



# Civil Resolution Tribunal

Date Issued: August 24, 2018

File: SC-2018-000246

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cohan v. King*, 2018 BCCRT 476

**BETWEEN:**

Jodie Cohan

**APPLICANT**

**AND:**

Douglas King

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Amy J. Peck

## INTRODUCTION

1. This dispute relates to the payment of a veterinarian bill. The applicant, Jodie Cohan, says the respondent Douglas King's dog attacked her dog. She asks for an order that the respondent pay the veterinarian costs the applicant paid to have her dog checked and treated after the incident. The respondent denies his dog attacked the applicant's dog. He says he initially agreed to pay the bill but he later

changed his mind when he learned the applicant kicked his dog during the incident. The applicant and the respondent are both self-represented.

## **JURISDICTION AND PROCEDURE**

2. 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.
3. 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.
4. 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.
5. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## ISSUES

6. The issue in this dispute is whether the respondent is responsible for the applicant's veterinarian bill.

## EVIDENCE AND ANALYSIS

7. I have reviewed all of the evidence and submissions presented by both parties. I refer only to the evidence and submissions that are relevant to my decision. For the reasons that follow, I find that the respondent must pay the applicant's veterinarian bill.
8. There is little dispute between the parties about what occurred the evening of December 14, 2017. They agree that:
  - an incident took place between the applicant's dog (named Cubby) and the respondent's dog (the setter)
  - the setter was off leash and was in the care of the respondent's adult son
  - the applicant kicked the setter to get it away from Cubby
  - the applicant took Cubby to the vet the following day for an assessment
  - the respondent initially agreed to pay the applicant's veterinary bill, and
  - the DNV issued the respondent a ticket for the bylaw infraction of dog at large related to the incident.

The only disagreement between the parties on the facts is whether the setter bit and shook Cubby and whether Cubby was injured.

9. The applicant says she was walking her two small dogs on leash the evening of December 14, 2017. When she was about 4 houses away from the respondent's home, she says the respondent's Irish Setter (the setter) leaped out of a vehicle

and ran directly at her and her dogs, snarling and snapping. She says the setter grabbed Cubby and shook her for about 15 seconds.

10. The respondent did not deny that he is the setter's owner and I find that to be the case.
11. The applicant took Cubby to a veterinarian's office the next day. The applicant provided a handwritten veterinary record for Cubby dated December 15, 2017 (vet record). While much of the vet record is illegible, it notes that 2 xray views were taken and that the dog's spine was intact. The applicant says in her statement that Cubby was treated for swelling.
12. The applicant submitted a copy of a veterinarian bill dated December 15, 2017 for \$349.34 in fees and medication expenses. This is the amount the applicant claims in this dispute.
13. The applicant says she took the bill for Cubby's veterinarian assessment to the respondent and that he agreed to pay. She says that on December 16, 2017, the respondent brought a cheque for \$349.34 to the applicant's home and again acknowledged responsibility. The respondent later put a stop payment on that cheque.
14. The applicant submitted a partially redacted case summary log from the District of North Vancouver (DNV) showing that she reported the altercation to the DNV on December 15, 2017 at 9:00 a.m. An entry in that log from 13:42 on December 15, 2017 says that the applicant had a previous incident with the setter in September 2016. Another entry that same date says a check of the owners/address of the dog at large shows a file for a dog in similar circumstances in 2016.
15. The DNV case summary refers to a meeting with the owners of the dog in issue on December 23, 2017 where the owner said the dog had no problems with other dogs, only with the applicant's dog. While the applicant has more than one dog, in the context of the meeting record as a whole, I find the reference to dog here to be a reference to Cubby.

