



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Raymond v. Toska Woodworking Inc.*, 2024 BCCRT 771

B E T W E E N :

KAYLEE RAYMOND

APPLICANT

A N D :

TOSKA WOODWORKING INC.

RESPONDENT

A N D :

KAYLEE RAYMOND

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. The applicant, Kaylee Raymond, hired the respondent, Toska Woodworking Inc. (Toska), to renovate cabinets in her home. Ms. Raymond says that Toska did not complete the work as the parties agreed. She claims a refund of \$5,000 for the allegedly unfinished work.
2. Toska says that it completed the agreed work, and that Ms. Raymond asked for additional work that was not included in the parties' contract. Toska counterclaims a total of \$313 for this work plus the balance of an earlier invoice, which it says Ms. Raymond has not paid. Toska also asks for an order that Ms. Raymond remove negative online reviews.
3. Ms. Raymond is self-represented. Toska is represented by its owner, Ali Khanijabarabadi.

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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. 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. In some ways, the parties in this dispute call into question each other's credibility, or truthfulness. However, an oral hearing is not necessarily required where credibility is in issue.¹ Here, the parties have each provided their recollections of what happened, and I find it unlikely that cross-examination would reveal relevant inconsistencies in their evidence. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions.

¹ *Downing v. Strata Plan VR2356*, 2023 BCCA 100.

6. 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.
7. 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.
8. I was unable to open one item of Ms. Raymond's evidence. Through CRT staff, I invited her to resubmit it in another format, and she did so. I was able to open the resubmitted evidence, which was a duplicate of Ms. Raymond's written arguments about Toska's counterclaim. So, I did not find it necessary to invite Toska to provide submissions about the resubmitted evidence.

ISSUES

9. The issue in Ms. Raymond's claim is whether Toska's work was deficient, and if so, whether Toska must reimburse her the claimed \$5,000.
10. The issues in Toska's counterclaim are whether Ms. Raymond owes it \$313 for unpaid work, and whether Ms. Raymond owes it \$4,500 for negative online reviews.

EVIDENCE AND ANALYSIS

11. In this civil proceeding, each applicant must prove their respective 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.

Background

12. In 2022, Ms. Raymond and her husband, YM, hired Toska to renovate some cabinets in their townhouse. Some of the cabinets were undisputedly made and partially

installed by another company, KKBD. The parties agree that Ms. Raymond and YM hired Toska to “finish” KKBD’s work.

13. Toska provided an invoice for this work, which it refers to as the parties’ contract. The invoice describes the agreed work as follows:
 - a. Make, install, and finish a new upper cabinet box and doors in the kitchen,
 - b. Install and finish laundry and bar doors, and
 - c. Install and finish closet doors.
14. Ms. Raymond and YM agreed to pay Toska \$18,900, including GST, for this work. They undisputedly paid Toska \$9,400 on August 12, 2022, and \$9,450 on September 29, 2022. This leaves a balance owing of \$50, which is included in Toska’s counterclaim as discussed below.
15. I pause to note that only YM’s name appears on the invoice and the cheques issued to Toska. YM is not a party to this dispute. However, Toska does not dispute that both YM and Ms. Raymond hired it for the cabinetry work. So, I find Toska’s contract was with both YM and Ms. Raymond, and that YM signed the contract as agent for them both. So, Ms. Raymond has standing to bring her claim against Toska.
16. Toska says it completed the agreed work on September 29, 2022. Toska then undisputedly returned to Ms. Raymond’s townhouse on June 10, 2023. Ms. Raymond says the June 10 visit was for Toska to finish and repair its original work, but Toska says this visit was to complete additional work that was not included in the parties’ original contract.
17. Ms. Raymond says that even after the June 10 visit, Toska’s work was unfinished and deficient. She claims a refund of \$5,000.
18. On August 29, 2023, Toska issued Ms. Raymond and YM a further invoice for \$313, which has not yet been paid. Toska claims this amount in its counterclaim, along with compensation for negative online reviews as discussed below.

Was Toska's work deficient?

19. I begin with Ms. Raymond's claim for a \$5,000 refund. Because the parties' contract was for professional services, there is an implied term that Toska will complete the work to a reasonably competent standard.² As the party alleging deficient work, Ms. Raymond has the burden of proving the deficiencies.³
20. In general, expert evidence is required to prove whether a professional's work fell below a reasonably competent 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.⁴
21. Ms. Raymond alleges 3 main deficiencies with Toska's work. First, she says the cabinet drawers are not properly aligned and do not close, and that some drawer tracks are loose. Second, she says that some cabinet doors are also misaligned and do not close properly. Finally, she says that Toska failed to caulk around the cabinets.
22. I begin with the alleged drawer deficiencies. Ms. Raymond submitted two videos of drawers which I infer are in a bedroom closet, because they contain clothing. One video shows that two drawers cannot properly open and close because they hit each other. Another video shows that one of the drawer tracks is loose to the touch.
23. Ms. Raymond also submitted photographs of lower cabinet drawers which appear to be in the kitchen. The photographs show noticeable gaps between the drawers, and that the drawers do not sit flush with each other when closed.
24. Toska says that KKBD provided and installed the drawers, and that they were not included in the parties' contract. It says that it was only responsible for providing and installing the upper cabinet box in the kitchen and installing cabinet and closet doors.

