



# Civil Resolution Tribunal

Date Issued: January 2, 2024

File: SC-2022-008666

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fears v. Velux Canada Inc.*, 2024 BCCRT 2

B E T W E E N :

DANIEL FEARS

**APPLICANT**

A N D :

VELUX CANADA INC. and ARNEL CARACAS

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. Daniel Fears hired Velux Canada Inc. (Velux) to replace 8 existing skylights and install one new custom skylight in his home. Velux subcontracted the work to Arnel Caracas.

2. Mr. Fears says that Velux did not complete the agreed work related to installing the new skylight. Specifically, he says that Velux failed to properly frame and secure the skylight, leaving a section of the roof unsupported. Mr. Fears undisputedly paid Velux's full invoice. He seeks a \$2,600 refund for his time and expenses to complete the framing he says Velux should have done.
3. Velux says that it was not responsible for any interior framing work under the parties' contract. It says that it completed the full scope of work, and that Mr. Fears is not entitled to any refund. Mr. Caracas did not provide any evidence or submissions of his own and relied on Velux's arguments.
4. Mr. Fears is self-represented. A Velux employee represents both respondents.

## **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.
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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Was interior framing part of the parties' contract?
  - b. Was Velux's or Mr. Caracas' work deficient?
  - c. If so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "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.
10. Mr. Fears has a geodesic dome house. The frame is a system of interconnected triangles, creating a dome shape. In about March 2022, Mr. Fears met with Velux's estimator, LS, and Mr. Caracas at this home to discuss replacing the 8 existing skylights and adding a new ninth skylight. Mr. Fears says that at this meeting, LS confirmed Velux could install the necessary "rough-in framing" for the new skylight. Mr. Fears says that while Velux agreed to do the framing, he agreed to be responsible for the interior drywall and "finishing carpentry".
11. On April 4, 2022, Mr. Fears signed Velux's quote, which totaled \$15,583.81. It included 9 skylights, flashing, underlay, and labour. For the newly added skylight, the scope of work section stated (as written): "Introduce one new custom skylight into lower roof area & flash/tie into existing shingles (Note: homeowner will install inner trims)". I find that the signed quote became the contract between Velux and Mr. Fears.
12. The contract stated it would take about 6 weeks for the skylights to arrive, and that once Velux started the installation, the job would take about 4 to 5 days to complete. Mr. Fears paid a \$8,871.30 partial payment upon signing the contract. This left \$6,712.51 to be paid upon the project's completion.

13. The dates that the skylights arrived and that Mr. Caracas started the installation are not before me, though I find from the evidence it was likely around the end of June 2022. I infer that Velux replaced the 8 existing skylights without issue, as only the new skylight is the subject of this dispute.
14. Mr. Fears provided the following chronology of events relating to the new skylight installation, which the respondents did not particularly dispute:
- June 29, 2022 – Mr. Caracas cut a hole in the roof for the new skylight.
  - July 4, 2022 – Mr. Fears raised with Mr. Caracas that the interior framing for the new skylight was incomplete. I infer that the skylight was already installed.
  - July 12, 2022 – Mr. Caracas attempted to install the requested interior framing. He used 1x6 wood and did not tie in any joists or studs, which Mr. Fears says was incorrect.
  - July 15, 2022 – Mr. Fears sent Mr. Caracas pictures of how he said the skylight should be framed in.
  - July 20, 2022 – Mr. Fears met with LS and Mr. Caracas at his home and Mr. Caracas verbally agreed to re-do the framing with double joist hangers and 2x6 wood.
  - August 8, 2022 – While Mr. Fears was out of town, Mr. Caracas advised that he had completed the framing work as discussed.
  - August 9 or 10, 2022 – Mr. Fears paid Velux the \$6,712.51 balance owing under the contract.
  - August 24, 2022 – Mr. Fears returned home and says the framing was “inadequate”. Mr. Fears spent the next 2 days removing what Mr. Caracas had installed and re-doing it himself.

