



Civil Resolution Tribunal

Date Issued: October 10, 2018

File: SC-2017-006055

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Martin v. Griffiths*, 2018 BCCRT 603

BETWEEN:

Vicki Martin

APPLICANT

AND:

Ken Griffiths

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Vicki Martin, says the respondent dog trainer, Ken Griffiths, was negligent because within 5 minutes of her dropping her dog Houston off into the respondent's care, Houston escaped and was loose for 7 or 8 days. Houston is a 4

year old Labrador Retriever cross. The applicant claims \$2,720 in reimbursement of expenses she says she incurred while searching for Houston and veterinary costs.

2. The respondent says Houston bolted from his property just as he was coming through his front door and turning to close it. The respondent says Houston's bolt was forceful enough to cause the respondent to fall and involuntarily drop the leash. After bolting, Houston escaped through a narrow and high gap at the top of the respondent's gate. The respondent denies he was negligent in the circumstances. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the tribunal's formal written reasons. 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. Some of the evidence in this dispute amounts to a "he said, he 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.

ISSUE

7. The issue in this dispute is whether the respondent dog trainer was negligent in Houston's escape from the respondent's property while in the respondent's care, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the burden of proof on the applicant is the balance of probabilities.
9. It is undisputed that the applicant contacted the respondent about training her fearful and aggressive dog Houston. The applicant travelled with Houston to bring him to the respondent's home for training.
10. It is also undisputed that immediately after the respondent brought Houston into his home for training, the dog escaped and was missing for 7 or 8 days. I accept that the applicant was understandably upset at Houston's having gone missing and upon finding him in need of veterinary care. I also accept that the respondent

was upset at Houston's having escaped and that all parties went looking for Houston.

11. The applicant says the respondent was negligent for allowing Houston to escape. In law, a dog is personal property. Having turned Houston over to the respondent for training for a fee, I find the respondent was what is known in law as a "bailee for reward". As such, the respondent can be held liable for negligence, or a failure to exercise due care and diligence.
12. 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.
13. It is undisputed that the respondent dog trainer had a duty to the applicant, his client. It was foreseeable that if Houston escaped, he would go missing and could sustain injuries and cause the applicant to incur some expenses.
14. This dispute turns on the reasonable standard of care and whether the respondent failed to meet it. I find the respondent had an obligation to take reasonable care, given his advance knowledge of Houston's fearful and aggressive temperament, to ensure Houston could not escape. The question then is whether the respondent did so. For the reasons that follow, I find that he did.
15. The respondent was cautious in asking the applicant to muzzle Houston and in walking Houston on a leash through his front door. At that point, the respondent says Houston had become calm. The respondent says Houston was "calmly sitting next to me on a slack leash" when the applicant left. The applicant denies telling the respondent after Houston had escaped that he had an escape history and that she had forgotten the dog's GPS. I do not need to resolve that question. The material point is that the respondent did not know of any prior 'bolting' behaviour at the time Houston escaped.

16. It is undisputed that the respondent was still holding Houston's leash when they were inside and the respondent was turning to shut his front door. He said that one of the other dogs in his care, confined in a separate room, barked, and this caused Houston to bolt out the still open door. The dog's sudden movement caused the respondent's body to spin around and he landed outside onto a concrete pad, which caused him to lose hold of the leash.
17. The respondent says Houston did not run to the fence, but instead went "directly to the gap 3 ½ feet off the ground that no one would ever imagine a dog would get through or even see". The respondent's photo of where the gap was located shows that it is very narrow and at the top of the gate. Certainly, in hindsight, had the gap not existed Houston would not have escaped. However, the standard is not perfection. I accept the respondent's evidence about the gap being an unlikely escape route. The respondent says once inside his house, Houston's only access would have been the fenced back yard. The respondent says that known "flight" dogs will be taken to his pen, but otherwise he prefers to work with the dogs inside his home as it is a more relaxed and calm environment.
18. On balance, I find that the applicant has not proved the respondent was negligent in letting go of Houston's leash when he bolted. It was an unfortunate timing, with the other dog barking at the moment the door was still open. However, I accept the respondent's evidence that he did so involuntarily and as a dog trainer normally has a "death grip" on leashes. As noted above, I accept that the respondent had no reason to expect Houston would bolt, as he was told only that he was fearful and aggressive, prone to lunging. That is why he was muzzled. Even if the respondent reasonably could have expected Houston to bolt, I cannot find that he could have prevented his losing his grip on the leash. I find the unfortunate escape occurred during the very moment the respondent was turning to shut his door and that the respondent reasonably planned to train Houston inside his home, given the background he was given. As referenced above, I also find the respondent reasonably did not expect Houston to escape through the very narrow gap that was high at the top of his gate.

19. Given my conclusions above, I do not need to address the damages requested by the applicant. I find the applicant's claims must be dismissed. As the applicant was unsuccessful, I find she is not entitled to reimbursement of tribunal fees paid.

ORDER

20. I find the applicant's claims, and therefore this dispute, must be dismissed.

Shelley Lopez, Vice Chair