



# Civil Resolution Tribunal

Date of Original Decision: May 19, 2021

Date of Amended Decision: May 20, 2021

File: SC-2020-008459

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilson v. Greater Vancouver Home Inspections Ltd.*, 2021 BCCRT 539

B E T W E E N :

KIRSTEN WILSON and KAREN LAU

**APPLICANTS**

A N D :

GREATER VANCOUVER HOME INSPECTIONS LTD., KE WANG and  
DA LI

**RESPONDENTS**

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**AMENDED REASONS FOR DECISION<sup>i</sup>**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This dispute is about a furnace allegedly damaged during a home inspection.
2. The applicants, Kirsten Wilson and Karen Lau, sold their home to the respondent individuals, Ke Wang and Da Li. Before the purchase, Mr. Wang and Ms. Li hired the respondent Greater Vancouver Home Inspections Ltd. (GVHI) to inspect the home.
3. The applicants allege that GVHI's inspector damaged the home's furnace. Before the sale completed, the applicants had the furnace repaired. The applicants claim the \$1,409.94 repair cost. Ms. Wilson represents the applicants.
4. Mr. Wang and Ms. Li say they are not responsible for the furnace damage. They say they reasonably relied on GVHI's expertise, and say it is unproven that the inspector damaged the furnace. Mr. Wang and Ms. Li represent themselves.
5. GVHI did not provide a dispute response and is in default, as discussed further below.

## **JURISDICTION AND PROCEDURE**

6. 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). Section 2 of the CRTA 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, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
7. 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.

8. 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 a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Where permitted by section 118 of the CRTA, 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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Did GVHI negligently damage the applicants' furnace?
  - b. If so, are Mr. Wang and Ms. Li also liable for that damage because they hired GVHI?

## **EVIDENCE AND ANALYSIS**

11. In a civil dispute like this one, the applicants must prove their claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. It is undisputed that Mr. Wang and Ms. Li hired GVHI to inspect the applicants' home after making an offer to purchase it.
13. The inspection took place on October 27, 2020. Neither Mr. Wang, Ms. Li nor the applicants were present when the inspector examined the furnace. It is undisputed that only the applicant's realtor, Alex Li, was present.
14. Alex Li provided a statement confirming that they saw the inspector insert a metal inspection mirror into the furnace near the motherboard.

15. GVHI's October 28, 2020 inspection report said the heating system failed to respond to normal operating controls. It also noted the furnace had not been serviced recently, though it did not say how it reached this conclusion.
16. On October 27 or 28, 2020, the applicants hired Lincoln Heating & Air Conditioning (Lincoln) to repair the furnace at a cost of \$1,409.94. The invoice included the cost of a replacement control board, igniter, and labour.

***Did GVHI negligently damage the applicants' furnace?***

17. I find the applicants allege that GVHI was negligent. To prove negligence, the applicants must prove that GVHI owed them a duty of care, that GVHI failed to meet a reasonable standard of care, and that they sustained damage actually caused by GVHI's failure: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
18. As noted above, GVHI did not provide a Dispute Response as required and is in default. Where a respondent is in default, liability is generally assumed. This means that it is reasonable to assume that the applicants' position on the claim against GVHI is correct.
19. I find that although GVHI did not contract with the applicants, it still owed them a duty of care because it entered their home. I find the standard of care for home inspectors includes not damaging property when inspecting a home. Because Mr. Wang and Ms. Li say it is unproven that GVHI's inspector damaged the furnace, I consider the evidence about causation here.
20. The applicants say the furnace was operating and in use the morning of GVHI's inspection. They also provided an invoice showing that the furnace was serviced in 2019. I accept the applicants' undisputed evidence that the furnace was working before the inspection.
21. The applicants provided a written statement from Daniel Lacosse, Lincoln's owner. Mr. Lacosse repaired the applicants' furnace and provided the notes on the invoice, which state that the control board was shorted out by an inspection mirror.

22. Mr. Lacosse also gave a written statement. He said the “only way the board can short out to ground” is if the inspector touched the hot surface igniter. He said this destroyed the board’s electronics. Mr. Lacosse also said once he replaced the board, the furnace worked immediately.
23. Given Mr. Lacosse’s observations and the applicants’ evidence that the furnace was working that morning, I find the most likely explanation for the furnace damage is that GVHI’s inspector shorted out the control board. I find GVHI was negligent.
24. I find the applicants had to repair the furnace, given the time of year and given they were selling their home. I find GVHI must reimburse the applicants the \$1,409.94 furnace repair cost.

***Are Mr. Wang and Ms. Li also liable?***

25. The applicants say “the bulk of the responsibility lies with” GVHI, but they feel that Mr. Wang and Ms. Li share some of the responsibility because they hired GVHI.
26. Mr. Wang and Ms. Li say they hired GVHI based on word of mouth reviews, after checking its inspection licence and insurance.
27. Vicarious liability is the legal concept that holds third parties, such as Mr. Wang and Ms. Li, responsible for wrongs committed by others, such as GVHI. Vicarious liability is typically applied in cases involving employer-employee or agent-principal relationships. A person who employs an independent contractor is not ordinarily liable for torts (legal wrongs) committed by the contractor carrying out the work: see *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59.
28. There is no evidence that Mr. Wang and Ms. Li had an employment or agent-principal relationship with GVHI. Rather, the evidence is clear that GVHI was an independent contractor Mr. Wang and Ms. Li hired for a home inspection. So, I find that Mr. Wang and Ms. Li are not vicariously liable for GVHI’s negligence. The applicants did not assert or provide evidence that Mr. Wang and Ms. Li were negligent themselves in

selecting GVHI. As there is no other apparent basis for Mr. Wang and Ms. Li's liability, I dismiss the claim against them.

29. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the \$1,409.94 from October 28, 2020, the date they paid the invoice, to the date of this decision. This equals \$3.55.
30. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I find the applicants are entitled to reimbursement of \$125 in CRT fees. They did not claim any dispute-related expenses.

## **ORDERS**

31. Within 14 days of the date of this order, I order GVHI to pay the applicants a total of \$1,538.49, broken down as follows:
  - a. \$1,409.94 in damages,
  - b. \$3.55 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125.00 in CRT fees.
32. The applicants are entitled to post-judgment interest, as applicable.
33. I dismiss the claims against Mr. Wang and Ms. Li.
34. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020

ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a notice of objection to a small claims dispute.

35. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

36. As the defaulting party, GVHI has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.

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Micah Carmody, Tribunal Member

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<sup>i</sup> Amendments made to the style of cause and paragraph 2 to correct the spelling of the applicant Kirsten Wilson's name, under section 64 of the CRTA.