15. As noted, Velux says that interior framing for the new skylight was not included in the parties' contract. I generally agree that the parties' contract did not expressly say Velux was responsible for interior framing. I find the term that Mr. Fears would be responsible for installing the "inner trims" is reasonably interpreted as Mr. Fears being responsible for interior framing.
16. Nevertheless, the undisputed evidence is that Mr. Caracas agreed to install interior framing for the new skylight at some point before his first attempt on July 12, 2022. I find he did so as Velux's agent, noting that LS was also present at the July 20, 2022 meeting, and there is no evidence Velux objected to Mr. Caracas doing this work. Velux says that Mr. Caracas only agreed to do the framing as a customer service gesture to appease Mr. Fears, who was unhappy when he learned the framing was not included in the contract. Whatever the reason, I find Velux ultimately agreed to do the interior framing at no additional cost to Mr. Fears, and so that work became part of the parties' contract.
17. As noted, Mr. Fears says that Mr. Caracas' second framing attempt was not completed properly. Specifically, he says Mr. Caracas did not tie the joists and studs in and he failed to install double joist hangers under the drywall area.
18. It is an implied term in a contract for professional or trade services, such as skylight installation and framing, that a contractor's work will meet a reasonably competent standard. I find that Mr. Fears is claiming that Velux's work fell below that standard. In these circumstances, Mr. Fears bears the burden to prove the deficiencies. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61.
19. Generally, expert evidence is required to prove a professional's work fell below the required standard. This is because an ordinary person does not know the standards of a particular profession or industry. The exceptions to this general rule are when the work is obviously substandard, or the deficiency relates to something non-technical. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112.

20. The only evidence Mr. Fears provided about the alleged deficiencies was several photos he took of Mr. Caracas' framing work. Some of the photos have poor lighting and most were taken at such a close angle that I cannot tell what the pictures are intended to show. Overall, I cannot determine from the photos that there are any obvious deficiencies.
21. I find that skylight framing is a matter outside an ordinary person's knowledge, and so expert evidence is required to prove that Mr. Caracas' work fell below a reasonably competent standard. Specifically, I find expert evidence is required to prove Mr. Caracas should have tied in the joists and studs and used double joist hangers and that he failed to do so, as alleged.
22. Mr. Fears says that he has knowledge of house framing, as he worked for 2 years framing houses from 2002 to 2004. I find that alone is insufficient to establish that Mr. Fears is an expert framer. In any event, I do not accept his comments as expert opinion because he is an interested party, and so I find he is not sufficiently objective. Therefore, I do not accept Mr. Fears' evidence about what the applicable standard is for skylight framing.
23. Further, Mr. Fears did not provide the source of the photos he gave to Mr. Caracas illustrating how he said the framing should be done. So, I cannot determine whether those photos represent the standard that a contractor must meet when framing a skylight in a home with a geodesic dome structure.
24. In the absence of any expert evidence, I find that Mr. Fears has not met his burden of proving Mr. Caracas' framing work was deficient. I dismiss his claim against Mr. Caracas on this basis. Mr. Fears did not make any separate claims against Velux, other than for Mr. Caracas' allegedly deficient work. So, I also dismiss Mr. Fears' claims against Velux.
25. I note that Mr. Fears says that he spent \$300 on materials, but he did not provide any receipts or invoices. While he says he spent 2 days re-doing the framing himself, he did not specify how many hours it took or explain what value should be placed on his

time. He also did not provide any evidence about what the cost would be for a professional to do that work. For these reasons, I would also dismiss Mr. Fears' claims for a failure to prove damages.

26. 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 Mr. Fears was unsuccessful, I dismiss his claim for reimbursement of paid CRT fees. The respondents did not pay any fees, and no party claimed dispute-related expenses.

## **ORDER**

27. I dismiss Mr. Fears' claims, and this dispute.

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Kristin Gardner, Tribunal Member