



Civil Resolution Tribunal

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File: SC-2017-004917

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kranabetter et al v. Lauro*, 2018 BCCRT 430

B E T W E E N :

Muriel Kranabetter and Allyce Kranabetter

APPLICANTS

A N D :

Safina Lauro

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about a cat named Monty. It is undisputed that in around May 2016 the respondent, Safina Lauro, agreed to look after Monty temporarily, until October 2016. The parties also agree that after October 2016 the respondent agreed to continue to look after Monty for an indefinite period of time.

2. The applicants want an order that Monty be returned to them. For ease of reference and without any disrespect, in this decision I will refer to Muriel Kranabetter as Muriel and Allyce Kranabetter as Allyce. The applicants are represented by Muriel and the respondent is 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.
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.
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.

ISSUE

8. The issue in this dispute is about whether the applicants own the cat Monty, and if so, what is the appropriate remedy.

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 referenced the evidence and submissions as necessary to give context to my decision.
10. I accept that the parties all love Monty. However, the law is clear that pets should not be treated in law as family members but rather as personal property (see *Henderson v. Henderson*, 2016 SKQB 282, and *Brown v. Larochelle*, [2017] B.C.J. No. 758).
11. Monty was born in 2007, and was cared for by the applicants. Allyce, Muriel's daughter, had custody of Monty in 2012 when she moved to Vancouver as Monty had begun fighting with the applicants' other 2 cats. In around May 2016, Allyce moved to a remote area for work. Because of the cat fighting, the Kranabettors decided it would be best if Monty stayed with someone else nearby, until Allyce finished her work contract in October 2016. The respondent Ms. Lauro agreed to care for Monty, and Allyce paid the respondent for Monty's expenses from time to time when Ms. Lauro sent receipts.
12. In November 2016, the parties agreed that Ms. Lauro would continue to care for Monty "for the foreseeable future". I accept that this arrangement was made only after Ms. Lauro asked Allyce what she wanted to do with Monty. At that point, Allyce stated that she was unable to take Monty where she lived with her mother (due to the cat fighting problem) and she did not foresee herself moving out soon.
13. It is undisputed that from May 2016 up until mid-May 2017, the applicants owned Monty and were entitled to possession of Monty, given the parties' arrangement. It is also undisputed that during that time frame the respondent cared for Monty,

although the applicants covered most of Monty's expenses and all that were asked of them. I accept the respondent's evidence that in February 2017 she stopped sending receipts because since July 2016 Allyce had repeatedly delayed sending payment. I accept that Allyce did not pay for all of Monty's expenses, and in some instances that was because Ms. Lauro did not seek payment.

14. The issue in this dispute is whether the applicants abandoned Monty and/or agreed to transfer his ownership to the respondent.
15. I turn to the law that applies to this dispute. The applicants' claim against the respondent is the tort of conversion. The tort of conversion involves wrongfully holding on to another person's property and claiming title or ownership of that property. Here, the respondent refuses to return Monty, claiming she now owns the cat due to the applicants having abandoned it.
16. The tort of conversion is proved when someone purposely does something to deal with goods in a wrongful way that is inconsistent with the owner's rights: see *Li v. Li*, 2017 BCSC 1312, citing *Royal Canadian Legion, Branch No. 15 v. Burkitt*, 2005 BCSC 1752 (CanLII) at para. 104; *Ast v. Mikolas*, 2010 BCSC 127 (CanLII) at para. 128; *Drucker, Inc. v. Gui*, 2009 BCSC 542 (CanLII) at para. 58; *Dhothar v. Atwal*, 2009 BCSC 1203 (CanLII) at para. 15.
17. The law is clear that the applicants must prove:
 - a. a wrongful act by the respondent involving the applicant's personal property;
 - b. the act must involve handling, disposing, or destroying the goods; and
 - c. the respondent's actions must have either the effect or intention of interfering with (or denying) the plaintiff's right or title to the goods.
18. In this case, the focus is on whether the respondent's action in refusing to return Monty, on the basis the applicants abandoned the cat, was wrongful. I find that if the applicants effectively abandoned Monty, the respondent is not liable for the tort

of conversion (see *Bangle v. Lafreniere*, 2012 BCSC 256). As set out in *Bangle*, if the applicant abandoned Monty, the respondent's continued possession of Monty is not conversion because in so doing, the respondent was not interfering with the applicants' right of possession. In other words, if the applicants abandoned Monty, the respondent does not have to return the cat to the applicant.

