Civil Resolution Tribunal

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File: SC-2018-003111

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Muir v. McDonald,* 2018 BCCRT 856

B E T W E E N :

Joshua Muir

APPLICANT

A N D :

Daron McDonald

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about veterinary (vet) bills following a dog bite. The parties are next-door neighbours. The applicant, Joshua Muir, says the respondent Daron McDonald's German Shepherd dog Mara went under a chain link fence and entered

the applicant's yard, and bit the applicant's dog Daisy who was loose in the yard. The applicant claims $917.44 as reimbursement for veterinary bills.

2. The parties are each self-represented.

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. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found 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 is liable for injuries to the applicant's dog, and if so, what is the appropriate remedy.

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 submissions below as necessary to explain my decision.

9. I accept that all parties love their pets. There is no evidence before me to support a conclusion that the respondent's dog Mara has ever been formally declared a dangerous or aggressive dog, either before or after the incident. I am not prepared to accept the applicant's neighbour CA's evidence to conclude Mara was a known aggressive dog. The weight of the evidence before me, including witness statements provided by the respondent, does not support that conclusion. To the extent the applicant may suggest it, I find the applicant has not proved Mara has a history of aggressive behaviour, such as biting or attacking other animals or people.

10. It is undisputed that neither Daisy nor Mara were leashed at the time the applicant's dog Daisy was injured, which was at around 10 p.m. on March 12, 2018. It is also undisputed that before the incident the parties had an agreement that they would each have a look into the other's back yard, before letting their respective dogs go into their yard. This was to avoid the dogs barking and becoming aggressive. In a text message, the applicant had agreed his dog Daisy had a propensity to be an "instigator". I accept that the applicant's installation of the chicken wire was an effort to keep his smaller dog Daisy from getting out of his yard. However, the respondent acknowledged that he knew the chicken wire was not a barrier and that his dog could easily get under it.

11. The parties agree that when Daisy ran out, she ran barking over to the applicant's side of the chicken wire fence. The respondent says Daisy "began to come" under

the wire fencing into his yard and Mara put her nose down by the wire fencing and Daisy bit Mara on the nose. In other words, Daisy bit first and "started" the confrontation. The respondent says Mara reacted, went under the fence and into the applicant's yard, and bit Daisy on her rear end. The respondent says this was a "corrective bite" only.

12. I find that nothing turns on whether Daisy bit Mara's nose, noting also that there is no counterclaim before me. I say this because I accept that Mara's attack on Daisy occurred in the applicant's yard, and the respondent was negligent in not preventing Mara from doing so. My reasons follow.

13. The respondent says he checked first to see if Daisy was in the applicant's yard, and as she was not, he released Mara to relieve herself. The applicant says that when he opened the door to check, Daisy ran out. The applicant submits that before he could grab Daisy, Mara was already in his yard. The applicant's point is that the parties' agreement to check could never be 100% reliable and that the respondent had an obligation to ensure his dog did not attack Daisy, particularly in the applicant's own yard. I agree with the applicant, for the reasons that follow.

14. I turn then to the law of liability for dog bites.

15. 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 his dog was not dangerous. As noted above, the applicant bears the burden of proof.

16. Thus, 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.

17. I will deal with scienter first, which 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)). Given my conclusions above, I find scienter does not apply here as the applicant has not proved that Mara had an aggressive history before the incident.

18. Section 3 of the *Occupier's Liability Act* states that an occupier must take reasonable care to ensure others on their property are reasonably safe from injury that the occupier ought to have foreseen. Occupier's liability does not apply in this case as it is undisputed that Daisy's injuries did not occur on the respondent's property. Rather, they occurred in the applicant's yard, after Mara came through the chicken wire fence.

19. I turn then to negligence. The respondent has a duty of care to reasonably ensure his dog does not attack other animals or people. The undisputed evidence is that the parties knew their dogs should be kept apart. It is particularly relevant that the respondent knew that the chicken wire fence was not a barrier and thus ought to have known that Mara could get under it. I find it was not reasonable for the respondent to entirely rely on the parties' agreement to check to see if the other's dog was already in the yard. It is also relevant that all parties had their dogs unleashed.

20. The applicable law of negligence does not impose strict liability (meaning liability regardless of fault or intention). To prove negligence, the applicant must prove that the respondent knew or ought to have known that Mara was likely to create a risk of injury and that the respondent failed to take reasonable care to prevent such injury (see the *Xu* decision, cited above). I find the respondent should have prevented Mara from accessing the applicant's yard, given his knowledge the dogs needed to be kept apart and his knowledge the chicken wire fence was not a barrier. Thus, I find the respondent was negligent and is liable for the applicant's proved damages.

21. What about Daisy's injuries and the applicant's claimed damages? The applicant says Daisy's injuries were extensive and would not have occurred had Mara not entered the applicant's yard. As discussed below, I find the applicant has not entirely proved his damages claim.

22. In the Dispute Notice, the applicant described a small cut and blood in Daisy's mouth, and then later a puncture wound. I find the applicant's evidence and submissions are not clear if the wounds are all around Daisy's mouth or head, or around her rear-end. Despite the applicant's submission to the contrary, I cannot determine the wounds' severity from the photos. The applicant's only supporting evidence are a statement from a neighbour and close-up photos of Daisy's injuries. Most significantly, the applicant did not provide any evidence to support his $917.44 claim, and in particular did not provide any veterinary records or invoice.

23. I find that the applicant had the opportunity to provide relevant evidence, as part of the tribunal's facilitation and decision preparation processes. For reasons unknown to me, the applicant did not provide the veterinary invoices to support his compensation claim, which I find he should have known was required. I am not prepared to award $917.44 without supporting evidence, in the circumstances described above. Instead, on a judgment basis, I will award the applicant $200 as compensation for his dog's injuries and associated treatment. I do not award pre-judgment interest under the *Court Order Interest Act*, as I find the applicant has not proved when or if he incurred an actual expense.

24. The applicant was partially successful. In accordance with the Act and the tribunal's rules, I find the applicant is entitled to reimbursement of half his $125 tribunal fees, namely $62.50. There were no dispute-related expenses claimed.

ORDERS

25. Within 14 days of this decision, I order the respondent to pay the applicant a total of $262.50, comprised of:

    a. $200 in damages, and

    b. $62.50 as reimbursement of tribunal fees.

26. The applicant is entitled to post-judgment interest, as applicable.

27. 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.

28. 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.

Shelley Lopez, Vice Chair