



# Civil Resolution Tribunal

Date Issued: August 30, 2018

File: SC-2018-001241

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cohen v. Rex Dog Hotel & Spa Ltd.*, 2018 BCCRT 489

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

Marcelo Avelar Cohen

**APPLICANT**

**A N D :**

Rex Dog Hotel & Spa Ltd.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about a pug dog named Bacon. The applicant, Marcelo Avelar Cohen, says the respondent, Rex Dog Hotel & Spa Ltd., failed to properly take

care of Bacon during his 12-day stay at the respondent's dog hotel, and Bacon got sick with pneumonia. The applicant says if the respondent had properly supervised Bacon as it was contracted to do, the respondent would have realized Bacon was sick and had him seen by a veterinarian.

2. The applicant seeks a total of \$3,782.98 in damages, which includes a refund for the dog hotel stay, veterinary bill and rental car reimbursement, and time spent caring for Bacon. The applicant is self-represented and the respondent is represented by Karen Balshaw, who I infer is an employee or principal.

## **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 I find I can fairly resolve this dispute based on the documentary evidence and submissions before me.
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. The issue in this dispute is whether the respondent is responsible for Bacon getting sick with pneumonia, and if so, what are the appropriate remedies.

## **EVIDENCE AND ANALYSIS**

8. I have only commented upon the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
9. The applicant left Bacon at the respondent's dog hotel on May 3, 2017, for 12 nights. The applicant says that when he and his wife picked up Bacon, they were asked to pay before the staff brought Bacon out. When the staff brought Bacon out, they told the applicant Bacon was not feeling well. A couple of hours later, the applicant took Bacon to a veterinarian, who diagnosed pneumonia. None of this is disputed.
10. At the outset, I note this dispute is not about the fact that Bacon got pneumonia, but that the respondent allegedly failed to notice Bacon's illness and seek veterinarian treatment earlier. The respondent says it was not apparent that Bacon was unwell until "right at time of check-out".
11. It is undisputed that Bacon was well-known to the respondent, as the applicant had used the respondent's dog hotel services often in the past. The applicant says it was immediately obvious that Bacon was not himself, in that he was lethargic and could barely walk. The applicant further says it is obvious that Bacon's pneumonia did not develop overnight and it should have been clear to the respondent much earlier that Bacon was sick and needed veterinarian treatment. While the respondent argues that it reasonably thought that Bacon was just very tired, the applicant says it should have been obvious he was sick, given his weight loss and lethargy.

12. The applicant acknowledges that he signed the respondent's waiver accepting responsibility for any veterinary expenses that the respondent, in its discretion, felt were necessary. Further, the waiver released the respondent "from any liability or claim due to illness, injury, disease or any medical condition whatsoever with regard to my dog, regardless of how they are caused". The applicant submits however that Bacon "could have died" due to the respondent's alleged negligence. The applicant submits that an earlier trip to a veterinarian "could have resulted in much faster improvement", without the high costs and suffering for Bacon.
13. There are 2 potential legal bases for the applicant's claims against the respondent: breach of contract and negligence. I will deal with negligence first.
14. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure did cause the claimed damages.
15. I find that the respondent owed a duty of care to reasonably care for and supervise Bacon, given the respondent agreed to care for Bacon at its dog hotel. I find the reasonable standard of care was to have the dog seen by a veterinarian if the dog appeared ill. I find it was reasonably foreseeable that Bacon could become more ill if the dog was sick and not treated.
16. However, the first difficulty for the applicant is that there is no veterinarian evidence before me that would support the applicant's claim that an earlier diagnosis could have resulted in faster improvement. While the applicant provided a June 14, 2017 letter from Bacon's veterinarian, that letter says nothing about whether faster improvement would have been possible if an earlier diagnosis had been made. In other words, the applicant has failed to establish causation. I am not prepared to speculate, and find the applicant has failed in its burden of proof in this respect.

17. The second difficulty for the applicant is that he has not provided medical evidence to support his position that Bacon's pneumonia should have been obvious. The respondent says dogs staying a long time (as Bacon was, for 12 days) tend to get tired in the stimulated environment. The respondent says it reasonably thought Bacon was tired, and relies upon photos it posted daily to its website during Bacon's stay to show he did not display outward signs of illness. Based on the photos in evidence, I agree with the respondent. On balance, I find the applicant has not proved the respondent should have realized Bacon was ill.
18. The third difficulty for the applicant is that even if the respondent had had Bacon see a veterinarian during the dog's stay, the applicant has not proved how the veterinarian bills would have been any less, even if there was "faster improvement". As referenced above, the applicant would have had to pay Bacon's veterinarian bills. Thus, the most the applicant could recover in this dispute are those bills that would have only been necessary because the illness was exacerbated by delayed diagnosis. Yet, the applicant claims all of the veterinarian bills. Further, while the applicant claims \$1,576.50 for 10.33 hours of his own time "taking care of my dog on Vet", yet the applicant does not explain how he arrived at what appears to be a \$152.61 hourly rate.
19. Given my findings above, I find the applicant has not proved negligence. This is because the applicant has not proved the respondent breached the standard of care and has also not proved causation.
20. The applicant has also not proved any breach of contract, which was not particularly argued. Given the waiver of liability language in the parties' contract, I find there was no breach of contract.
21. In summary, I find the applicant's claims must be dismissed. The applicant was unsuccessful. As such, as per section 49 of the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of tribunal fees or dispute-related expenses.

## ORDER

22. I order the applicant's claims, and therefore this dispute, dismissed.

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Shelley Lopez, Vice Chair