



Civil Resolution Tribunal

Date Issued: April 16, 2024

File: SC-2023-006631

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rosenau v. Roarty Painting Inc.*, 2024 BCCRT 359

BETWEEN:

ELIZABETH JOAN ROSENAU

APPLICANT

AND:

ROARTY PAINTING INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about alleged flooring damage. Elizabeth Joan Rosenau hired Roarty Painting Inc. (Roarty) to paint her home's interior. Ms. Rosenau says Roarty damaged her new flooring. She claims \$1,600 for the cost of repairing it.

2. Roarty denies damaging Ms. Rosenau's new flooring and says it does not owe her anything.
3. Ms. Rosenau is self-represented, and Roarty is represented by its owner.

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. 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 court.
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.

ISSUE

8. The issue in this dispute is whether Roarty damaged Ms. Rosenau's new flooring, and if so, whether Ms. Rosenau is entitled to \$1,600 to repair the damage.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Ms. Rosenau must prove her claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss Ms. Rosenau's claims.
10. In 2023 Ms. Rosenau renovated her home, which included replacing her floors with vinyl plank flooring. In February 2023, after the new flooring was installed, Ms. Rosenau hired Roarty to paint her home's interior. Roarty finished painting on March 2, 2023. Roarty returned to Ms. Rosenau's home on March 30, 2023 to touch up parts of the drywall that had been damaged by the carpet installers, and to clean the floors.
11. Ms. Rosenau says that on March 30, 2023 Roarty steam-cleaned the floors then used a product called "Clean & Gleam" to polish them. She says this left the floors much shinier in certain areas than it had been before Roarty applied the polish, and the areas with "knots" were most affected. She says there were "swish" marks on the floor, which she suspects were from a mop, and the floor was sticky to walk on.
12. Roarty denies that it polished Mrs. Rosenau's floor or used "Clean & Gleam", and it denies that the floors are damaged. However, to address Ms. Rosenau's concerns, Roarty hired a professional cleaning company called Cleaning Fairy, who cleaned Ms. Rosenau's floors on April 17, 2023. Ms. Rosenau says that despite telling the Cleaning Fairy to only use a vinegar-based cleaning product, it used a different product "of some sort" that she says improved the floors and made the "swish" marks less obvious. However, Ms. Rosenau says there were still parts of the floor that were shinier than they were originally. The Cleaning Fairy returned to Ms. Rosenau's home on April 19, 2023 and cleaned the floors with a different cleaning product, but Ms. Rosenau says this did not further improve the damage.
13. For the following reasons, I find Ms. Rosenau has failed to prove her claim. First, she says Roarty used "Clean & Gleam" to clean her floors. However, I find it is not clear from the evidence that Roarty used that product. Roarty denies polishing Ms.

Rosenau's floors and says the only cleaning products it used were a Swiffer wet-jet cleaner, a vinegar solution, and Windex. There is no documentary evidence supporting Ms. Rosenau's assertion that Roarty used "Clean & Gleam".

14. Even if Ms. Rosenau could prove that Roarty used "Clean & Gleam", I find she has failed to prove that the product could damage her floors. She says "research shows" that "Clean & Gleam" is not recommended for vinyl plank flooring. She says this may be because this cleaning agent can accumulate in the floor's furrows and crevices. She says it could also be because the product's chemical components may react with the vinyl surface to change its reflective properties. She did not provide evidence of her research or any expert opinion evidence about this research. She says vinegar was the only cleaning product the vendor guaranteed would not damage the flooring, but she provided no evidence to support this assertion and I find it unproven.
15. On April 28, 2023, Ms. Rosenau emailed 5 different cleaning companies in her area stating that Roarty has used "Clean & Gleam" to clean her floor, which contains polish and was not recommended to be used on her vinyl plank flooring. She said the polish remained despite the floor having since been cleaned several times with water-based cleaner. She asked if the cleaners had experience removing "Clean & Gleam" from vinyl plank flooring, or if they had any suggestions for how to do so. She received 3 responses.
16. One cleaner responded suggesting the product needed to be stripped by a flooring specialist. Another cleaner responded that they had no experience with that issue but suggested using Windex. They said vinegar was not recommended because it could damage the vinyl's topcoat. Neither of these cleaners saw Ms. Rosenau's floors, so neither of them could confirm whether "Clean & Gleam" was used, or whether it was an inappropriate cleaning product to use on vinyl floors.
17. Ms. Rosenau says 1 of the cleaners she emailed on April 28, 2023 came to her home to inspect the floors. She says he told her he could not guarantee that he could restore the floor to its original condition, but she provided no statement or other documentary

evidence from this cleaner. Even if he did tell her this, it does not prove that Roarty used “Clean & Gleam” or that it was an inappropriate product to use on her floors.

18. Finally, even if Ms. Rosenau could prove that Roarty inappropriately used “Clean & Gleam” on her floors, I find she has failed to prove that her floors are damaged. She submitted various photos that she says show the floor at the bottom of her stairs is now shinier after Roarty cleaned it. However, I find I cannot discern this from the photos in evidence. Roarty also submitted some photos which it says shows the floors look the same before and after it cleaned them. I agree with Roarty. I find I cannot see any noticeable damage as Ms. Rosenau alleges.
19. Ms. Rosenau says it is difficult to capture in photos how different lighting at different times of the day affects the look of the floors. However, she provided no expert opinion evidence or any witness statements supporting her contention that the floors are damaged. Without more, I find there is insufficient evidence to establish that Ms. Rosenau’s floors are damaged.
20. For all of these reasons, I find Ms. Rosenau has failed to prove her claim, and I dismiss it.
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. I see no reason in this case not to follow that general rule. Since Ms. Rosenau was unsuccessful, I find she is not entitled to reimbursement of her CRT fees. Roarty did not pay any CRT fees, and neither party claimed any dispute-related expenses.

ORDER

22. I dismiss Ms. Rosenau's claims and this dispute.

Sarah Orr, Tribunal Member