



Civil Resolution Tribunal

Date Issued: May 11, 2018

File: SC-2017-003072

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rasmussen v. Peebles et al*, 2018 BCCRT 179

B E T W E E N :

Dale Rasmussen

APPLICANT

A N D :

Gloria Peebles and Kirk Dobson

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the death of a Pomeranian dog named Penny, owned by the applicant Dale Rasmussen. The respondents, Gloria Peebles (also known as Gloria Scharf) and her boarder Kirk Dobson, live next door. In the course of Mr.

Dobson's repair of a fence that divided the parties' properties, Mr. Dobson's Pit Bull dog named River attacked Penny, which led to her death. The parties are self-represented, with Ms. Peebles representing both herself and Mr. Dobson.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (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.
3. 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. An oral hearing was not requested.
4. 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.
5. Under tribunal rule 126, 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

6. The issue in this dispute is whether the respondents are responsible for the death of the applicant's dog Penny, and if so, what are the appropriate remedies.

EVIDENCE AND ANALYSIS

7. I have only commented upon the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
8. It is undisputed that River is Mr. Dobson's dog, not Ms. Peebles'. It is also undisputed that in the early evening of June 26, 2016, while the applicant was away on holiday, Mr. Dobson's dog River entered the applicant's yard through a hole under that fence and attacked Penny.
9. Shortly before River's attack on Penny, Mr. Dobson had cleared blackberry bushes that would have previously prevented River's access through that hole. Mr. Dobson was clearing those bushes as a preliminary step before building a solid cedar fence that the dogs could not see through. The cedar fence has since been built.
10. Mr. Dobson, while doing the bush clearing work, was not aware of the hole and that it allowed access to the applicant's yard. He stepped inside for a break, and that is when River went through the hole into the applicant's yard and attacked Penny.
11. Based on the evidence before me, including photos, I accept the applicant's dogs dug the hole on the applicant's side of the fence. I say this because until Mr. Dobson cleared the blackberry bushes around the time of River's attack, River and Ms. Peebles' dogs would not have had access to create that hole. However, contrary to the respondents' submission, this fact does not make the applicant responsible for what happened to Penny.
12. Further, while the respondents say the cost of the new cedar fence exceeds the amount of the applicant's claims, I note there is no counterclaim before me. Therefore, I make no comment about the respondents' references to fence costs.

13. The applicant submitted a July 7, 2016 “Aggressive Dog Report” (the Report) from an animal control officer with the Fraser Valley Regional District (FVRD). The handwritten statements the respondents each provided to the FVRD that led the Report are also before me and I find they support the conclusions in the Report.
14. The Report sets out the officer’s investigation and her finding that River trespassed onto the applicant’s property, causing injury to Penny that resulted in her death. The officer issued a fine to River’s owner, Mr. Dobson. The Report notes Mr. Dobson’s statement that River would be on a tether when out in the yard, under supervision. The Report sets out the officer’s instruction to Mr. Dobson about the FVRD’s tethering bylaws, and that he will need to follow the regulations “if River is deemed an aggressive dog”. The officer ultimately concluded that River poses a threat to public safety and recommended that River be deemed an aggressive dog.

Liability

15. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent’s failure to meet that standard could cause the applicant’s damages, and the failure did cause the claimed damages.
16. I find that the respondents owed a duty of care to their adjacent neighbour in these circumstances. I find the reasonable standard of care was to not permit their animals to enter the neighbouring yard and attack another animal. I further find it was reasonably foreseeable that River could attack the neighbour’s dog if not prevented from doing so. I also find it is clear that River caused Penny’s injuries and ultimately her death.
17. I find Ms. Peebles is not responsible for the applicant’s claims. I say this because River is Mr. Dobson’s dog and its attack on Penny did not occur on Ms. Peebles’ property. I dismiss the applicant’s claims as against Ms. Peebles.

18. I find Mr. Dobson is responsible for Penny's injuries and death. While I have found that the applicant's dogs caused the hole under the fence, Mr. Dobson was the one who exposed that hole when he was clearing bushes. More importantly, he made a choice to leave his dog River untethered in his yard. Ultimately, what matters is that River trespassed onto the applicant's property and Mr. Dobson is responsible for the harm River caused when it did so.
19. In summary, I find Mr. Dobson is responsible to compensate the applicant for the death of Penny. I have discussed the appropriate remedies below.

Damages

20. The applicant wants the respondents to pay Penny's outstanding vet bills, totaling \$973.29. The vet bills before me do not reflect interest on their face, but based on the vet's statements it is clear the vet was charging interest. The vet statements show that Mr. Dobson has paid \$400 in cash towards the vet bill. I do not have a clear statement showing a \$973.29 balance owing. However, taking all of the evidence before me and the fact that Mr. Dobson has stated he will continue to pay the vet bill when he is able, I am satisfied that \$973.29 is still owing. I order Mr. Dobson to pay the applicant that amount.
21. The applicant submits that the vet was not paid for months, and that he paid the balance as the vet continued to add interest and the bill "was over a year old". I find the applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$973.29 from August 1, 2017, which I find is reasonable and proportionate given the applicant did not provide an exact date of when he paid the vet bill.
22. The applicant also wants the fence to be as secure as the one that was removed to ensure the safety of his pets, and for this he also claims \$500. I have held Mr. Dobson responsible for River's attack on Penny. I also note the respondents have already built the stronger cedar fence. However, if the applicant wants a more secure fence, he is free to build one himself on his side of the property line or to

make a mutually agreeable arrangement with Ms. Peebles for the cost of building a fence. The parties remain responsible for the conduct of their animals. I dismiss the applicant's claimed remedy for a new fence and for \$500.

23. The applicant also wants \$2,600 for the cost of a new dog, which the applicant says he has already purchased although he did not say when. However, the applicant has not provided any documentation to support this claim, such as a receipt for what he paid for his new dog. In his Dispute Response, Mr. Dobson objected that the applicant had not provided any supporting documentation for this claim, and yet the applicant still did not submit any with his submissions. I therefore order a nominal award of \$200 for the applicant's new dog.
24. Finally, the applicant wants an order that River be destroyed on the grounds that it is aggressive and dangerous. I find that the FVRD and/or The British Columbia Society for the Prevention of Cruelty to Animals (SPCA) are the appropriate agencies to assess that question and to pursue any related remedy in BC Supreme Court, as set out in section 25 of the *Prevention of Cruelty to Animals Act*. I leave it to Mr. Rasmussen to pursue this issue with those agencies as he considers appropriate.
25. The applicant was successful. In accordance with section 49 of the Act and the tribunal's rules, I find the respondent must reimburse the applicant \$175 in tribunal fees.

ORDERS

26. The applicant's claims against Gloria Peebles are dismissed.
27. Within 30 days of the date of this decision, I order the respondent Kirk Dobson to pay the applicant Dale Rasmussen a total of \$1,355.32, broken down as follows:
 - a. \$973.29, as payment for the outstanding vet bill,
 - b. \$7.03 in pre-judgment interest, under the COIA,

- c. \$200 as compensation for the purchase of a new dog, and
 - d. \$175 in tribunal fees.
28. The applicant is also entitled to post-judgment interest, as applicable.
29. I dismiss the applicant's remaining claims.
30. Under section 48 of the Act, the tribunal 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 tribunal's final decision.
31. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal 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 tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair