



# Civil Resolution Tribunal

Date Issued: July 30, 2018

File: SC-2017-007314

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ray et al v. Floyd*, 2018 BCCRT 391

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

Alexander Ray and Anita Ray

**APPLICANTS**

**A N D :**

Noelle Floyd

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Shelley Lopez, Vice Chair

### INTRODUCTION

1. This dispute is about neighbours and a dog bite and related injuries. The applicants, Alexander Ray and Anita Ray, say the respondent's dog attacked their Weimaraner dog Wilner and caused severe injuries. The applicants say the attack

happened on a trail, not on the respondent's property. The applicants claim reimbursement of \$4,682.01 in veterinarian bills and related care expenses.

2. The respondent, Noelle Floyd, says the incident occurred after Wilner (then unknown to her) came onto her property without invitation. The respondent was outside in her back yard with her 2 dogs, Oreo and Molly. The respondent denies her dogs had ever showed any prior aggression. 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 while there are inconsistencies in the evidence about the circumstances of the collision, I find I can fairly resolve the dispute based on the documentary evidence before me. This conclusion is consistent with the court's observations of the tribunal's processes in the recent decision in *Yas v. Pope*, 2018 BCSC 282. 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 applicants' dog's injuries and related treatment expenses?

## **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. Based on the applicants' veterinarian bills, I accept that their dog's injuries at issue in this disputed were caused by a dog bite. The evidence suggests Molly, rather than Oreo, bit Wilner, but nothing turns on which of the respondent's dogs caused the bite.
10. I accept that all parties love their pets. There is no evidence to support a conclusion either of the respondent's dogs had been formally declared a dangerous or aggressive dog before the incident. There is also no evidence that Molly has a history of biting or attacking other animals or people. The fact that Molly was an unlicensed dog is not any proof that she has a history of being aggressive. The fact that the respondent showed some hesitation with the younger Molly around an unknown dog Wilner is not sufficient to conclude the respondent ought to have known Molly would be aggressive. It is undisputed that none of the dogs were leashed at the time the applicants' dog was injured.
11. The central area of the parties' disagreement is where the dog bite occurred. The applicant says it happened on Valley Trail, in Whistler, B.C. The applicant says Valley Trail is private property, but not the respondent's private property. I am unable to conclude on the evidence before me that Valley Trail is private property,

but I do find that it is either a public roadway or is common property owned by the strata corporation in which the respondent lives. Valley Trail is not owned by any of the parties.

12. In the applicants' June 25, 2017 statement to the Resort Municipality of Whistler (Whistler), they stated that the incident occurred that day at about 9:30 a.m. "near" the respondent's property address. The applicants said they were on a path on Valley Trail, and Wilner was curious about a squirrel in a tree. The applicants said a white/black dog approached (which I infer is a reference to Oreo) and "everything was fine". The applicants said they heard the neighbour (the respondent) allow her other dog (Molly), a German Shepherd (that she was hesitant about letting go originally) approach Wilner with the words, "ok, you can go say hi now". The applicants stated that Molly then ran over and bit their dog Wilner on the back. Wilner ran away "welping" and crying. The applicants stated the respondent asked if her dog had bitten their dog.
13. In contrast, the respondent says the incident occurred on her property, around the area of her double hammock. Based on the photos in evidence, I find the hammock is strung in trees that sit on the boundary of the respondent's property line. The applicant Mr. Ray says the respondent's account could not be true, because his wife, the applicant Ms. Ray, witnessed the whole incident and she could not have done so if it had occurred on the respondent's property. I do not agree. I find based on the photos that while the trees obscured some of the view into the respondent's yard, it would not obscure it entirely. I note the respondent told Whistler that she could see a woman with the other dog, but could not see her face through the bushes from where the respondent was standing by her back door. I do not agree with the applicants that there is any significant inconsistency in the respondent's statements to Whistler and what her lawyer had said to the applicants in correspondence.
14. I find the most likely scenario is as follows. At the time of the incident, Wilner was unknown to the respondent. The respondent saw Wilner off-leash around her

hammock, when the respondent took her dogs outside to go to the bathroom. The respondent let Oreo go towards Wilner, while both dogs remained on her property. Seeing that Wilner was fine with Oreo, the respondent let her younger dog Molly go over. The respondent turned to go back inside her home to make breakfast, at which point she heard barking. She turned back and saw her 2 dogs still on her property, still by the hammock, and that Wilner had run off to the woman (Ms. Ray) who was standing on the respondent's property boundary.

