



# Civil Resolution Tribunal

Date Issued: December 18, 2024

File: SC-2023-005302

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Choi v. Acworth*, 2024 BCCRT 1284

B E T W E E N :

TSZ YAN CHOI and CHEN ZHOU

**APPLICANTS**

A N D :

GLEND A BURROWS, Administrator of the Estate of GRETA JEAN  
ACWORTH, deceased

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The applicants, Tsz Yan Choi and Chen Zhou, purchased a home from the estate of Greta Jean Acworth. The respondent in this dispute is Glenda Burrows, administrator of the estate.

2. The applicants say the respondent breached the contract of purchase and sale (CPS) by not ensuring that all included items were in proper working order, not ensuring there were no water leaks, and not having the home professionally cleaned. The applicants claim \$5,000, without providing a breakdown. Ms. Choi represents the applicants.
3. The respondent generally denies that any of these issues were present on the possession date. She also says the property was professionally cleaned. The respondent is represented by DC, the real estate agent who helped sell the property.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. Section 2 of the CRTA says 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 hearing's format, including by telephone or videoconference. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 and fairness.
6. 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 court.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an

agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

8. Some of the respondent's evidence was not uploaded correctly initially, and I was unable to view it. CRT staff asked the respondent to re-upload the evidence. The applicants were given an opportunity to comment on the re-uploaded evidence, so I find there is no unfairness in admitting it. I consider it where relevant below.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did the respondent breach the CPS by:
    - i. Failing to ensure the central vacuum system and water valve were in good working order,
    - ii. Failing to ensure there were no water leaks or damage, or
    - iii. Not having the home professionally cleaned.
  - b. If the respondent breached the CPS, what are the applicants' damages?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicants must prove their 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.
11. On April 5, 2023, the parties signed the CPS with the applicants purchasing a home from the estate of Greta Jean Acworth. The completion date was May 11, 2023, and the possession date was May 12, 2023.
12. The CPS's terms and conditions relevant to this dispute are as follows (all reproduced as written):

- The Seller warrants that all applicable included items (heating, electric, plumbing, mechanical, appliances) are in proper working order and there is no any type of water damage/leakage at time of possession. In the event any of these items are not in working order and/or any water damage is identified on the possession day, the seller agrees to call a licensed technician to remediate deficiencies at the sellers expense and in a timely manner.
  - The Seller agrees to remove all personal possessions that are not included in the sale of this property and have the suite, all appliances, professionally cleaned and free of debris upon the Buyer's possession.
13. The listing did not indicate that the home had a separate suite, so I infer that the CPS's reference to "suite" above meant the home. The "included items" explicitly included the built-in vacuum system.
  14. The applicants hired Precise Building Inspections (Precise) to inspect the home. Precise's April 10, 2023 report is in evidence.
  15. The applicants hired Professional Home Inspection Consulting (PHIC) to complete an inspection when they took possession on May 12, 2023. That report is also in evidence. The home was unoccupied between inspections although the respondent says she and a neighbour regularly checked on it.
  16. The applicants say PHIC found several "deficiencies" that Precise did not identify. They say the deficiencies were as follows:
    - a. Water damage on the living room or dining room floor.
    - b. Moisture stains on foundation wall, garage, and attic in bedroom #2.
    - c. A broken water valve in the laundry room.
    - d. The central vacuum system did not work.

e. Indications of mice activity.

17. The CPS also included a standard clause that the property and all included items will be in substantially the same condition at the possession date as when the applicants viewed the property on April 1, 2023. If something did not work on April 1, 2023, then arguably under this clause the respondent did not need to make it work by the possession date. However, it is a principle of contract interpretation that a more specific provision overrides the more general provision. Applying that principle, I find that included items had to be in working order and there had to be no active leaks or new water damage. However, I find the respondent was not required to address evidence of damage that existed on April 1, 2023.
18. Applicants in CRT disputes are told that they must provide evidence to prove each aspect of their claim, including damages. This is because the decision-maker must be able to quantify the applicants' claimed loss to know what the respondent must pay them to make them whole. Here, the applicants claimed \$5,000 without providing a breakdown or any details about their alleged damages. Because I find the applicants did not prove any damages, my reasons will be brief.
19. The PHIC report found "water damaged floor" in the family room and "high moisture". A single photo shows a darker spot on the hardwood floor. However, the PHIC report does not include any moisture readings. It does not say that there was an active or recent leak, or where in the family room high moisture was found. The applicants did not have a contractor examine the floor to determine the extent of water damage or its source. So, while I accept that the dark spot represented "water damage/leakage" in breach of the contract, there is no evidence of its extent, or what damages order would make the applicants whole. I return to this below.
20. I accept that the PHIC report found moisture stains or efflorescence on the foundation wall, garage wall, and in the attic that the Precise report did not find. However, nothing in the PHIC report or photos indicates that these stains were new. I find it more likely that the PHIC inspector was simply more thorough in noting stains. I also find these stains do not indicate "water damage/leakage" because

there is insufficient evidence about what caused the stains or efflorescence, when they arose, or whether they indicated an ongoing problem.

21. The PHIC report does not say anything about a broken water valve, so I find no proven contract breach there. The PHIC report noted a small amount of rodent droppings on the garage floor, but there was nothing in the contract about the presence or absence of rodents in the garage, so I find no breach.
22. The applicants say the respondents failed to professionally clean the property. They acknowledge that DC hired professional cleaners for a 4-hour clean. However, they say the cleaners did not clean the garage and left the carpet dirty. The applicants provided no evidence, such as photos of the carpet, or a receipt for carpet cleaning. In the circumstances, I find the respondent remedied any breach when DC hired professional cleaners, and the applicants have not proven damages anyway.
23. I accept the unchallenged evidence that the central vacuum system did not work on possession day, but it is difficult to assess damages given the applicants do not provide any repair invoices or estimates.
24. In the circumstances, I find the applicants are only entitled to nominal damages. Nominal damages are awarded in circumstances like these where the evidence does not establish compensable damages, to recognize the violation of a legal right (see *Davidson v. Tahtsa Timber Ltd.*, 2010 BCCA 528). For the dark spot on the floor in the family room and the broken central vacuum system, I award the applicants \$100.
25. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the nominal damages from May 12, 2023, when I find the respondents breached the contract, to the date of this decision. This equals \$8.02.
26. Under CRTA section 49 and the CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The respondent was largely successful but did not pay CRT fees or claim expenses. I dismiss the applicants' claim for CRT fees and registered mail expenses.

## ORDERS

27. Within 21 days of the date of this decision, I order the respondent to pay the applicants a total of \$108.02, broken down \$100 in damages and \$8.02 in pre-judgment interest under the *Court Order Interest Act*.
28. The applicants are entitled to post-judgment interest, as applicable.
29. This is a validated decision and order. 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. Once filed, a CRT order has the same force and effect as a court order.

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Micah Carmody, Tribunal Member