

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP1693/2019

CATCHWORDS

Domestic building work whether the work was done in a proper and workmanlike manner – evidence.

APPLICANT	Thomas Robertson
RESPONDENT	Timothy Stubbs t/as TS Tiling (ABN: 44 118 414 063)
WHERE HELD	Melbourne
BEFORE	R Walker, Senior Member
HEARING TYPE	Hearing
DATE OF HEARING	4 December 2019
DATE OF WRITTEN REASONS	19 December 2019
CITATION	Robertson v Stubbs (Building and Property) [2019] VCAT 2021

WRITTEN REASONS FOR DECISION

Background

1. The Applicant is the owner of a house in Fussell Street, Ballarat (“the House”). The Respondent is and was at all material times a tiler carried on business under the name TS Tiling.
2. The Applicant claimed damages for allegedly defective tiling work carried out by the Respondent in the bathroom of the House in February last year.

Hearing

3. The matter came before me for hearing on 4 December 2019. The parties appeared in person.
4. I heard evidence from the Applicant and the Respondent and was referred to a report and invoice received from a builder, Mr Kinnane, who reported on the allegedly defective work and was subsequently engaged by the Applicant to rectify it.

5. At the conclusion of the hearing I said that I was satisfied that the work was defective and ordered the Respondent to pay to the Applicant the sum of \$13,949.10. I gave brief oral reasons at the time for my decision.
6. Written reasons are now sought by the Respondent.

The work

7. In early January 2018, the Respondent provided a quotation to the Applicant to re-tile the floor and parts of the walls of the bathroom in the House for a price, inclusive of GST, of \$3,226.08.
8. The quotation was accepted by the Applicant on 8 January 2018 and the Respondent started work on 5 February 2018.
9. According to the Respondent's evidence, he or his workmen demolished the shower base and removed the tiles on the floor and the walls of the bathroom, cut out the existing substrate and re-sheeted the areas where the new tiles were to be laid. He said that there were three layers of tiles on the floor that had to be removed.
10. He said that once the tiles had been removed, he waterproofed the substrate and subsequently laid the new tiles.
11. The work was completed on 25 February 2018 and the Respondent rendered an invoice which the Applicant paid.

The defects alleged

12. The following year, the Applicant noticed that there was water leaking from the bathroom which damaged the floor outside the bathroom. He made a claim on his insurance company, as a result of which the House was inspected by Mr Kinnane, who provided a report dated 28 July 2019.
13. In his report, Mr Kinnane said that there was visible water damage to the hallway entrance on the floor and that he suspected that the water was coming from the existing shower recess. He said that his inspection revealed that there was a current leak, consistent with the visible area of water staining and damage, and clear evidence of past water damage behind the tap breach and the bottom section of the wall, which he described as mould and dampness underneath the bottom plate of the wall.
14. He said that both a pressure test of the pipes and a spray test on the tiles revealed no leaks but that, upon conducting a flood test of the shower base, he found that it filled rapidly with water, due to a possible blockage within the waste drain. He said that water was escaping underneath the tiles to the back of the wall instead of down the waste and into the smart pan.

15. He recommended that the bathroom be stripped out in order to repair the plumbing issues with the waste lines and that the damaged flooring not be replaced until this work was done.
16. Following receipt of this report, on 4 August 2019, the Applicant sent an email to the Respondent informing him of Mr Kinnane's findings, saying that the shower would need to be completely redone and asking him to come out in person and look at the damage and confirm a time to complete the work that was required.
17. When the Respondent did not rectify the problem, the Applicant engaged Mr Kinnane do so at a cost of \$13,949.10.

Rectification

18. Mr Kinnane said that, when the rectification work was undertaken, the following was found:
 - (a) the waste trap was full of mortar, which he said was from the previous restorer (i.e., the Respondent), and was the cause of the flood test failure;
 - (b) the puddle flange under the waste had been cut and butted to the waste trap instead of being connected. He said that no plumber's glue had been used and the join was effected with silicon only. He suggested that this had been done by a not licensed plumber or tradesman;
 - (c) the shower grate was installed approximately 5 to 8 mm higher than the puddle flange, allowing an access point for water to escape;
 - (d) there was an electrical hazard, due to power point cables running behind the shower niche instead of the wires being re-routed around it; and
 - (e) upon removing the floor tiles there was a significant amount of water underneath the tiles at the opposite end of the bathroom, running from the shower base, and mould was present in the wall cavities to the cladding and timbers.
19. He produced photographs depicting the cut puddle flange, the incorrect installation method of the shower grate and the material removed from the old trap. There were also photographs showing staining of the timbers on the walls.
20. The Respondent denied that he or his workmen had cut the puddle flange or done any plumbing work.

Conclusion

21. It appeared likely to me that the defective work was done by workmen engaged by the Respondent. From the Respondent's description of the work done, it seemed unlikely that the waste was not lowered and it was also likely that, in the course of reconstructing the shower base, the puddle flange was cut. It also seemed likely to me that the waste grate was set in position as shown in the photograph by the Respondent's workmen.

22. I was satisfied that the work was not done in a proper and workmanlike manner, that the Respondent had failed to rectify it after being requested to do so and consequently, that the Applicant was entitled to recover from the Respondent the cost of having the work redone by Mr Kinnane, which was \$13,949.10.

R Walker
Senior Member

APPEARANCES:

For Applicant	Mr T Robertson, in person
For Respondent	Mr T Stubbs, in person