



# Civil Resolution Tribunal

Date Issued: June 13, 2018

File: SC-2018-001565

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bseiso v. Qiu*, 2018 BCCRT 253

**BETWEEN:**

Mira Bseiso

**APPLICANT**

**AND:**

Aimee Qiu

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

### INTRODUCTION

1. The applicant Mira Bseiso says she re-homed her Siamese cat, Tiger, to the respondent Aimee Qiu, because her health did not allow her to keep him. The applicant now claims that Tiger has been mistreated in his new home. The applicant seeks an order (a) returning Tiger to her, and (b) for a veterinary referral for Tiger.

2. The respondent did not file a Dispute Response despite being provided with notice by process server on March 10, 2018. I therefore find that the respondent is in default.
3. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
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. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

7. The issues on this application for default judgement are:
  - (a) whether the tribunal has jurisdiction over the applicant's dispute;

- (b) if it does, whether the applicant's dispute discloses a reasonable claim; and, if so
- (c) what is a suitable remedy?

## **EVIDENCE AND ANALYSIS**

8. While liability is generally assumed on a default application, an applicant's claim must still be within the tribunal's jurisdiction. Where a claim is within the tribunal's jurisdiction, an applicant seeking non-debt relief must provide sufficient evidence to justify the order sought. I have reviewed all of the applicant's evidence.
9. There is no issue about who now owns Tiger. The applicant concedes the respondent owns Tiger, because the applicant, to use her word, re-homed Tiger with the respondent and her family, along with his water fountain and toy laser, in exchange for \$280.00.
10. The applicant alleges that Tiger has been abused in his new home. She says he is depressed and otherwise unwell. All of her requested remedies stem from this allegation that Tiger is in distress.
11. One question is whether a contractual claim, that Tiger would be returned to the applicant if not cared for to a particular standard, is within the tribunal's jurisdiction.
12. In part, the applicant's claim can be viewed as contractual. She appears to be saying that as a term of the agreement to sell Tiger to the respondent, they agreed to treat Tiger well, failing which Tiger would be returned to her. A claim for specific performance for the return of personal property falls within the tribunal's jurisdiction.
13. The tribunal has the jurisdiction to resolve a claim for relief in the nature of recovery of personal property (see the Act, s. 3.1(1)(b)). At law, pets are treated as possessions. Therefore, a dispute about the sale of a pet, where ownership is

contested due to a contractual issue, falls within the tribunal's jurisdiction. (See *Van Den Broek v. Taylor*, 2018 BCCRT 56 at paragraph 11)

14. In reality, pets are living beings unlike inanimate possessions. I note the legal requirement that animals be treated "humanely", as articulated by the court in *Brown v. Larochelle*, [2017] B.C.J. No. 758. The standard of whether a pet is being cared for humanely should be an objective one, not one based on the previous owner's particular preferences.
15. Because liability is assumed on an application for default judgement, I accept that it was a contractual term between the parties that Tiger would be treated well or be returned to the applicant.
16. Turning to the remedy sought by the applicant, that Tiger be returned to her, there is no sufficient evidence of Tiger being mistreated, on an objective standard of reasonableness. This is a non-debt claim in which I must have evidence of damage in order to found such a remedy. While the applicant's affection for Tiger is clear in the evidence she filed, there is no objective evidence that he is being mistreated or is in poor health. The applicant filed photographs which she says show that Tiger is unhappy, but there is no independent assessment that would sustain that conclusion on a balance of probabilities. Indeed, the emails she filed show that that Tiger was seen by a veterinarian in around early February 2018, suggesting appropriate care was being provided.
17. As well, the emails filed by the applicant show the new owners responding in a diligent way to suggestions from her about Tiger's likes and dislikes. They report on Tiger eating well, playing regularly and receiving lots of company.
18. The applicant makes an allegation that one of the respondent's children hit Tiger, on one occasion. While this is a serious allegation, there is no evidence beyond the applicant's assertion that it occurred. I do not find the allegation alone sufficient to warrant return of Tiger under the agreement between the parties. The evidence filed also shows that the respondent told the children that Tiger was not a

toy, suggesting that the respondent sets boundaries to protect Tiger's physical wellbeing. The allegation of a hit would be best dealt with through the animal welfare investigation that the applicant says she has already commenced, discussed further below.

19. For these reasons, I dismiss the claim for Tiger to be returned to the applicant.
20. Having addressed the contractual claim, the applicant's claim also raises her concerns about Tiger's welfare and seeks an order for a veterinary referral. She does not suggest that veterinary care was a part of the agreement between the parties when Tiger was re-homed. This part of the applicant's claim and the remedy sought raise animal welfare issues, distinct from purely contractual ones. I find this part of the claim and the remedy sought to be outside the tribunal's jurisdiction.
21. I say this because the British Columbia Society for the Prevention of Cruelty to Animals (SPCA) is the provincial agency with the authority to enforce laws related to animal cruelty.
22. The legislation under which the SPCA operates is called *The Prevention of Cruelty to Animals Act* (the PCA). The PCA provides that authorized agents may take any action necessary to relieve an animal in distress where the person responsible for the animal will not do so or cannot be reached. These powers extend to taking custody of an animal and/or arranging veterinary treatment, which are two remedies the applicant seeks here.
23. The powers of an authorized agent under the PCA may only be exercised if that person has been appointed a special provincial constable under the *Police Act*. These are not powers of the tribunal.
24. The applicant says that she has already contacted the SPCA about her concerns and a file was opened but has not been concluded. Nothing in this decision overrides any decision the SPCA might make about Tiger's welfare.

25. In these circumstances, the applicant's request for a veterinary referral is dismissed as outside the tribunal's jurisdiction.

**ORDER**

26. The applicant's dispute is dismissed. Given that the applicant was unsuccessful, I make no order regarding her tribunal fees.

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Julie K. Gibson, Tribunal Member