



# Civil Resolution Tribunal

Date Issued: July 9, 2018

File: SC-2017-006305

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grunewald v. Buchamer*, 2018 BCCRT 312

**B E T W E E N :**

Christine Grunewald

**APPLICANT**

**A N D :**

Bethany-Cerise Buchamer

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. The applicant Christine Grunewald and the respondent Bethany-Cerise Buchamer were friends or neighbours. This dispute is about a fight between the respondent's dog Willow and the applicant's dog Lucy, which resulted in Lucy's death. The

applicant claims approximately \$1,350 in damages for the cost of a new .dog, reimbursement for vet bills, and missed days of work.

2. The respondent says the applicant failed to keep the dogs separate as the applicant had said she would do. The respondent therefore says she should not have to pay the applicant anything more beyond half of one vet bill she has already paid. 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, and I note that no one requested an oral hearing.
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: 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

7. Is the respondent responsible for the death of the applicant's dog Lucy, and if so to what extent is the applicant entitled to: a) reimbursement of a veterinary bill, b) lost wages, and c) reimbursement for the cost of a new dog?

## EVIDENCE AND ANALYSIS

8. 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.
9. I accept that all parties love their pets and that unquestionably what happened to Lucy, a Yorkshire Terrier cross, was very sad. The applicant says the respondent knew Willow was an aggressive dog. Willow's breed is not in evidence, but based on a photo she appears to be some sort of Collie or similar looking breed. There is no suggestion Willow had been formally declared a dangerous or aggressive dog before the attack.
10. It is undisputed that the respondent's dog Willow bit Lucy, resulting in Lucy's death. Willow's attack on Lucy took place in the applicant's home, while the applicant had agreed to care for Willow. The relevant chronology follows.
11. The respondent had asked the applicant if she wanted to "puppy sit". The applicant responded, asking how Willow was "with cats & a small dog?" The respondent replied "Lol she thinks they are food lol". The applicant submits that at the time she thought this was just a reference to cats. I disagree, given the quoted text above and the further text exchange set out below:

Applicant: Oh .. well I have both of those [*unhappy emoticon*]

Respondent: Lol all good that's why I'm having a hard time finding her a spot overnight

Applicant: Is it just over night? I could lock my animals down stairs for the night if anything! ...

12. The respondent dropped off Willow at around 3:30 p.m. at the applicant's house on October 19, 2017. At 8:09 p.m., the applicant texted the respondent that Willow was doing great, slightly whiny, "& kinda getting along with my animals!!". The respondent replied that this was awesome, and that if Willow was whining too much the applicant was free to take her to the respondent's house.
13. On the evidence before me, I find that the attack occurred while the dogs were unsupervised. In particular, the applicant wrote in the early morning of October 20, 2017 that she had found Lucy dead that morning, and that "I know what you said, they were fine they were playing last night & everything I thought they'd be okay".
14. The applicant submits that the respondent told her after Lucy's death that Willow had "done this before". The respondent denies making that statement. I find the evidence proves the respondent had reason to be concerned about Willow being left with other small animals, which is why she texted the applicant Willow thought cats and small dogs were food. I find the applicant was on notice about Willow's propensity to attack. However, the applicant had also agreed to keep Willow separate and then chose not to do so.

## **Liability**

15. Since the repeal of the *Animals Act* in 1981 there is no legislation in BC reversing the onus so as to require the respondent dog owner to prove her dog was not dangerous. As noted above, the applicant bears the burden of proof.
16. Thus, in BC there are currently 3 ways for a pet owner to be liable for the action of their pet: a) occupier's liability, b) the legal maxim known as 'scienter', and c) negligence.
17. Occupier's liability is where damage happens on property controlled by the occupier. I find occupier's liability is not relevant here, as it would be if a third party

had been injured by Willow on the applicant's property and was claiming against Ms. Grunewald on the basis Willow was in her care. In other words, the applicant is the occupier here, not the respondent.

18. Scienter means knowledge of the animal's poor behaviour or propensity to be aggressive. For scienter to apply, the applicant must prove that at the time of the attack:
  - a. the respondent was the dog's owner,
  - b. the dog had manifested a propensity or tendency to cause the type of harm that happened, and
  - c. the dog's owner knew of that propensity (see *Xu v. Chen & Yates*, 2008 BCPC 0234, citing *Janota-Bzowska v. Lewis* [1997] B.C.J. No. 2053 (BCCA)).
19. I find the applicant has failed to prove scienter against the respondent. I say this because at the time of Willow's attack on Lucy, the applicant was the occupier and Willow's 'keeper', as referenced in the scienter case law. In other words, at the time of the attack the applicant held the role of "owner", in place of the respondent. This is because the applicant had agreed to care for Willow. Further, the applicant was expressly told that Willow thought other small animals were food and thus may bite. I find the applicant herself is responsible in scienter for Willow's attack on Lucy. My conclusion that the applicant was Willow's 'keeper' at the material time, and akin to the dog's owner, is supported by the decision in *McLean v. Thompsons*, 2009 BCPC 415.
20. The Fort St. John Animal Control Bylaw No. 2377 relied upon by the respondent includes a provision that a dog's 'owner', defined to include a caregiver, must take effective measures to ensure that the dog does not bite or attack a domestic animal or person. I find this bylaw also supports my conclusion above.

21. I turn then to negligence. As noted above, the applicant had agreed to care for Willow, and had agreed to keep Willow separate from the applicant's animals knowing Willow thought small animals were food. It is not the respondent's fault that the applicant misread their texts and thought Willow's propensity to attack was only with cats rather than small dogs too. If anyone was negligent, it was the applicant in failing to keep the dogs separate as she had agreed to do. I find the applicant has not proven the respondent was negligent in handling the applicant's care of Willow.
22. I find the applicant has not proven the respondent is liable for Willow's attack on Lucy or for her claimed damages. Given this conclusion, I find I do not need to address the applicant's damages claims in any detail.
23. The applicant was unsuccessful. In accordance with the Act and the tribunal's rules, I find she is not entitled to reimbursement of tribunal fees paid.

## **ORDER**

24. I order that the applicant's claims, and thus this dispute, are dismissed.

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Shelley Lopez, Vice Chair