16. The DNV case summary further includes an entry for an internal district meeting/discussion that occurred on January 4, 2018. The entry notes that the owners do not seem to recognize the dog's potential for aggression while at large, despite previous incident and warning. As a result of that discussion, on January 5, 2018 the DNV issued a ticket to the setter's owners for the bylaw infraction of having a dog at large, and sent a management advisory letter to the owners noting the setter's escalating behaviour issues.
17. The applicant also presented a letter dated January 5, 2018 from a DNV senior animal welfare officer to a redacted addressee. The letter says that the recent incident and a former incident from 2016 have shown "escalating defensive behaviour" and have formed the historical basis for the subject dog acting defensively around the dog's property.
18. I find that all of the redacted documents refer to the setter. Given the DNV documentation, I find the respondent knew the setter had a propensity to be aggressive, particularly if it was off leash and around Cubby.
19. The applicant submitted a video of her delivering the veterinary bill to the respondent. The respondent says that the applicant did not have permission to record that video. I find that I do not need to consider the video evidence to decide this matter.
20. The respondent submitted a statement from his son. In that statement the son says "I acknowledge [the setter] should have been on leash from car to fence gate which would have prevented the commotion and distressing situation for all involved". The statement is not dated. However, I find that the statement describes the incident of December 14, 2017.
21. The respondent submitted a further undated statement from a person sharing the respondent's last name. I infer that this statement is from a family member. The statement describes an incident in September 2016 between the setter and the

- applicant while she was walking a dog other than Cubby. Since that dog of the applicant's was not involved in the incident, I find this statement to be irrelevant.
22. The respondent also presented an email dated April 10, 2018 with the subject "Shelter report" that appears to be written by the respondent's son. That email says that the setter never picked up and shook Cubby, and that, as far as the writer could tell, the setter never bit Cubby "but was just trying to pin her down".
  23. I find it is not necessary for me to decide whether the setter bit and shook Cubby or simply tried to pin her down. The evidence from the applicant, the veterinarian assessment, and the DNV case summary is that Cubby had suffered an injury as of December 15, 2017 that required medication. Bearing in mind the respondent's son's evidence that the setter "tried to pin her down," I find that the setter's actions caused Cubby's injury, and the altercation made it reasonable that the applicant would have Cubby assessed by a veterinarian.
  24. While not binding on me, I find persuasive the reasoning in *Jeffrey et al. v. Anderson*, 2018 BCCRT 272. That case involved a fight among 3 off leash dogs. The tribunal confirmed at paragraphs 12 through 19 that there are currently 3 ways for a pet owner to be liable for the action of their pet: 1) occupier's liability where an incident occurs on the pet owner's own property (which is not the case here), 2) scienter, or knowledge by the owner of the pet's propensity to cause the kind of harm that occurred, or 3) negligence, which in the context of injury by one's dog means a duty on the part of the owner to ensure that a dog is under control such that it will not escape and injure someone or another animal on a public road.
  25. I find that the applicant has proven scienter.
  26. The applicant bears the burden of proving the setter had shown a propensity to cause the harm. However, the applicant need not prove that the setter had caused the same kind of harm in the past. Rather, it is enough if the owner knew that the dog had manifested a trait to do that kind of harm, as explained in *Xu v. Chen & Yates*, 2008 BCPC 234 at paragraph 57.

27. The evidence suggests that the setter had acted aggressively toward Cubby in the past. While the respondent presented a statement denying that the setter had been aggressive at the September 2016 incident, the DNV animal control office was persuaded that there was a history of the setter's aggressive behaviour that justified sending the management advisory letter of January 5, 2018. The DNV case record documents the owner's admission that the setter had a problem with Cubby. I find there is sufficient evidence of the setter's propensity for aggression toward Cubby. Since the respondent is the owner of the setter and knew of the propensity to cause harm, as acknowledged to the district animal control office, the applicant has proven scienter.
28. The fact that the applicant kicked the setter does not affect the respondent's liability in scienter. Once the applicant proves that the elements of scienter are met, the owner is strictly liable regardless of the applicant's actions, as confirmed in *Gallant v. Sloomweg*, 2014 BCSC 1579 at paragraph 22.
29. Since I have found that the applicant has proven her claim in scienter I do not need to consider the claim in negligence.
30. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees.

## **ORDERS**

31. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$476.54, broken down as follows:
  - a. \$349.34 as reimbursement for the applicant's veterinary expenses,
  - b. \$2.20 in pre-judgment interest under the *Court Order Interest Act*, and

- c. \$125 for tribunal fees.
32. The applicant is entitled to post-judgment interest, as applicable.
  33. 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.
  34. 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.

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Amy J. Peck, Tribunal Member