



Civil Resolution Tribunal

Date Issued: January 27, 2022

Date of Amended Decision: January 27, 2022

File: SC-2020-008459

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilson v. Greater Vancouver Home Inspections Ltd.*, 2022 BCCRT 103

B E T W E E N :

KIRSTEN WILSON and KAREN LAU

APPLICANTS

A N D :

GREATER VANCOUVER HOME INSPECTIONS LTD.

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a furnace allegedly damaged during a home inspection. The applicants, Kirsten Wilson and Karen Lau, sold their home to KW and DL. Before the sale completed, KW and DL hired the respondent Greater Vancouver Home Inspections Ltd. (GVHI) to inspect the home. As discussed below, KW and DL are no longer parties to this dispute.
2. The applicants say GVHI damaged their furnace when inspecting it. The applicants claim \$1,409.94 for the furnace's repair cost, which the applicants paid before the home sale completed.
3. GVHI says it was not negligent in how it inspected the furnace and says that even if it was, it did not cause the claimed furnace damage.
4. Ms.¹ Wilson represents the applicants. GVHI is represented by Ce Zheng, also known as Brian Zheng, who is the person who did the GVHI inspection.

JURISDICTION AND PROCEDURE

5. 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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
6. 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy

¹ Amendment Notes: Amended under CRTA section 64, to correct an inadvertent error in a party's title.

resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

7. Under CRTA section 42, 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.
8. Where permitted by CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
9. The applicants originally named KW and DL as co-respondents with GVHI, and in an earlier decision a CRT tribunal member dismissed the claims against KW and DL and found GVHI liable as it was in default. GVHI later successfully cancelled that decision and the dispute was returned to the CRT's facilitation process. Before this dispute was assigned to me for a final decision, the applicants withdrew their claims against KW and DL. So, this dispute is only as against GVHI and I have amended the style of cause above.
10. I note one of the applicants' listed evidence items was missing from the file (a brief signed statement from Ms. Wilson) and so I asked CRT staff to obtain it and give GVHI a copy and an opportunity to comment on it. GVHI did not respond.

ISSUE

11. The issue is whether GVHI damaged the applicants' furnace during its home inspection, and if so, are the applicants entitled to the claimed \$1,409.94 from GVHI?

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, the applicants have the burden of proving their claims, on a balance of probabilities (meaning “more likely than not”). I have only referenced below what I find is necessary to give context to my decision.
13. KW and DL hired GVHI after making their offer to purchase the applicants’ home. GVHI’s Brian Zheng inspected the applicants’ furnace on October 27, 2020, before the sale completed. The furnace did not work after Mr. Zheng’s inspection. None of this is disputed.
14. On October 27 or 28, 2020, the applicants hired Lincoln Heating & Air Conditioning (Lincoln) to repair the furnace for \$1,409.94, the amount claimed in this dispute. The October 28, 2020 invoice included the cost of a replacement control board, igniter, and labour.
15. It is undisputed the only person present during Mr. Zheng’s inspection was the applicants’ realtor Alex Li. The applicants submitted Mr. Li’s written statement that he saw Mr. Zheng insert a metal inspection mirror into the furnace near its motherboard. Mr. Li added that Mr. Zheng said he used the mirror to look for the furnace label, which Mr. Li said in fact was upside down on the outside of the furnace. The furnace was undisputedly installed upside down.
16. Mr. Zheng undisputedly removed the furnace’s cover to do the inspection. While Mr. Zheng admits inserting the mirror, he says it went nowhere near the furnace’s motherboard or its hot surface igniter.
17. The applicants say the furnace was working on the morning of the inspection and in Ms. Wilson’s statement she says she recalls it was a cold morning and she put her feet over the warm bathroom register. I accept this undisputed evidence. In any event, I find it likely at that time of the year the applicants would have been cold and would have realized if the furnace was not working before the inspection. In his statement Mr. Li said the furnace was also working when he showed the property on October 25, 2020, 2 days before GVHI’s inspection.