² See *Lind v. Storey*, 2021 BCPC 2, at paragraph 83.

³ See *Absolute Industries Ltd. v. Harris*, 2014 BCCA 287, at paragraph 61.

⁴ See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.

25. Ms. Raymond does not directly address this submission. The bedroom and kitchen drawers are not specifically mentioned in the parties' contract. In the absence of evidence to the contrary, I find the parties' contract did not include installation or finishing of the drawers.
26. I turn to the alleged cabinet door deficiencies. I find the parties' contract included installation and finishing of cabinet doors in the kitchen, laundry and bar area, and closet. Ms. Raymond provided photographs showing that at least three upper cabinet doors are visibly misaligned.
27. Based on the videos and photographs Ms. Raymond provided, I am satisfied that the cabinet misalignment is an obvious deficiency with Toska's work that does not require expert evidence. I find the expectation that cabinets and doors will line up is not a technical matter, and Ms. Raymond's evidence is sufficient to prove that Toska's work was deficient in this regard.
28. I note that Toska provided two reference letters from home builders, both who say that Toska is well-respected in the woodworking industry and has completed projects for them in the past. I place no weight on these letters, as I find they do not address Toska's work in this specific case. So, I find they do not establish that Toska's cabinet installation work for Ms. Raymond was reasonably competent.
29. Finally, I turn to Ms. Raymond's complaint about the lack of caulking between the cabinets and the walls. I find this is supported by photographs in evidence. However, Toska argues that caulking was not included in the parties' contract. While the contract says that Toska will provide "finishing" work, it does not specifically say whether this includes caulking around the cabinets.
30. I find the question of whether finishing work includes caulking is a technical question that requires expert evidence. Ms. Raymond provided an email from another cabinet company which says, in part, "the cabinet company who provided and installed the cabinets are the ones who should be completing the project". However, it does not say that caulking is typically included in finishing work. In the absence of specific

evidence about whether a reasonably competent cabinet installer would caulk the cabinets, I find Ms. Raymond has not proven that Toska's failure to do so is a breach of the parties' implied contractual term. So, I find Ms. Raymond has only proven deficiencies in the cabinet alignment.

Damages

31. Where deficiencies exist, contractors are usually entitled to a reasonable opportunity to fix them. If a homeowner does not give the contractor that opportunity, they are generally not entitled to claim damages for having the work fixed.⁵
32. Toska says that Ms. Raymond did not notify it about her complaints at any time. However, it says YM began posting negative online reviews of its work in June 2023. In response to this, as noted, Toska undisputedly returned to Ms. Raymond's property on June 10, 2023 and completed some additional work, which I address below.
33. Ms. Raymond says some deficiencies remained after the June 10 work. She provided screenshots of text messages showing that YM messaged Toska's owner Mr. Khanijabarabadi on July 12, 2023, asking when they would be "coming by". YM messaged again on July 14 complaining that Mr. Khanijabarabadi would not answer their calls or texts, and that they would be reinstating a Google review they left.
34. Mr. Khanijabarabadi responded on July 29, saying that they had been busy with a project but that they would come "check everything" once it was complete. On August 16, Mr. Khanijabarabadi messaged YM and said that they would come by the following Saturday. Both parties' copies of these text messages show that Mr. Khanijabarabadi said "Let me know if work for you" (reproduced as written).
35. Toska says that YM did not respond to this message. However, Ms. Raymond's submitted copy of the messages show that YM responded "All right" with a thumbs up emoji. Toska does not address this in its submissions, and does not allege that Ms. Raymond fabricated this response message.

⁵ See *Lind v. Storey*, 2021 BCPC 2, at paragraph 91.

36. On balance, I find that Ms. Raymond provided Toska an opportunity to address the alleged deficiencies. Even if Toska was unaware of Ms. Raymond's complaints until YM began posting online reviews, Toska then had close to two months to return to Ms. Raymond's home and address the deficiencies before Ms. Raymond filed her CRT dispute.
37. With that, I turn to Ms. Raymond's claimed damages. As noted, I find Ms. Raymond has not proven that Toska was responsible for the drawer installation or caulking. So, I find Ms. Raymond is only entitled to damages for the cabinet door installation deficiencies.
38. As noted, Ms. Raymond claims \$5,000 for the alleged deficiencies. In submissions, Ms. Raymond says that YM spent four days completing the caulking and "minor fixes". She says that her husband owns a towing company with an hourly rate between \$150 and \$200. She claims \$4,320 for YM's work, based on 24 hours of work at \$180 per hour.
39. However, as discussed, YM is not a party to this dispute. So, I find Ms. Raymond is not entitled to claim compensation on his behalf. In any event, Ms. Raymond says that most of this work was for caulking, which I have found she has not proven was included in the parties' contract. So, I do not award Ms. Raymond any damages for YM's work.
40. Ms. Raymond also says that she will have to pay someone else to "finish all the adjustments". However, she provided no evidence of what it will cost to have someone repair the cabinet alignment issues. Based on the photographs in evidence, I find the proven alignment issues are relatively minor. On a judgment basis, in the absence of any evidence of the cost to repair these issues, I award Ms. Raymond \$250 in damages for the cabinet misalignment. As Ms. Raymond's evidence is that she has not yet paid anyone to do this work, I find she is not entitled to pre-judgment interest on this amount under the *Court Order Interest Act*.

