



Civil Resolution Tribunal

Date Issued: June 26, 2018

File: SC-2017-005610

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sproule v. Schafer*, 2018 BCCRT 281

B E T W E E N :

James Sproule

APPLICANT

A N D :

Rosamond Schafer

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, James Sproule, seeks a refund of a \$250 deposit he says he paid for the respondent to transport a dog from a shelter in California to British Columbia.
2. The respondent, Rosamond Schafer, says the applicant refused to pick up the dog so she is not obligated to return the deposit. She also says she sent the deposit to California to pay for veterinary bills, grooming, food, and other care for the dog, as agreed to by the applicant.
3. The applicants are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

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 issue in this dispute is whether the respondent must refund the \$250 deposit paid by the applicant.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant 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.
10. The respondent is involved in rescuing dogs from animal shelters. In July 2017 the applicant contacted the respondent and asked her to arrange to get a dog from a shelter in California and have it transported to British Columbia. The respondent agreed to do so.
11. There was no specific written contract between the parties. Rather, their agreement was arranged through a series of emails, sent between July 5, 2017 and September 25, 2017.
12. Both parties live on Vancouver Island. The key issue in the dispute is whether or not the respondent agreed to deliver the dog from the Lower Mainland to Vancouver Island, or whether they agreed that the dog would be transported to the ferry terminal in Tsawwassen, with the applicant to pick the dog up there.
13. The respondent says that by refusing to pick up the dog in Tsawwassen, the applicant violated their agreement, so she is entitled to keep the deposit. The applicant says the respondent agreed to deliver the dog to Vancouver Island and did not do so, and therefore she breached their contract and must refund the full deposit.

14. Based on the email correspondence provided by the applicant, I find that the respondent is entitled to keep the \$250 deposit. I find the parties did not have an “agreed delivery plan”, as asserted by the applicant.
15. In particular, the emails show that the applicant first contacted the respondent on July 5, 2017 about getting a rescue dog. The respondent replied with the names of some shelters in California she could get dogs from, and on August 1, 2017 the applicant asked her to get a particular dog he saw online. The respondent agreed. There was no discussion about a specific delivery location.
16. On August 3, 2017 the respondent emailed the applicant and asked if he could drive across the border (to Washington) to get the dog. The applicant said he had no passport and rarely left Victoria, and hoped the respondent had a way to get the dog to Victoria. The respondent replied that she would “have to figure that out.”
17. On the same day, the applicant emailed the respondent and offered to travel to the Tsawwassen ferry terminal to pick the dog up from whomever brought it across the border. The respondent replied, “Well you can pick up your dog if you want I will have to organize that.” She asked for a \$250 deposit, which the applicant paid the following day.
18. This correspondence shows that at the time the deposit was paid, there was no agreement between the parties that the respondent would deliver the dog to Vancouver Island.
19. The parties continued to exchange emails about the dog. The emails show that the respondent was not charging any fee or receiving payment for transporting the dog. Rather, any amount paid by the applicant was sent to the respondent’s counterpart in California as partial reimbursement for dog-related costs such as adoption and veterinary care.
20. On September 10, 2017 the respondent emailed that she would take the ferry to the mainland to pick up the dog, and on September 11, 2017 the applicant wrote that if the respondent could arrange for someone to bring the dog to Tsawwassen,

he could walk onto the ferry and ride back with the dog. The respondent wrote, “I was going to walk on but if you will that would save me the trip”, and the applicant wrote, “Yes, I can do that”.

21. On September 12, 2017, the applicant emailed that his spouse did not want him to pick up the dog, so “it’s left to you, sorry”. The respondent initially agreed to pick up the dog in Tsawwassen, but then emailed on September 24, 2017 to say that she could not take the ferry to pick up the dog because she was babysitting her grandchildren.
22. The applicant asked if the respondent could arrange to have the dog delivered to the Swartz Bay ferry terminal near Victoria. The respondent said the transporter would not want to do that, and the applicant had plenty of notice to arrange to pick up. The applicant said he was unable to do that. At this point, the agreement broke down and the applicant asked for his deposit back.
23. This email correspondence establishes that the parties’ agreement never included specific terms about where the dog would be delivered to. It was the applicant who initially offered to pick up the dog on the mainland, and he repeated that offer on September 11, 2017.
24. When she requested the \$250 deposit on August 3, 2017, the respondent wrote, “I do need a deposit for your dog so you don’t change your mind on me.” This clearly indicates that the deposit was in case the applicant changed his mind about taking the dog. He ultimately did not take the dog, and is therefore not entitled to any refund. Because the respondent had never offered or agreed to deliver the dog to Vancouver Island at the time the deposit was paid, the deposit is not contingent upon delivery to Vancouver Island.
25. I also note that evidence provided by the respondent indicates that her counterpart in California spent more than \$250 for adoption fees and veterinary care for the dog, which was incurred based the applicant’s request to have that particular dog shipped to Canada.

26. For all of these reasons, I dismiss the applicant's claim for a refund of the \$250 deposit.
27. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful, so I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. The respondent did not pay any fees and did not claim any dispute-related expenses.

ORDERS

28. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member