



Civil Resolution Tribunal

Date Issued: September 21, 2018

File: SC-2018-000767

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sweett v. Blackey et al*, 2018 BCCRT 545

BETWEEN:

Jeffrey Micheal Sweett

APPLICANT

AND:

Morgan James Blackey and Sydney Morgan Halliday-Van Ryssel

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Jeffrey Micheal Sweett, says the respondents' dog Henry attacked his dog Tucker, leaving serious bite wounds that required emergency surgery. The applicant claims reimbursement of \$2,266.74 in veterinary bills.

2. The applicant is self-represented and the respondents are represented by Mr. Morgan James Blackey.

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. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
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 issues in this dispute are a) are the respondents responsible for their dog Henry's attack on the applicant's dog Tucker, and b) if so, to what extent do the respondents owe the applicant reimbursement of his \$2,266.74 in veterinary bills.

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. I accept that all parties love their pets and that unquestionably what happened to Tucker, a 9 year-old white Labrador, was very unfortunate. After the incident at issue, Henry, an adult black Labrador/Staffordshire terrier mix, was declared a vicious dog by the Animal Control Bylaw Officer and now in the City of Nanaimo must wear a muzzle when off its owner's property. However, there was no bylaw infraction found as against the respondent.
10. At this point, I note that the applicant did not provide a statement from his mother, who was the person in control of Tucker at the time. To the extent Mr. Sweett's version of events contradicts Mr. Blackey's, I am inclined to favour Mr. Blackey's given Mr. Blackey was present. Having considered all of the evidence and submissions before me, I find the relevant chronology is as follows.
 - a. The City of Nanaimo's bylaws require that all dogs be on leash and under the control of a competent person when off their owner's property.
 - b. Mr. Sweett's mother was walking Tucker on a leash around 7 a.m. on a trail in Westwood Park in Nanaimo, along with her own small dachshund dog. Mr. Sweett was not present.

- c. Mr. Blackey was walking his 2 dogs, Henry and Beau. Both dogs were leashed, one in each of Mr. Blackey's hands. I acknowledge that Beau was briefly off leash before the incident while Mr. Blackey picked up dog feces. However, I do not agree that Beau was off leash at the moment of the attack, as perhaps alleged by the applicant. Even if Beau was off leash at the time of the attack, that fact would not change the outcome of this decision. I say this because this dispute is about Henry's attack on Tucker.
- d. Mr. Sweett's mother "let go" of Tucker's leash well before the dog attack, in order to put her dachshund behind a fence that was around a corner and 20 feet down a path. Without his leash being held, Tucker ran back down the path towards Mr. Blackey's puppy, Beau. I agree with Mr. Blackey that this is most consistent with the overall evidence, including photos and Mr. Blackey's video showing the scene of the incident. It is also consistent with Mr. Sweett's Facebook post that acknowledged his mother had "let go" of Tucker's leash and his acknowledgement in his dispute application that his mother was putting her dachshund behind a fence. Further, it is consistent with the contemporaneous findings of the Animal Control Bylaw Officer, who found that Mr. Sweett's mother "had dropped" Tucker's leash, "and therefore the dogs made contact".
- e. Tucker bounded quickly towards Beau from around a corner, which had a path that after 20 feet the path ended with the fence mentioned above. Other than smelling Beau, Tucker did not touch him. I find this is most consistent with the weight of the evidence, rather than Henry or Beau approaching Tucker. I say this because Mr. Blackey held both his dogs on a leash, whereas I have found Mr. Sweett's mother had already let go of Tucker's leash to put her dachshund behind a fence.
- f. At this point, Mr. Blackey says Henry felt protective of the puppy and attacked Tucker by "clamping" down with a bite on Tucker's head, who at that point was trying to escape. This is consistent with the photo showing bite

marks on Tucker's head, which faced towards Tucker's tail. Mr. Blackey acknowledges that he could not prevent the attack, even though he held Henry on a leash, because he did not foresee the incident and had no time to react. As Mr. Blackey put it, "Henry beat me to it". In less than 10 seconds, Mr. Blackey "got him off" Tucker.

- g. There is no evidence before me that Henry had been violent before this incident, apart from barking at cats and squirrels.

Liability

11. At this point, I will address the Henry's ownership. It is undisputed that the respondent Mr. Blackey is Henry's owner and he was the person in control of Henry at the time in question. I find there is no basis upon which to hold the respondent Ms. Halliday-Van Ryssel liable and I dismiss the applicant's claims against her.
12. 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 their dog Henry was not dangerous. As noted above, the applicant bears the burden of proof.
13. 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. This framework is often referred to as the "one bite rule", meaning absent proven negligence and a breach of scienter or occupier's liability, a dog is entitled to one free bite without its owner being held liable for any damages.
14. Occupier's liability is where damage happens on property controlled by the occupier. I find occupier's liability is not relevant here, because the incident did not occur on property controlled by the respondents.

15. Scienter 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)).
16. I find the applicant has failed to prove scienter against the respondent. I say this because while Mr. Blackey is Henry's owner, there is no evidence of prior aggressive behaviour at all, and certainly no evidence that Mr. Blackey knew of any such aggressive behaviour.
17. I turn then to negligence. Mr. Blackey had Henry on a leash. I have accepted above that Tucker bounded quickly towards Beau, while Tucker was off leash. Given the timing, I find there is insufficient evidence to support a conclusion that Mr. Blackey could have reacted more quickly to prevent or stop Henry's attack on Tucker. I accept that in the circumstances, Henry reacted to protect Beau from Tucker's seemingly boisterous approach.
18. Given my conclusion above, I find Mr. Sweett has not established negligence. The fact that Henry was declared a vicious dog relates to the severity of Tucker's injuries and that the incident had occurred. That declaration is not proof of Mr. Blackey's negligence or that he ought to have known Henry would be aggressive.
19. As I have found Mr. Blackey is not liable for Tucker's injuries, I find I do not need to address Mr. Sweett's damages claims in any detail.
20. The applicant was unsuccessful. In accordance with the Act and the tribunal's rules, I find he is not entitled to reimbursement of tribunal fees paid.

ORDER

21. I order that the applicant's claims, and thus this dispute, are dismissed.

Shelley Lopez, Vice Chair