



Civil Resolution Tribunal

Date Issued: March 20, 2024

File: SC-2023-003071

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Avery v. Star-Lite Dry-Cleaning (Sidney) Inc.*, 2024 BCCRT 293

B E T W E E N :

ANNE ALAINE AVERY

APPLICANT

A N D :

STAR-LITE DRY-CLEANING (SIDNEY) INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about damaged drapes. The applicant, Anne Alaine Avery, took their drapes to the respondent, Star-Lite Dry-Cleaning (Sidney) Inc. The applicant says the respondent damaged the drapes' blackout liner, which is a separate panel sewn to

the back of the drapes. The applicant claims \$314.79 to replace the liner and \$73.50 as a refund of the respondent's cleaning charge, for a total of \$388.29. The applicant is self-represented.

2. The respondent denies the claim. It relies on a disclaimer on its claim slip. It also says it followed industry-standard practices and the drapes were beyond their 4-year functional life-span. The respondent is represented by a director, Jeffrey Simpson.
3. For the reasons set out below, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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. In submissions, the respondent says it reserves the right to file a counterclaim against the applicant. It also requests an order that the applicant remove a negative online review about the respondent. Given that the respondent did not file a counterclaim, it would be procedurally unfair to make orders against the applicant. In any event, an order to remove an online review is a form of injunctive relief (an order to do or stop

doing something), which the CRT cannot make for small claims disputes. So, I have not addressed those issues in this decision.

ISSUE

8. The issue in this dispute is whether the respondent is liable for damaging the drapes' blackout liner, and if so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. In February 2023, the applicant took their drapes to the respondent for cleaning. Mr. Simpson accepted the drapes. There was no discussion about how the drapes would be cleaned. None of this is disputed.
11. On February 13, 2023, the applicant picked up the drapes. They say the underside of the liner was covered in "melted" crease lines. The applicant says the once-smooth liner now has a lumpy and wrinkled appearance. Photos confirm this. The applicant asks to present the damaged liner in physical evidence so I can see and feel its quality, I find this is not necessary. I accept that the liner was of good quality and is now irreparably damaged.

The law of bailment

12. A bailment is a temporary transfer of person property from one person, a "bailor", to another person, a "bailee". As noted in *Davis v. Henry Birk & Sons Ltd.*, 1982 CanLII 490 (BCCA) at paragraph 3, the law of bailment applies to a wide range of commercial activities, including dry cleaning. I find that both a bailment and a contractual relationship existed between the parties.

13. In *Blais v. Brown*, 1992 CanLII 2717 (NBQB), a customer sued for the value of a dress damaged by a drycleaner. The court noted that the drycleaner, as a bailee for reward, had to show that it took reasonable care of the dress and was not negligent. The CRT reached the same conclusion about the burden of proof in a dispute about damaged drapes left at a cleaner in *Cassidy v. Bastien*, 2022 BCCRT 212. Although these decisions are not binding on me, I find they accurately set out the applicable law. I find the respondent must show it took reasonable care and was not negligent in cleaning the drapes.
14. The respondent says it followed recommended industry guidelines when cleaning the drapes. It says this included washing the drapes in a cold-water cycle with mild detergent, and air-drying them. Since there is no evidence that the parties agreed on any specific cleaning method, I find it was an implied term of their contract that the respondent would use industry-standard cleaning methods.
15. The respondent submitted as expert evidence 2 letters from other dry-cleaner operators. The first is from Miguel Mendez of Pristine Drycleaners. I give this letter no weight for the following reasons. First, Miguel Mendez discussed drapes in general but not blackout liners. Second, they said that the process the respondent used to clean the drapes was “managed in accordance with industry standards,” without saying what the process was or what the industry standards are. Third, they urged me to find in the respondent’s favour, which is inappropriate for expert evidence. Experts are supposed to assist the CRT and not advocate for a party.
16. The other letter is from Wally Perlstrom, former owner and operator of Star-Lite Cleaners. Mr. Perlstrom has 25 years’ experience as a drycleaner and I accept that he is qualified to provide expert opinion evidence about commercially-recommended cleaning processes. Specifically, I accept Mr. Perlstrom’s evidence that drapes have a functional lifespan of 4 years and that blackout liners are pretreated with a protective film that decomposes over time. I also accept his evidence that the commercially-recommended process to clean blackout drapes is to machine wash them in cold water with mild detergent, and air-dry them. I have disregarded the rest of Mr.

Perlstrom's evidence. He did not say how he determined that the respondent followed the commercially-recommended process. I find he has likely simply restated what the respondent told him it did. Further, like Miguel Mendez, Mr. Perlstrom strayed into advocacy by urging to me to find in the respondent's favour.

17. That said, the respondent says it washed the drapes in cold water and air-dried them. With no evidence to the contrary, I accept that submission. The applicant says they attempted to seek information from other drycleaners, and "more than half" said they do not clean blackout drapes at all because, depending on age and sun exposure, damage like the kind that happened here can occur. I find this evidence supports the respondent's assertion that the type of damage that occurred to the applicant's blackout liner can happen despite following commercially recommended practices of cold-water washing and air drying.
18. The applicant says the person who made the drapes provided, by email, an alternate way to clean them. This email was not included in the evidence. However, the applicant acknowledges that they only learned of this information after the damage was apparent, and there is no suggestion that this alternate cleaning method was communicated to the respondent. So, I find this evidence would not assist the applicant.
19. The applicant says they spoke with an industry leader in cleaning blackout drapes. They say that person declined to provide a written statement but was willing to speak to the CRT by phone. However, the applicant does not say what this potential witness would say or how their evidence would help the applicant. Bearing in mind the claim's smaller economic value and the CRT's mandate that includes proportionality, I decline to re-open these proceedings to obtain further evidence and submissions that may or may not assist the applicant.
20. Given the above, I conclude that the respondent was not negligent in washing the applicant's drapes and did not breach the parties' contract. I therefore dismiss the applicant's claim. This means it is not necessary to consider whether the liability exclusion on the back of the claim slip was binding.

21. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The respondent was successful but did not pay CRT fees. I dismiss the applicant's claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

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

Micah Carmody, Tribunal Member