Toska's counterclaim

41. In its counterclaim Dispute Notice, Toska asked for an order that Ms. Raymond withdraw her CRT claim and a Better Business Bureau complaint she submitted, and that she promise not to post any “malicious” complaints on any platforms in the future. Toska valued this claim at \$4,500.
42. In submissions, Toska expanded this request to apply to reviews on other online platforms. It also says that it lost several new clients because of the reviews. Lastly, it says that its owner, Mr. Khanijabarabadi, suffered an anxiety attack which affected their productivity.
43. I decline to grant these requested remedies, for several reasons. First, Toska's request that Ms. Raymond remove her negative online reviews and refrain from posting further reviews is a request for injunctive relief, which is an order that someone do or stop doing something. In its small claims jurisdiction, the CRT may only order injunctive relief in very limited circumstances, such as for the return of personal property or specific performance of an agreement, which I find do not apply here.
44. Second, Toska's claims that it lost clients and that Mr. Khanijabarabadi suffered an anxiety attack because of Ms. Raymond's reviews were not included in its Dispute Notice. The purpose of the Dispute Notice is to define the issues and provide fair notice to the other party of the claims against them. While CRT rule 1.19(1) allows applicants to request amendments to a Dispute Notice, rule 1.19(3) says the CRT will not allow amendments during the CRT's decision stage except in extraordinary circumstances, which I find do not exist here.
45. In any event, I find Toska's claim for compensation for the negative reviews is essentially a claim for defamation, which is outside the CRT's small claims jurisdiction under CRTA section 119. So, I would have refused to resolve Toska's defamation claims even if they had been included in the Dispute Notice.

46. Further, to the extent that Toska says Ms. Raymond should compensate it for Mr. Khanijabarabadi's anxiety attack, I find it does not have standing to do so. Toska is a corporation, separate from its directors, officers, or shareholders. It cannot suffer an intangible injury like mental distress.⁶ Mr. Khanijabarabadi is not a party to the counterclaim as an individual, and I find Toska cannot claim damages on their behalf.
47. For these reasons, I find Toska's counterclaim is limited to the \$313 it claims for allegedly unpaid work, which I will now address.
48. Toska claims \$50 for the unpaid balance from its original \$18,900 invoice. Ms. Raymond acknowledges that this balance is outstanding, but says that she was not aware of it until Toska raised it during the CRT process. Ms. Raymond says she should not have to pay this amount because Toska did not finish its work.
49. I have addressed the deficiencies in Toska's work above, and have awarded Ms. Raymond damages for repairing those deficiencies. So, I find Ms. Raymond has already been compensated for the deficiencies, and Toska is entitled to the agreed \$50 balance of the original contract. Under the *Court Order Interest Act*, Toska is entitled to pre-judgment interest on this amount from the invoice date, September 29, 2022, to the date of this decision. This equals \$4.16.
50. Toska also claims \$250 plus tax for the additional work it says it completed outside of the parties' original contract. While Toska's invoice shows that it completed some additional work that I agree was not included, such as adding shelves, a garbage bin, and a channel for strip lighting, the invoice also shows that Toska waived its charges for this work. So, I find this is not part of Toska's counterclaim.
51. The only remaining charge on the invoice is \$250 for "touch-up on June 10, 2023." While Toska does not provide details about the work it did on this date, I find the phrase "touch-up" implies that Toska was finishing or repairing work it had already done. As the parties' contract undisputedly included "finishing", I find Toska has not

⁶ See *Northwest Organics, Limited Partnership v. Fandrich*, 2019 BCCA 309, at paragraphs 126 to 128.

proven that it is entitled to additional payment for this work. I dismiss this part of Toska's counterclaim.

Summary, CRT fees, and expenses

52. In summary, I find that Ms. Raymond is entitled to damages of \$250, and Toska is entitled to damages of \$54.16. The net result is that Toska must pay Ms. Raymond \$195.84. I dismiss the parties' remaining claims.

53. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, each party was partially successful, so I find it appropriate for each party to bear their own CRT fees. Neither party claimed dispute-related expenses, so I make no order for them.

ORDERS

54. Within 30 days of this decision, I order Toska to pay Ms. Raymond a total of \$195.84 in damages.

55. Ms. Raymond is entitled to post-judgment interest, as applicable.

56. I dismiss the parties' remaining claims.

57. This is a validated decision and order. Under CRTA section 58.1, 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.

Alison Wake, Tribunal Member