



# Civil Resolution Tribunal

Date Issued: July 18, 2018

File: SC-2018-002349

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Howe v. Cooke*, 2018 BCCRT 340

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

Jocelyn Howe

**APPLICANT**

**A N D :**

Brendan Cooke

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Kate Campbell

### **INTRODUCTION AND JURISDICTION**

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, due to the respondent's non-compliance with the tribunal's directions as required, as discussed below.
2. This dispute is about the possession of a dog named Atlas.

3. The parties are each self-represented.
4. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
  - a. hear the dispute in accordance with any applicable rules.
  - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
5. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the 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.
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.
7. For the reasons that follow, I have allowed the applicant's claim.

## ISSUES

8. The issues in this dispute are:
  - a. Should I hear the applicant's claim without the respondent's further participation, given the respondent's non-compliance?
  - b. Is the respondent required to return the dog Atlas to the applicant?

## EVIDENCE & ANALYSIS

### *Non-compliance*

9. My June 12, 2018 summary decision to hear the dispute without the respondent's participation due to the respondent's non-compliance was previously communicated to the parties by email through the case manager. The details supporting that decision are set out below.
10. The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the case manager to contact him with a request for a reply.
11. The respondent filed his Dispute Response on April 21, 2018. The case manager made the following attempts at contact, with no response from the respondent:
  - a. *May 4, 2018 email:* The respondent was directed to respond to the case manager by May 18, but did not.
  - b. *May 22, 2018 email:* The case manager requested a response by May 23.
  - c. *May 25, 2018 email:* The case manager requested a response by May 28.

- d. *May 29, 2018 email:* The case manager requested a response by May 30, and stated that all parties are required to respond to her emails as part of the facilitation process and tribunal rules. The email said that if the respondent failed to respond, the dispute might be referred to Tribunal Member for a decision without his further participation.
  - e. *May 29, 2018 telephone call:* The case manager left a message directing the respondent to respond to her emails or telephone her.
  - f. *May 30, 2018 email:* The case manager repeated her previous warning and requested a response by May 31.
  - g. *May 30, 2018 telephone call:* The case manager left another message asking him to respond to her emails and indicate how he wanted to proceed.
  - h. *May 31, 2018 telephone call:* The case manager left another message asking him to respond to her emails and stating that she had started non-compliance process, meaning that the matter would be referred to a Tribunal Member and might be decided without his participation and findings might be made against him.
  - i. *June 1, 2018 email:* The case manager sent a formal warning email to the respondent requested a response by June 4.
  - j. *June 5, 2018 email:* final written warning requesting response by June 7.
12. The case manager then referred the matter of the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute without the respondent's participation.

*Should the tribunal hear the applicant's dispute without the respondent's participation?*

13. As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why he failed to communicate with the tribunal as required. I find the case manager made a reasonable number of attempts to

contact the respondent. The respondent was informed in writing at the beginning the facilitation process that he must actively participate in the dispute resolution process and respond to the case manager's emails. Given that the respondent provided his contact information on April 21, 2018, less than 2 weeks before the case manager's contact attempts, I find it is more likely than not that the respondent knew about the case manager's contact attempts and failed to respond.

14. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
  - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
  - b. the stage in the facilitation process at which the non-compliance occurs;
  - c. the nature and extent of the non-compliance;
  - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
  - e. the effect of the non-compliance on the tribunal's resources and mandate.
15. First, this dispute does not affect persons other than the named parties.
16. Second, the non-compliance here occurred early in the facilitation process, and the respondent has provided no evidence or submissions. The respondent effectively abandoned the process after providing a response.
17. Third, given the case manager's attempts at contact and the respondent's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant.
18. Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear

the dispute is outweighed by the circumstances of his non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy, which would be unfair to it.

19. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.
20. In weighing all of the factors, I find the applicant's claim should be heard. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
  - a. the extent of the non-compliance is significant;
  - b. the applicant is not prejudiced; and
  - c. the need to conserve the tribunal's resources.

#### *Possession of the Dog Atlas*

21. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
22. The applicant says the respondent, who is her ex-boyfriend, refused to return the dog Atlas to her, contrary to the terms of a signed written agreement.
23. The applicant says the parties shared custody of Atlas for 3 years, and equally shared time with the dog as well as dog-related expenses. She says he bought property in another town and moved in December 2017, and at that time they signed an agreement to continue shared custody of Atlas. She says that despite that agreement, the respondent has since refused to return Atlas and has ignored her attempts at contact.

24. The applicant seeks return of Atlas, enforcement of the dog-sharing agreement, and compensation for \$3,000 in dog-related expenses.
25. In his Dispute Response, the respondent says he was always Atlas' owner, and Atlas always lived with him because the applicant was not allowed to have a dog at her residence. The respondent says he let the applicant take Atlas on some weekends out of kindness, but they did not share Atlas equally.
26. The applicant provided a copy the written agreement, which was signed by both parties and a witness on December 28, 2017. The agreement relates solely to Atlas, and says he would be exchanged between owners every 30 days not exceeding a 7 day grace period to account for unforeseen circumstances. It specifies the location where exchanges would take place, and says that vet bills would generally be shared except for emergency care which would fall on whomever had the dog at the time.
27. In his Dispute Response, the respondent said he has a letter from the breeder stating that he purchased Atlas, a copy of Atlas' veterinary history, and copies of bank transactions showing that he provided for Atlas financially. While he asserted that these documents show that he solely owned Atlas, he did not provide them in evidence. I therefore place no weight on this argument. However, I do place some weight on the documents provided by the applicant showing that she paid for veterinary insurance from November 2014 onwards, and obtained a dog license in her name in January 2015, and a veterinary bill from July 2015 listed both parties' names. I find that these documents show that the respondent did not pay for all dog-related expenses during this period, and that they acted as co-owners of Atlas.
28. The respondent said the December 28, 2017 agreement is void because the applicant's tenancy does not allow dogs. However, he has not provided any evidence to prove the applicant is not allowed to keep a dog, so I do not make that finding.

29. The respondent also said he only signed the December 28, 2017 agreement because the applicant had taken Atlas on December 25, 2017 and would not return the dog because she knew the respondent was moving out of town. He said he signed because it was a stressful situation and he had no other legal option to get Atlas back immediately.
30. Again, the respondent has not provided any evidence to substantiate his claim of duress. Also, where a respondent has failed to comply with the tribunal's directions as required, as is the case here, an adverse inference may be drawn against that respondent. This means that if the person or organization refuses to participate, it is generally assumed that the other party's position is correct. This is similar to when a respondent fails to provide any response at all to the dispute and is in default and the respondent's liability is assumed.
31. Because the respondent has not provided any evidence to support the assertions in his Dispute Response, and because of the adverse inference against him for failing to comply with the tribunal's directions, I find that the December 28, 2017 agreement is enforceable, and the applicant is entitled to shared possession of Atlas as specified in the terms of that agreement.
32. I find the applicant is not entitled to \$3,000 for dog-related expenses as this is not a term of the December 28, 2017 agreement.
33. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was successful in this dispute, I order that the respondent pay the applicant \$125 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.

## **ORDERS**

34. I order that within 10 days of this decision, the respondent must return Atlas to the applicant, and must follow the terms of the December 28, 2017 agreement going



forward. I note that the agreement contains specific terms about the location of the dog exchange every 30 days.

35. Within 30 days of this decision, the respondent must pay the applicant \$125 as reimbursement for tribunal fees paid. The applicant is also entitled to post-judgment interest on that amount, under the *Court Order Interest Act*.
36. 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.
37. 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.

---

Kate Campbell, Tribunal Member