



Civil Resolution Tribunal

Date Issued: November 14, 2018

File: SC-2018-004089

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mitchell v. Crombach*, 2018 BCCRT 720

B E T W E E N :

Angela Mitchell

APPLICANT

A N D :

Nancy Crombach

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION AND JURISDICTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent Nancy Crombach, due to the respondent's non-compliance with the tribunal's directions as required, as discussed below.

2. The applicant, Angela Mitchell, says the respondent failed to pay the veterinary bill incurred after Ms. Crombach's dog bit and injured the applicant's poodle named Gromley.
3. The parties are each self-represented.
4. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
 - a. hear the dispute in accordance with any applicable rules.
 - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
5. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the 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.
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.
7. For the reasons that follow, I have allowed the applicant's claims.

ISSUES

8. The first issue in this dispute is whether I should proceed to hear the applicant's claim, without the respondent's further participation given the respondent's non-compliance.
9. The second issue is to what extent I should order the respondent to pay the applicant the claimed amount of \$368.04.

EVIDENCE & ANALYSIS

Non-compliance

10. My August 31, 2018 summary decision to hear the dispute without the respondent's participation, given the respondent's non-compliance, was previously communicated to the parties by email, through the tribunal facilitator. The details supporting that decision are set out below.
11. The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the facilitator to contact its representative with a request for a reply.
12. In particular, the applicant filed the Dispute Notice on June 7, 2018. The respondent filed her Response on July 3, 2018. The facilitator made the following attempts at contact:
 - a. **July 17, 2018** – The case manager emailed the parties to arrange a telephone conference.
 - b. **July 24, 2018** – The case manager emailed the respondent saying she had not had a reply to the July 17, 2018 email, and asking for the respondent to provide her availability for a 15 minute phone call in the week of August 7, 2018, not later than July 27, 2018 at noon.

- c. **July 25, 2018** – The respondent replied, saying she was having problems with her phone but offered to arrange to call from an alternate phone during a “good time.” The respondent did not provide availability for a telephone conference.
- d. **July 26, 2018** – The case manager replied, explaining that a telephone conference line, toll free, could be arranged for the respondent to call in. The case manager requested three times during the week of August 7 that worked for the respondent and offered to book the call for one of those times. The respondent did not reply.
- e. **August 14, 2018** – The case manager emailed the respondent again, asking for three times the respondent was available that week. The respondent did not reply.
- f. **August 20, 2018** – The case manager emailed again, asking that the respondent reply before August 23 at 5:00 p.m. with three times that she would be available to speak with the case manager the following week. If the respondent failed to comply, the case manager indicated that the dispute may be referred to a tribunal member who may decide the dispute without the respondent’s further participation.
- g. **August 24, 2018** – The case manager emailed the respondent indicating that if she did not respond and provide her availability for a phone meeting, the dispute may be referred to a tribunal member who may decide the matter without her participation. The case manager indicated that because this was the first warning to the respondent about the consequences of non-compliance, the case manager had arranged a telephone conference call for Tuesday August 28, 2018 at 12 noon, to meet with the respondent by phone. The case manager provided a telephone conference line and access codes.
- h. **August 28, 2018** – The case manager waited on the telephone conference line for 30 minutes. The respondent did not attend or otherwise make contact with the case manager. The case manager then emailed the respondent and

indicated that the respondent had failed to comply with requests, and that the dispute would be referred to the tribunal for a decision without her participation if she failed to email by 9:00 a.m. on August 29, 2018, providing a time for a telephone conference. The respondent did not reply.

13. The facilitator referred the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute in the absence of participation from the respondent.

Should the tribunal hear the applicant's dispute?

14. As noted, the respondent filed a response agreeing to the applicant's claims but has provided no explanation about why she suddenly stopped communicating with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact the respondent. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process. I find it is more likely than not that the respondent was aware of the attempts to contact her and chose not to respond.
15. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
 - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
 - b. the stage in the facilitation process at which the non-compliance occurs;
 - c. the nature and extent of the non-compliance;
 - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
 - e. the effect of the non-compliance on the tribunal's resources and mandate.