18. On balance, I find it likely the applicants' furnace was working just before Mr. Zheng's inspection. As noted, it admittedly did not work afterwards.
19. I turn to the applicable law, which is negligence. To prove negligence against GVHI, the applicants must prove GVHI owed them a duty of care, that it breached the standard of care, and that the breach caused the claimed damage (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27). I find GVHI owed the applicants a duty of care as they were the furnace's owners, even though the respondent purchasers hired GVHI. As for the applicable standard of care, I find GVHI had a duty not to damage the furnace during its inspection. Here, I find I do not need to specifically determine whether inspecting the furnace with a mirror at all was below the standard of care.
20. The central issue here is causation. At the heart of this dispute is whether Mr. Zheng damaged the furnace when he inserted the metal mirror, or, whether the furnace malfunctioned due to age or other issues unrelated to the inspection.
21. I find furnace inspection and the nature and cause of furnace malfunction to be technical and outside ordinary knowledge. So, I find expert evidence is required (see *Bergen v. Guliker*, 2015 BCCA 283).
22. In addition to Lincoln's invoice mentioned above, the applicants provided a written statement from Daniel Lacosse, Lincoln's owner. Mr. Lacosse said he has been in the heating trade since 1990. I accept his opinion as expert evidence on the subject of furnace function under the CRT's rules, noting his qualifications are not disputed. Mr. Lacosse repaired the applicants' furnace and provided the notes on Lincoln's invoice, which state that the control board was shorted out by an inspection mirror.
23. In his opinion, Mr. Lacosse wrote 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.

24. The applicants submitted evidence showing their 2003 furnace had been inspected and serviced on November 5, 2019, just under a year before GVHI's inspection on October 27, 2020. So, to the extent GVHI suggests it, I do not agree the furnace was overdue for service, bearing in mind GVHI's evidence that a furnace should be serviced annually. I also do not agree with GVHI that the 2019 service record indicated the hot surface ignitor required replacement or further repair, since that record only noted the ignitor without more. In other words, it is not clear that the ignitor was simply not inspected on that date.
25. GVHI says that the motherboard was installed in the furnace's upper chamber and that Mr. Zheng used the mirror in the lower chamber, so there was "no chance" for him to have had any direct contact with any of the metal connections that he says were insulated in the lower chamber. GVHI also says the igniter was "already misaligned" and likely "conductive," and that it created a close circuit once Mr. Zheng removed the furnace cover. If that had happened, I accept GVHI was not negligent simply because Mr. Zheng was the one who removed the furnace cover for the inspection.
26. The difficulty for GVHI is that there is no expert opinion in evidence before me to support its hypotheses that the furnace's "electrolytic capacitors" aged out or the "misaligned igniter" caused a short once the cover was removed. Although Mr. Zheng is qualified as a home inspector, he has not shown how he is qualified as an expert in furnace function, and even if he were qualified, I would not accept his opinion as expert evidence under the CRT's rules because he is not neutral given his role with GVHI.
27. I acknowledge that GVHI relies on an opinion from Rizwan Syed, who says he is President of Final Check Home Inspections. I accept Rizwan Syed is an expert in home inspections, based on his evidence that he has been certified as such since 2006. However, I do not accept him as an expert in furnace function or damage assessment. This is because there is no evidence that he is so qualified.

28. In any event, I find Rizwan Syed's opinion unhelpful to GVHI. GVHI asked them "how likely would an inspection mirror get in touch with the igniter when the inspector collects the product information" 600 mm away. Yet, Rizwan Syed did not answer that question at all, and simply responded that Mr. Zheng is fully trained to conduct a non-invasive inspection and has completed many of them.
29. Finally, GVHI also relies on various website printouts that troubleshoot furnace issues. In particular, GVHI says a furnace ignitor usually has a lifespan of 4-7 years and that delayed ignition can be commonly caused by things like dirty burners or pilot light. I place no weight on this evidence as it is not specific to the applicants' furnace. I also have no evidence before me that the furnace had a dirty burner or pilot light.
30. On balance, I find it likely Mr. Zheng damaged the furnace during his inspection. I say this because I find the furnace was working just before the inspection and he admits it was not working immediately afterwards. I also come to this conclusion given the weight I give to Lincoln's opinion and the fact I found Rizwan Syed's opinion unhelpful.
31. Give the above, I find GVHI must reimburse the applicants the \$1,409.94.
32. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgment COIA interest on the \$1,409.94. Calculated from October 28, 2020 to the date of this decision, this equals \$7.92.
33. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As the applicants were successful, I allow their claim for reimbursement of \$225 in paid CRT fees. The applicants claim \$21 for "court filing fees" but provided no evidence in support of this. In any event, to the extent this related to any process in the BC Provincial Court following an earlier CRT decision that GVHI successfully canceled, I find the court is the appropriate forum to address those court fees. I dismiss the applicants' claim for dispute-related expenses.

ORDERS

34. Within 30 days of this decision, I order GVHI to pay the applicants a total of \$1,642.86, broken down as follows:
- a. \$1,409.94 in damages,
 - b. \$7.92 in pre-judgment interest under the COIA, and
 - c. \$225 in CRT fees.
35. The applicants are entitled to post-judgment interest, as applicable.
36. 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.
37. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

Shelley Lopez, Vice Chair