19. I turn then to the relevant chronology and evidence of abandonment. In using the word 'abandonment', I am not suggesting the applicants were heartless or negligent in handling Monty. Rather, 'abandonment' is a legal term which may apply to the applicants' decision to leave Monty in the respondent's care.
20. On May 2, 2017, Allyce texted Ms. Lauro that "we spoke about you keeping him but didn't make it official". She added, "[Muriel] would be happy to take him back once our older cat dies in a year or two". On July 13, 2017, Allyce texted that she was "open" to Ms. Lauro "keeping" Monty, but wanted to see how he was doing first.
21. The applicants say that the respondent reneged on their agreement. However, I agree with the respondent that by that date there was no longer any pet-sitting agreement. Allyce's and Ms. Lauro's May 3, 2017 text message exchange clearly set out Ms. Lauro's position, which I find was reasonable:

... If you would like to have Monty back at this point, I would be sad but I would understand. If you cannot at this point in time, I think maybe we should consider that he should stay here and that would be that. What are your thoughts?

22. On May 4, 2017, Allyce responded that her "main concern" was that Ms. Lauro and/or her roommate smoked inside their home. Allyce wrote that she would love to find a solution that worked for them both. I infer this meant that Allyce would be happy if Ms. Lauro kept Monty if the indoor smoking issue resolved (and Ms. Lauro submits the smoking is no longer an issue). I find Ms. Lauro reasonably replied that she understood the concern, but that Allyce's solution did not address that

concern, in that she still wanted the respondent care for Monty for another year or two, but not own him outright.

23. On May 15, 2017, Allyce responded that her house was too small for 3 cats and they fight. The reasonable inference was that she wanted Ms. Lauro to continue to look after Monty, indefinitely.
24. On May 16, 2017, Ms. Lauro wrote she had given the issue a lot of thought, and that Monty was stable at her home and that Allyce was unable to accommodate taking him back. Ms. Lauro wrote that given that situation, she would be keeping Monty, and that it would not be fair for her to have to care for Monty for another year or two and then return him. The tenor of the email was friendly.
25. Contrary to the applicants' submission, I do not consider Ms. Lauro's May 16, 2017 email to be a "unilateral" decision. It followed a lengthy exchange with Allyce, who at no point said she would take Monty back. It is not reasonable for the applicants to expect the respondent to indefinitely continue to care for Monty, and I find the respondent reasonably set out her position in that May 16, 2017 message.
26. Allyce did not respond until June 13, 2017, and at that point just asked Ms. Lauro to take Monty to the vet. Allyce did not demand Monty's return even though Ms. Lauro reiterated that at that point Monty was hers. I find this timing is consistent with Ms. Lauro's reasonable conclusion that she was entitled to treat Monty as her pet at that point.
27. After taking Monty to the vet on June 21, 2017, Allyce made the comment that she was "open" to the respondent keeping Monty. There was an altercation between the parties' at the respondent's home in July 2017, when the applicants attended uninvited and the respondent found them in her yard with Monty. The respondent moved after that.
28. Given the extraordinary amount time that the applicants asked the respondent to look after Monty, with no end-date in sight, I find the respondent was entitled to give an ultimatum on May 3, 2017. Given the timing and the nature of her

exchange with Allyce, the respondent reasonably stated on May 16, 2017 that she would be keeping Monty. Certainly, if the applicants had not abandoned Monty, I find they would have responded much sooner. Allyce did not demand Monty's return on June 13 or June 21, 2017.

29. I do not accept the applicants' submission that Allyce was so shocked and distressed at Ms. Lauro's May 15, 2017 decision to keep Monty that she had to wait a month to respond. I find that submission to be inconsistent with the weight of the evidence before me that Allyce was quite clear that she had no ability to take Monty back, at least until this dispute was filed in October 2017.
30. Having made the choice not to take Monty back in May 2017, I find the applicants accepted the respondent's stated alternative: that the respondent became Monty's owner. In the legal sense, I find the applicants abandoned Monty to the respondent.
31. Given my conclusions above, I find the applicants are not entitled to Monty's return. The applicants did not claim tribunal fees, although as they were unsuccessful I find they would not be entitled to reimbursement.

ORDER

32. The applicants' claim, and therefore this dispute, is dismissed.

Shelley Lopez, Vice Chair