



Civil Resolution Tribunal

Date Issued: February 5, 2024

File: SC-2023-004918

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *DiCarlo dba Tom DiCarlo v. Figtree Ventures Inc.*, 2024 BCCRT 109

B E T W E E N :

TOM CHRISTOPHER DICARLO (Doing Business As TOM DICARLO)

APPLICANT

A N D :

FIGTREE VENTURES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. The respondent, Figtree Ventures Inc., hired the applicant, Tom Christopher DiCarlo (Doing Business As Tom DiCarlo)¹, to install carpet for its customer. The applicant

¹ The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. The applicant, Tom Christopher DiCarlo (Doing Business As Tom DiCarlo), did not provide their pronouns or

says they installed the carpet, but the respondent has refused to pay them in full. The applicant claims \$1,950 remains owing for their installation work. The applicant also claims \$275 for penalties and fees they say they have incurred. The applicant is self-represented.

2. The respondent says the applicant completed extra work outside of the scope of the work order it provided to the applicant. The respondent further alleges there were deficiencies in the applicant's installation work and that the applicant delayed completing the work. As a result, the respondent says that it owes the applicant nothing. Instead, it argues the applicant owes it \$3,760.89 for supplies and transportation it allegedly provided the applicant, and for expenses incurred due to the applicant's alleged substandard work. The respondent did not file a counterclaim. The respondent is represented by its owner.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 and that an oral hearing is not necessary.
5. 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.

title. Because of this, I will use gender neutral pronouns to refer to the applicant throughout this decision, intending no disrespect.

6. Where permitted by CRTA section 118, 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.

ISSUE

7. The issue in this dispute is whether the respondent owes the applicant \$1,950, or some other amount, for the unpaid carpet installation work.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the applicant must prove their 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. I note the respondent did not provide any documentary evidence and the applicant did not provide any final reply argument, despite both having the opportunity to do so.
9. The applicant is a carpet installer, and the respondent is a flooring and carpet supplier. In April 2023, the respondent hired the applicant to install carpet for its customer. The applicant undisputedly did so and issued the respondent their April 15, 2023 invoice for the work, totaling \$3,850.52. The evidence shows the respondent paid the applicant \$1,500 by e-transfer on May 3, 2023 and a further \$300 by e-transfer on May 12, 2023, totaling \$1,800. The applicant says they claim the remaining balance, which I note is \$2,050.52, slightly more than the \$1,950 the applicant claims in the Dispute Notice. The applicant has not explained this discrepancy.
10. The respondent says that the applicant charged for extra work that was not set out in its work order. The respondent says that since this alleged extra work was not approved, the applicant is not entitled to be paid for it. The applicant, on the other hand, says that they completed the work the respondent asked them to do. The applicant says that the respondent informed them after they completed the carpet

installation that the respondent did not have enough room left in its budget to pay the applicant's full invoice.

11. It is undisputed that the applicant completed the work they are claiming for. The respondent says that it issued a work order to the applicant that set out the work it required the applicant to do and said that any extra work had to first be authorized. In its written argument, the respondent says the work order is "attached above". However, the respondent did not provide the work order as evidence in this dispute. At my request, CRT staff asked the respondent to review the submitted evidence and confirm that there was no additional documentary evidence it wanted to rely on. The respondent did not respond to this request. I find the respondent has had an adequate opportunity to provide all relevant evidence and the respondent has chosen not to provide the work order.
12. When a party fails to provide relevant evidence, the CRT may make an adverse inference. An adverse inference is when the CRT assumes that the reason a party did not provide evidence is that the evidence would not help their case. I find it appropriate to draw an adverse inference against the respondent here. If there was a work order that showed the applicant did work outside the scope of what the respondent had authorized, I find the respondent would have provided this document as evidence. Since the respondent did not do so, I find it more likely than not that the respondent approved the carpet installation work that the applicant seeks payment for in this dispute.
13. The respondent does not otherwise dispute the amount the applicant invoiced for the completed work. So, I find the applicant is entitled to charge the respondent \$3,850.52 for the completed work. Deducting the respondent's \$1,800 payments, this leaves \$2,050.52 owing. As noted, the applicant has not explained the discrepancy between this amount and the \$1,950 they claim in the Dispute Notice. Under the circumstances, I find the applicant is entitled to the claimed lower amount of \$1,950 for the unpaid carpet installation work. The respondent owes the applicant this amount, subject to any deductions for proven deficiencies addressed below.

14. As noted, the respondent alleges that the applicant delayed the carpet installation work and that their completed work was deficient. The respondent bears the burden of proving any alleged deficiencies (*Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 at paragraph 16 and *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287).
15. The respondent says the applicant installed the wrong type of carpet inside a corridor, resulting in 40 yards of carpet being wasted. The respondent also alleges that there were other deficiencies that it had to send another crew to fix. However, the respondent provided no documentary evidence about these alleged deficiencies. So, I find it unproven that there were deficiencies in the applicant's work.
16. Similarly, other than the respondent's bare assertions, there is no evidence that the applicant delayed completing the carpet installation, or that the respondent incurred any loss or expense as a result. So, I find any delay on the applicant's part unproven as well.
17. Finally, the respondent says that it gave the applicant \$705.45 worth of supplies because the applicant did not have the proper tools to complete the job. The respondent also says that the applicant owes it \$450 plus GST for transportation that it allegedly provided to the applicant. Again, the respondent provided no evidence to support these claims. So, I find the respondent has failed to prove that it is entitled to any set-off for any supplies or transportation it may have provided to the applicant.
18. I note in the Dispute Notice, the applicant claims \$275 for penalties and fees. I infer the fees the applicant refers to are CRT fees which I address below. The applicant did not explain what penalties they may have incurred or provide any evidence in support of this claim. So, I dismiss this part of the applicant's claim. In the Dispute Notice, the applicant also seeks \$0 for a flooring inspection. There is no evidence that the applicant obtained a flooring inspection or incurred any costs for one. So, I dismiss the applicant's claim for reimbursement of expenses for a flooring inspection.
19. In conclusion, I find the applicant is entitled to \$1,950 for the unpaid carpet installation work. The *Court Order Interest Act* (COIA) applies to the CRT. The applicant is

entitled to pre-judgment interest on the \$1,950 from April 15, 2023, the date of the applicant's invoice, to the date of this decision. This equals \$76.69.

20. 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. I find the applicant is entitled to reimbursement of \$150 in CRT fees. Neither party claims any dispute-related expenses, so I award none.

ORDERS

21. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$2,176.69, broken down as follows:
- a. \$1,950 in debt for the unpaid carpet installation work,
 - b. \$76.69 in pre-judgment interest under the COIA, and
 - c. \$150 in CRT fees.
22. The applicant is entitled to post-judgment interest, as applicable.
23. I dismiss the applicant's remaining claims.
24. 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