

**SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation: *Drover v. Fleet (Safeway Siding & Roofing)*, 2020 NSSM 4**

**Date:** 2020-01-06

**Docket:** SCCH 493736

**Registry:** Halifax

Between:

Matthew Drover

*Claimant*

- and -

David Fleet, carrying on business as Safeway Siding & Roofing

*Defendant*

**DECISION**

**Adjudicator:** Eric K. Slone

**Heard:** in Halifax, Nova Scotia on January 2, 2020

**Appearances:** For the Claimant, self-represented

For the Defendant, self-represented

**BY THE COURT:**

[1] The Claimant and his spouse Lynn Drover needed a new roof on their Clayton Park West home in 2018. They found the Defendant through an online Yellow Pages site and asked him for a quote. The quote they received on July 20, 2018 was \$15,500.00<sup>1</sup> for a complete roof replacement, stripping down to

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<sup>1</sup> There was no indication on the quote that the Defendant was charging HST, which must be taken to have been included.

the sheathing. The work was done in September 2018.

[2] Although the Defendant presented himself to the Claimant as Safeway Siding & Roofing, or (as shown on his quote) “Safe Way Roofing,” in fact the records at Joint Stocks reveal that he at one time (in 1995) registered the name “Safeway Siding & Roofing Specialists” as a sole proprietorship, but this registration was revoked for non-payment in 2008. It also reveals a spotty payment history before that.

[3] In any event, the Defendant David Fleet is responsible personally in all respects for his workmanship. The quote included a ten-year warranty on workmanship as well as a 50-year warranty on the shingles.

[4] The Claim is for damages in the amount of \$8,917.11, as a result of leaks that the Claimant says they experienced within a month of the Defendant doing the work. I will provide more details below.

### **Credibility**

[5] I want to state at the outset my impressions of the credibility of the witnesses. The Claimant and his spouse Lynn Drover testified. The Defendant testified on his own behalf. I found the evidence of the Drovers to be straightforward and fair. They had a good recollection of the events and did not seem to be embellishing. They were entirely sincere and credible.

[6] The Defendant, however, was another story altogether. His evidence was disorganized, at times rambling and mostly in the nature of ranting. Even allowing for the fact that he does not appear to be as well-educated as are Mr. and Ms. Drover, I found him to be wholly unworthy of belief. In any respects where his evidence conflicts with that of the Drovers, I accept their evidence and entirely reject Mr. Fleet’s evidence.

[7] As mentioned, the work was done in September 2018. The Claimant testified that they had never previously experienced leaks but were replacing their roof because it was showing signs of deterioration and might leak in the future.

[8] On November 12, 2018, Halifax experienced a significant rainstorm. The Claimant and his spouse immediately noticed water leaking through the ceiling into their living room. Their first instinct was to call their insurance company,

TD Insurance, who sent a crew out to inspect. They could not find any evidence of damage that might explain the leaking and concluded that the problem was most likely due to poor workmanship.

[9] The Drovers then called the Defendant, who (to his credit) came out promptly to have a look. He speculated that the problem might be at the junction where the roof meets a dormer and did some kind of repair involving replacement of a wooden board.

[10] The next major rainstorm in December resulted in further significant leaking. Once again, the Defendant was called. He came out again to inspect.

[11] At this point, the two versions of what he did and said differ significantly. According to the Claimant and his spouse, whose evidence I accept, the Defendant lifted an area of the shingles and found a deteriorated board which he replaced.

He supposedly told the Drovers, by way of explanation, that he had been working with an inexperienced apprentice who must have missed the fact that the wood was deteriorated. The Drovers were very definite that this was the explanation given, and that no other explanation was offered.

[12] At trial the Defendant gave a completely different explanation of what he said and did. He denied having an apprentice on the job. He denied finding any deteriorated boards. And he says that the repair he did consisted of an adjustment to an area of the gutters which were somehow angled incorrectly, thus allowing water to back up and get into the structure. He did not accept that the misplaced gutter was related to his work, but says he fixed it anyway.

[13] As I have indicated, I prefer the evidence of the Drovers. I do not believe that they made up the story that they gave. This was the explanation that the Defendant gave them at the time, whether true or not.

[14] In any event, whatever the Defendant did appears to have done the trick. In the year-plus since this repair, the roof has not leaked.

[15] On all of the evidence, I find that the Defendant was guilty of faulty workmanship and the claim is within the warranty that he gave. The faulty workmanship caused water to leak into the home, causing damage. I also take notice of the fact that water in the ceiling and walls of a home can be

quite destructive and needs to be dealt with properly.

[16] In the spring of 2019, the Drovers undertook to deal with the damage to the interior of their home. They called the restoration specialist company Paul Davis, which did a comprehensive assessment and recommended remedial steps to address the mould contamination that they found, as well as replacement of multiple areas of drywall. The work was eventually done at a cost of \$6,698.76 (including HST).

[17] The Defendant was dismissive of this remedial work, suggesting that there was no way that mould should have developed in this short amount of time, and suggesting that all that was needed was a few sheets of drywall that he could have replaced at a fraction of the cost.

[18] The Defendant was critical of the Drovers for not allowing him the opportunity to repair the interior of the home. He was also critical of the Drovers for not inviting him into the home to see the damage - suggesting that they were somehow being deceitful - though there is no evidence that he ever asked to see it.

[19] There are several problems with the Defendant's view. First of all, he never expressed any interest in assisting the Drovers when he learned that they were considering having this work done, although he did apparently offer to make some installment payments (which he now denies having done). Also, he has no demonstrated credentials in the area of mould growth and remediation. More significantly, it is understandable that the Drovers would want to have the work done professionally and would have no faith in the quick and dirty type of repairs that the Defendant was suggesting.

[20] The repair effort involved three other items.

[21] The area where the Defendant had replaced a board at the dormer was not properly finished. The Claimant has a quote of \$1,092.50 from Vaci Painting to install and paint new corner trim along the dormer.

[22] While the Defendant was dismissive of this proposal as well, I am satisfied that the Drovers are acting responsibly and will allow this expense.

[23] Another item concerns a built-in window seat that was damaged by repeated exposure to water. This window seat was originally built in 2016 by

Mikes Country Kitchens, which has quoted \$954.50 to replace the swollen and damaged MDF top. Again, I find that this was a direct result of the deficiencies in the roof, and I allow it as a recoverable expense.

[24] Lastly there is a quote for \$171.35 for carpet cleaning from RugCleaningGuys to clean an upholstered couch that was damaged by water. I also allow this amount.

[25] The Claimant is accordingly entitled to the following damages:

Invoice from Paul Davis	\$6,698.76
Quote from Vaci Painting	\$1,092.50
Quote from Mikes Country Kitchens	\$954.50
Quote for carpet cleaning from RugCleaningGuys	\$171.35
Total damages for breach of warranty	\$8,917.11

[26] The Claimant is also entitled to his costs of \$199.35.

**Eric K. Slone, Adjudicator**