidence, such as an invoice or receipt, showing what, if anything, she paid Reuben Mitchell. So, I make no award for it.

ORDERS

23. Within 30 days of the date of this decision, I order Mr. Thomas to pay Ms. Kavouris a total of \$4,650, broken down as follows:
 - a. \$4,475 in damages for the substandard flooring work, and
 - b. \$175 in CRT fees.
24. Ms. Kavouris is entitled to post-judgment interest, as applicable.
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. 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