15. While Mr. Ray submits that his wife witnessed the whole incident and that the attack occurred on Valley Trail, there is no evidence or statement from Ms. Ray before me. It is undisputed that Mr. Ray himself did not witness the incident.
16. On July 4, 2017, L, a senior bylaw enforcement officer with Whistler, emailed the applicants and set out the conclusion of their investigation, which included a review of photographs, overhead GIS maps, and the Whistler Animal Control Bylaw. L concluded that the evidence shows that there is no indication an offence was committed, because "both dogs were on private property" and as such leashes were not required. L wrote that if 1 or more of the dogs had been on leash, the incident may have been avoided.
17. On balance, I find Molly bit Wilner while on the respondent's property, when Wilner was unleashed and uninvited.
18. I turn then to the law of liability for dog bites.
19. 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.
20. 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.

21. I will deal with scienter first, which 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)). As referenced above, I find scienter does not apply here as there is no evidence Molly had an aggressive history.
22. Occupier's liability is where damage happens on property controlled by the occupier. Here, the question is whether the respondent breached her duty of care under section 3 of the *Occupier's Liability Act* to take reasonable care to ensure others on her property were reasonably safe from injury that she ought to have foreseen. I find the respondent did so, in that she had no reason to believe Molly would cause the type of harm that occurred (see *Lewis v. Robinson et al*, 2001 BCSC 643 for a similar conclusion).
23. Section 3(3) of the *Occupier's Liability Act* also says an occupier has no duty of care for risks willingly assumed by another person, other than not to a) create a danger with intent to do harm, or b) act with reckless disregard to the integrity of the person's property. There is no suggestion the respondent intended any harm. Given my conclusions above, there is no evidence to support she acted with reckless disregard for Wilner – all of the dogs were off-leash and again, I find she had no reason to believe Molly would be aggressive. I find the applicants willingly assumed the risk when they allowed Wilner to enter the respondent's property, off-leash.
24. I turn then to negligence. The respondent has a duty of care to reasonably ensure her dogs do not attack other animals or people on her property. Again, the respondent had no reason to believe Molly would be aggressive. I also find it relevant that Wilner was not invited onto her property and was unleashed. I am unable to conclude the respondent was negligent in letting her unleashed dogs

approach Wilner on her property, given the above circumstances. This conclusion is consistent with the analysis of negligence set out in the *Xu* decision.

25. I am mindful of the tribunal's mandate that includes recognition of ongoing relationships. The evidence before me is that the parties are neighbours. Even if I had concluded the dog bite occurred on the Valley Trail, and not on the respondent's property, I would not have found the respondent liable. *Scienter* would still be unproven, for the same reasons set out above. Occupier's liability would not apply as the respondent is not an occupier of Valley Trail. Finally, the same negligence analysis would apply in that all dogs were all off-leash and the respondent had no reason to believe Molly would be aggressive.
26. I find the applicant has not proven the respondent is liable for Molly's attack on Wilner or for the applicants' claimed damages. Given this conclusion, I find I do not need to address the applicants' damages claims in any detail.
27. The applicants were unsuccessful. In accordance with the Act and the tribunal's rules, I find they are not entitled to reimbursement of tribunal fees paid.

## **ORDER**

28. I order that the applicants' claims, and thus this dispute, are dismissed.

---

Shelley Lopez, Vice Chair