16. First, this claim does not affect persons other than the parties involved in this dispute.
17. Second, the non-compliance here occurred at the outset of the facilitation process and no substantive discussions between the parties occurred. The respondent has effectively abandoned the process after providing a response. Third, given the facilitator's repeated attempts at contact and the respondent's failure to respond despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
18. Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of her non-compliance. If I refused to proceed to hear the dispute, the applicant would be left entirely without a remedy and that would be unfair.
19. Finally, the tribunal's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.
20. In weighing all of the factors, I find the applicant's claims should be heard. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
 - a. the extent of the non-compliance is significant;
 - b. the applicant is not prejudiced if such an order is made; and
 - c. the need to conserve the tribunal's resources.

Merits of the Dispute and Damages

21. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute. Where a respondent filed a response but has since failed to comply with the tribunal's directions, an adverse inference may be drawn against that respondent. This simply means that if the person refuses to participate, then it is generally reasonable to assume that the applicant's position is correct on the issue at hand. This concept is similar to where liability is assumed when a respondent has failed to provide any response at all to the dispute and is in default.
22. Having said that, I will review the Dispute Response because it was filed prior to the respondent's non-compliance. The respondent says there is no proof the injury was caused by her dog.
23. The respondent admits that the two dogs were unleashed and had a "small disagreement" when playing in the beach area of Maiden Lake in Fernie, BC. She witnessed both dogs growling and rolling around in the sand. The respondent admits that the applicant's dog had a "very small cut\scratch above the eye." She says it is impossible to say whether the injury arose during play with her dog, from the dog's own claw, or during some previous incident.
24. In her Response Notice, the respondent describes the applicant's dog as a small Springer Spaniel. Gromley is not a Springer Spaniel but I find that nothing turns on this error.
25. The applicant filed a witness statement from her family member, Daniel Mitchell. Mr. Mitchell says that at Maiden Lake on May 21, 2018, at around 2 pm, the respondent's dog was playing with Gromley. Then, the dogs wandered close to a woman who was sunbathing. The woman pet the respondent's dog, then pet Gromley. As soon as this happened, the respondent's dog growled and bit Gromley in the face. Mr. Mitchell recalls that Gromley squealed loudly and there was blood on his face. Mr. Mitchell says the respondent then approached the applicant and said that her dog "does this", then describing that he gets jealous when people pet

another dog. Mr. Mitchell says the respondent then told the applicant she would pay the vet bill and gave the applicant her phone number.

26. While he is related to the applicant, I accept Mr. Mitchell's evidence because provided a first-hand, factual account of events, and the respondent, through her choice to stop participating, did not contest his evidence.
27. Bearing in mind the adverse inference, I need not dwell on the legalities of responsibility for the dog bite. Having said that, based on her prior knowledge of her dog's aggressive tendency, the respondent is liable under the legal doctrine of scienter (see *Janota-Bzowska v. Lewis* [1997] B.C.J. No. 2053 (BCCA)).
28. Given the evidence from Mr. Mitchell, an eye witness to the incident, and the respondent's own admission that her dog was involved in a skirmish with Gromley from which Gromley emerged with a visible injury, I find that it is more likely than not that that the respondent's dog injured Gromley as described in the Dispute Notice.
29. The applicant provided photographs of Gromley's eye and a puncture wound located underneath his right mandible. Dr. Tim Rittson Bennett, veterinarian, wrote a note describing examining Gromley the day after being "attacked by another dog". Dr. Rittson Bennett confirms an eye injury and the puncture wound, and that treatment was provided.
30. Based on Dr. Rittson Bennett's evidence and the photographs of Gromley, I find that the injuries to Gromley's eye and mandible caused by the respondent's dog required examination and treatment. I allow the \$368.04 claimed.
31. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$368.04, from May 22, 2018 when the veterinary bill was paid to the date of this decision.

ORDERS

32. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$506.03, comprised of:
- a. \$368.04 as reimbursement of the veterinary care costs,
 - b. \$2.49 in pre-judgment interest under the COIA,
 - c. \$10.50 in expenses for providing the Dispute Notice to the respondent, and
 - d. \$125 in tribunal fees.
33. The applicant is also entitled to post-judgment interest under the COIA.
34. 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.
35. 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.

Julie K. Gibson, Tribunal Member