



Civil Resolution Tribunal

Date Issued: June 1, 2018

File: SC-2017-005644

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Prunier v. Allen*, 2018 BCCRT 225

B E T W E E N :

Emilie Prunier

APPLICANT

A N D :

Felicia Allen

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a horse named Jewel that the applicant Emilie Prunier bought from the respondent Felicia Allen. The applicant returned Jewel to the

respondent, but says the respondent has failed to refund her the \$2,600 adoption fee as required by the parties' contract. The applicant says the respondent has also failed to return her horse tack and related equipment, and she seeks its return or \$815. The applicant also wants an order that the respondent stop making "false and unfounded allegations of theft and threats" against the applicant.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. As set out in the Act, the tribunal does not have jurisdiction over defamation. I therefore decline to address the applicant's request for an order that the respondent stop making alleged false allegations of theft and threats, which I find amounts to allegations of defamation. I will not comment further upon those issues.

7. 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

8. The issues in this dispute are whether the applicant is entitled to a) a refund of the \$2,600 adoption fee for the horse Jewel, and b) \$815 for the applicant's horse tack and related equipment she says the respondent retained, or the return of those items.

EVIDENCE AND ANALYSIS

9. I have only commented on 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.
10. The applicant bought Jewel in May 2017 and returned the horse to the respondent in August 2017, which is undisputed. The applicant also says she returned with the horse various horse-related items she had bought, such as saddle, safety vest, helmet, and boots.
11. The parties' May 13, 2017 written 1-page contract for the sale of Jewel for \$2,600, with the applicant as the buyer and the respondent as the seller, included the following term:

In the event that the Buyer decides to cease ownership of the horse, the horse and any tack/belongings included in the adoption fee/purchase price according to this Agreement will be returned to the Seller and the Seller agrees to remit the adoption fee/purchase price according to this Agreement to the Buyer at the same time ...

12. Contrary to the respondent's submission, I find the above term to be clear and unequivocal. It is irrelevant that the contract had a separate term that allowed the applicant to sell Jewel with the respondent's approval. When the applicant

returned Jewel to the respondent, under the contract the respondent was required to refund the applicant the \$2,600 at that same time.

13. Based on the parties' emails, the respondent initially agreed to take back Jewel and provide a refund. The respondent also texted the applicant about when she was going to come and pick up her things, which I find referred to the horse-related tack and equipment claimed by the applicant in this dispute. I do not accept the respondent's submission that a garbage bin and a bucket were the only things she had belonging to the applicant.
14. Over time, the respondent's agreement shifted to providing a refund amount based on what she could get for Jewel on re-sale, and then later she refused to provide a refund based on the unfounded allegation the applicant had not demonstrated a financial need to return Jewel.
15. It appears the respondent's position changed at least in part because she came to believe the applicant was involved in a theft on her property. There is no counterclaim from the respondent, and no evidence before me to support such an allegation. I find the alleged theft is not relevant to this dispute.
16. I do not accept the respondent's submission that the contract required the applicant to prove financial distress in order to return Jewel and obtain the refund. There is nothing in the contract to support such a conclusion. That said, contrary to the respondent's submission, I find the applicant did email the respondent that she needed to return Jewel in August 2017 due to financial concerns.
17. I do not accept the respondent's allegation that a separate "Horse Buyer Oath" document she alleges the applicant signed changes the terms of the contract. The respondent's emphasis appears to be on the applicant's alleged promise in that oath to give the horse a "forever" home. I note the applicant says her signature on the "Horse Oath" document is a forgery, and I agree the printed name "E. Prunier" on that document appears to be different handwriting than what the applicant has elsewhere used. In any event, as referenced above, the parties' contact is one

page, dated at the top and signed by the parties on the bottom. There is no indication on the face of that contract that a Horse Buyer Oath is part of the agreed terms. Moreover, the "Horse Buyer Oath" expressly states that the applicant can return the horse "as per the agreement". That is what the applicant has done.

18. I also do not accept the respondent's submission that a limitation of liability document precludes this proceeding. That document covers all "equine activities" provided by the "host", the respondent. That document is relevant if the applicant were injured or somehow suffered a loss while using the respondent's horses or facility. It is irrelevant to the contract about Jewel's purchase and the terms for her return and refund. The applicant has not waived her right of action against the respondent with respect to the contract about Jewel's purchase and option to return for a refund.
19. I also do not accept the respondent's argument that her responsibility under the contract for Jewel's sale is somehow changed because the applicant allegedly failed to give notice when she stopped boarding the horse. There is no counterclaim before me, and therefore any claim for board rent due to lack of notice is not before me.
20. What about the applicant's horse tack and equipment? It is undisputed that there was no tack included in the purchase price. Rather, the applicant's evidence and submission is that in late May and July 2017 she bought various items for the horse that she left with the respondent while the horse was boarded there. Contrary to the respondent's submission, based on the parties' texts and the overall evidence, I find the respondent did agree to keep the applicant's belongings and she is therefore responsible for them. The evidence is clear that the respondent has failed to return the items or permit the applicant to attend to pick them up. The respondent now submits she does not have the items.
21. In law, if monetary compensation will suffice it is generally ordered instead of specific performance, which here would be an order to return the items. Here, the respondent denies having the applicant's belongings, beyond a bucket and a

garbage bin that the applicant does not claim. I therefore find a monetary order is appropriate.

22. The applicant's receipts total \$565, based on the items the applicant highlighted in yellow. I find the applicant is entitled to an order for this amount.
23. The applicant was successful. Under section 49 of the Act and the tribunal's rules, I find the applicant is entitled to reimbursement of \$175 in tribunal fees.

ORDERS

24. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$3,363.20, comprised of:
 - a. \$2,600 as the refund for the horse Jewel as per the parties' contract,
 - b. \$564.92 for the applicant's belongings the respondent failed to return,
 - c. \$23.28 in pre-judgment interest under the *Court Order Interest Act*, from August 31, 2017, and
 - d. \$175 in tribunal fees.
25. The applicant is entitled to post-judgment interest as applicable.
26. 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.
27. 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