



Civil Resolution Tribunal

Date Issued: April 22, 2024

File: SC-2023-000410

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Exclusive Floors Ltd. v. Yorke*, 2024 BCCRT 380

BETWEEN:

EXCLUSIVE FLOORS LTD.

APPLICANT

AND:

GREG YORKE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for carpeting.
2. The applicant, Exclusive Flooring Ltd., says it supplied and installed carpeting for the respondent, Greg Yorke. The applicant says the respondent has not paid for the carpets, and seeks payment of \$3,500.

3. The respondent says the carpeting was damaged upon delivery and improperly installed, and the applicant has refused to repair it. So, the respondent says he should not have to pay.
4. The respondent is self-represented in this dispute. The applicant is represented by an employee.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims 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.
6. 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. As the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
7. 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 court.

ISSUE

8. Is the applicant entitled to payment of \$3,500 for carpeting?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove its claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.

10. The evidence shows that in March 2022, the applicant gave the respondent a written estimate for removing old carpet and installing new carpet in the den, living room, dining room, family room and 2 stairways. The estimate's total price was \$11,161.44 including tax. The applicant signed the estimate, and paid a \$6,170.04 deposit. The carpet was installed on May 10, 2022.
11. The respondent did not pay the remaining balance. Instead, after the installation, he complained that he was unhappy with the carpet installation in the family, living, and dining rooms. In particular, he says those areas of the carpet have waves or buckles.
12. Although the outstanding balance is over \$5,000, but the applicant abandoned the portion of its claim over \$5,000, to fit within the CRT's small claims monetary limit. Also, in its final CRT submission, the applicant said it was only requesting payment of \$3,500. So, that is the amount I have considered in this decision.
13. The applicant admits there were problems with the carpet installation. It says it sent workers to fix the problems in July 2022. In its CRT submission, the applicant admits there are still problems with the carpet installation, but it says the problems can be corrected and do not require replacement carpeting.
14. The respondent says the problems are so severe they cannot be corrected without replacing the carpet in the affected areas.
15. The respondent provided an 82-page report that he wrote, titled "Engineering Report". While I accept that the respondent is an engineer, I do not accept his report as expert evidence for 2 reasons. First, CRT Rule 8.3(7) says the role of an expert giving evidence to the CRT is to assist the CRT and not to advocate for any side or party in a dispute, and a party generally cannot act as their own expert because the party is not neutral. Second, while I accept that the respondent is an engineer, there is no evidence before me that he has any professional expertise or experience in carpet installation.
16. The applicant provided a report written by carpet inspector CS, who inspected the carpets in the respondent's home on September 7, 2023. The respondent objects to

CS's report for several reasons. He says CS is not neutral because he works for the carpet manufacturer, and may have worked for the applicant in the past. The respondent also says CS is not an expert in carpet installation, and did not inspect the carpet correctly. The respondent says CS's report contains "redactions, lies, omissions and errors."

17. Despite these objections, I find CS's report actually supports the respondent's position in this dispute. CS found no significant buckling, but reported that tufts were coming loose because the cut edge was not sealed in compliance with the Carpet and Rug Institute Standard for Installation of Residential Carpet (CRI-105). CS also said the seams were not compliant with CRI-105, because the seams were not sealed, and some areas had overlaps.
18. I accept CS's report as expert evidence, as his credentials in flooring inspection were provided in evidence. Also, I find the respondent's assertions about CS's possible bias speculative and unproven.
19. The applicant's own witness, CS, says the carpet installation did not meet the CRI-105 standards. The applicant argues that CRI-105 sets out standards rather than rules. However, CS undisputedly described problems with the carpet's installation. The applicant did not provide another expert opinion to contradict CS' opinion that the installation did not meet industry standards. So, I find the carpet installation was deficient.
20. A service provider is generally entitled to a reasonable opportunity to fix deficiencies in their work: *Lind v. Storey*, 2021 BCPC 2 at paragraph 91. However, the evidence before me shows that the respondent had already sent workers to fix the carpet problems before CS's inspection, and problems remained after that. Also, in a July 20, 2022 email, the applicant said there were no problems with the carpet, which CS's subsequent inspection proves incorrect, and the applicant now admits was incorrect.

21. For these reasons, I find it was reasonable for the respondent to refuse further visits by the applicant.
22. For all these reasons, I find the respondent is not responsible to pay any portion of the outstanding bill. I note that the respondent already paid \$6,170.04, so is not receiving the properly installed portions of the carpet for free.
23. The respondent says he wants a new, undamaged carpet to be installed. He also requests a \$5,000 refund, plus damages and reimbursement for the engineering report he prepared.
24. Since the respondent did file a counterclaim, I do not order any replacement or reimbursement.
25. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees. As the applicant was unsuccessful, I dismiss its claim for reimbursement of CRT fees. The respondent is the successful party. He paid no CRT fees, so I award no reimbursement.
26. I do not order reimbursement for the respondent's own time in preparing the engineering report, based on CRT Rule 9.5(5). That rule says the CRT will only order compensation for a party's own time spent dealing with the CRT proceeding in extraordinary circumstances. I find there are no extraordinary circumstances in this dispute, as it is a routine dispute about a consumer transaction. Also, as noted above, I did not accept the respondent's report as expert evidence.

ORDER

27. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member

