



Civil Resolution Tribunal

Date Issued: February 28, 2018

File: SC-2017-006725

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Van Den Broek v. Taylor*, 2018 BCCRT 56

B E T W E E N :

Brenda Van Den Broek

APPLICANT

A N D :

Laurena Taylor

RESPONDENT

A N D :

Brenda Van Den Broek

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about the ownership of and payment for a dog. In September 2017, the applicant Ms. Van Den Broek had a four-month old puppy. Ms. Taylor took possession of the puppy, and says the applicant gave her the dog for free. Ms. Van Den Broek says she did not give the dog away, but she agreed to share the dog with Ms. Taylor and Ms. Taylor refused to grant her access.
2. Ms. Van Den Broek seeks an order that Ms. Taylor return the dog. She also seeks an order that Ms. Taylor pay \$1,800 for the dog and related supplies and equipment.
3. Ms. Taylor filed a counterclaim seeking \$2,000 in damages for pain, suffering, and harassment by Ms. Van Den Broek. She also seeks \$3,000 for boarding fees and veterinary bills in the event that the Civil Resolution Tribunal (tribunal) orders her to return the dog to Ms. Van Den Broek.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.

7. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Is Ms. Taylor required to return the dog to Ms. Van Den Broek, or pay Ms. Van Den Broek \$1,800?
 - b. Is Ms. Van Den Broek required to pay \$3,000 for boarding and veterinary expenses?
 - c. Is Ms. Van Den Broek required to pay \$2,000 for pain, suffering, and harassment?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. For the counterclaim, the respondent bears the burden of proof on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Ownership of the Dog

11. As noted by Ms. Van Den Broek, the law treats animals as possessions. Thus, the exchange of the dog is treated the same as the exchange of any object between individuals.

12. Ms. Van Den Broek and respondent were coworkers. In late August 2017, they exchanged text messages about personal matters and discussed getting together. On September 5, 2017, Ms. Van Den Broek texted Ms. Taylor, stating that she had a stressful week caring for her mom's puppy. She said she was shocked and hurt because her son did not want to help with the puppy (named Jasper).
13. On September 6, 2017, Ms. Van Den Broek texted Ms. Taylor and asked if she was "still interested in a puppy?". Ms. Van Den Broek wrote that it was heartbreaking to give him away, but having it was too hard for her, especially working all the time. Ms. Van Den Broek wrote, "let me know as I'm looking for a good home".
14. Ms. Taylor wrote back, "We would love a puppy." Ms. Taylor then wrote as follows:

I don't know if I should have told my kids...they are soooooo excited to babysit Jasper tomorrow. I told them if it works out with we will keep him, if you are ok with it. You can visit him anytime if he comes to live with us.

[Quote reproduced as written]
15. Ms. Van Den Broek replied that it was great news, and she was happy the dog was going to a good family close by. Ms. Taylor picked up the dog on September 7, 2017 and kept him.
16. Based on these text messages exchanged at the time of the transaction, I find that Ms. Van Den Broek agreed to give the dog to Ms. Taylor for free. I place significant weight on Ms. Van Den Broek's September 6, 2017 text message, which specifically used the phrase "give him away".
17. Ms. Van Den Broek did not mention payment or a monetary value for the dog until a September 21, 2017 text, in which she said Ms. Taylor had broken her agreement to share the dog and let Ms. Van Den Broek see him. She said Ms.

Taylor had ten days to decide whether to return the dog or pay \$2,000 for the cost of the dog and related expenses.

18. Because Ms. Van Den Broek did not mention payment until two weeks after Ms. Taylor took possession of the dog, and because Ms. Van Den Broek's September 7, 2017 text said she was giving the dog away, I find that Ms. Taylor was not obliged to pay for the dog or return the dog. In subsequent correspondence Ms. Van Den Broek said the parties agreed to share the dog, but I find that the texts show that was not their agreement at the time of the transaction.
19. In particular, I note that Ms. Taylor's September 6, 2017 email said Ms. Van Den Broek could visit the dog anytime. However, I find that statement was a gratuitous promise, and therefore unenforceable. The concept of a gratuitous promise was explained in *Shamrock Fencing (1992) Ltd. v. Michael Walker, 2016 BCPC 244 (CanLII)*, which says that a promise is not, as a general rule, binding as a contract unless it is either made under seal or supported by some "consideration". This means that "something of value in the eyes of the law" must be given for a promise to make it enforceable, and an informal gratuitous promise does not amount to a contract.
20. Because Ms. Van Den Broek already wrote that she was giving the dog away before Ms. Taylor agreed to let her visit, and because there was no mention of the dog's monetary value until September 21, 2017, I find that Ms. Taylor's promise to let Ms. Van Den Broek visit the dog is unenforceable, and was not part of their agreement that she would take the dog for free.
21. For all of these reasons, Ms. Taylor is not required to return the dog or pay \$1,800. Because I have not ordered Ms. Taylor to return the dog, I do not order Ms. Van Den Broek to pay for boarding or veterinary expenses. Given the above, I dismiss Ms. Van Den Broek's claims.

Pain, Suffering, and Harassment

22. The evidence shows that there was ongoing conflict regarding the dog after September 21, 2017. Ms. Taylor in her counterclaim seeks an order that Ms. Van Den Broek pay \$2,000 for pain, suffering, and harassment due to Ms. Van Den Broek's repeated calls and texts, and for having the police visit her home on numerous occasions.
23. While I accept that the conflict was stressful for Ms. Taylor, I find there is no basis to award monetary damages for pain and suffering. Specifically, there is no evidence before me indicating that Ms. Taylor sustained physical or psychological harm, or that her stress related to Ms. Van Den Broek's actions amounted to pain and suffering. Given my conclusion above about Ms. Van Den Broek's claims, I do not need to address Ms. Taylor's alternative claim for compensation for veterinary bills.

Summary and Tribunal Fees

24. In summary, Ms. Taylor is not required to return the dog or pay Ms. Van Den Broek \$1,800. Ms. Van Den Broek is not required to pay Ms. Taylor \$2,000 for pain and suffering, or \$3,000 for boarding and veterinary expenses.
25. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As Ms. Van Den Broek was not successful in her dispute, I do not order reimbursement of her tribunal fees. Because Ms. Taylor was not successful in her counterclaim, I also do not order reimbursement of her tribunal fees.

ORDERS

26. I dismiss Ms. Van Den Broek's claim. I also dismiss Ms. Taylor's counterclaim.

Kate Campbell, Tribunal Member