



Civil Resolution Tribunal

Date Issued: December 17, 2018

File: SC-2017-007235

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pauze v. Dogway Dog Rescue Society*, 2018 BCCRT 865

BETWEEN:

Marc Pauze

APPLICANT

AND:

Dogway Dog Rescue Society

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a \$450 refund for a dog the applicant, Marc Pauze, adopted from but later returned to the respondent, Dogway Dog Rescue Society. The applicant says the dog was not the sort of dog the parties had agreed upon, and so

he returned the dog and the respondent agreed to try and find a more suitable dog. However, the respondent never did, and so the applicant asks that the respondent refund the \$450 the applicant paid for the dog.

2. In its Dispute Response filed at the outset of this proceeding, the respondent stated it never provided any guarantees about ages or health of the dogs it adopts out, because they are rescues. However, despite multiple reminders, the respondent never provided any evidence or submissions for this decision.
3. The applicant is self-represented. The respondent is represented by Cherry Latour, an employee or principal.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.

6. 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.
7. 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

8. The issue in this dispute is whether the respondent owes the applicant the claimed \$450 refund for the dog the applicant returned to the respondent after the applicant decided the dog's adoption was not suitable.

EVIDENCE AND ANALYSIS

9. 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.
10. The applicant says that after adopting the dog from the respondent, he discovered the dog was very lethargic and not eating. The respondent referred the applicant to their veterinarian, who said the dog was fine. Ultimately the applicant had the dog seen by a different veterinarian who said the dog needed a special diet and that the dog was much younger than the respondent had said. When the dog's health improved, the applicant found the dog was more energetic than he could handle and says he was looking for an older, quiet dog with minimum exercise required.
11. The evidence indicates that the parties' agreement was that if the applicant for any reason did not want to keep the dog, he was to return it to the respondent. The applicant did so, and asked for a refund of the \$450 he paid for the dog.

12. The applicant says the respondent suggested the applicant foster different dogs to find a better match, and the applicant agreed. However, the applicant says the respondent never followed through with this offer, and so the applicant now asks for the \$450 to be refunded.
13. Emails provided by the applicant indicate that the respondent failed to respond to the applicant's numerous inquiries about the \$450 refund, other than to ask him what he paid the vet that advised the dog needed a special diet.
14. The adoptive agreement is not before me in evidence. Apart from the respondent's statement in the Dispute Response, there is no evidence before me that the \$450 payment was non-refundable if the dog was returned. The dog was returned. I also have the applicant's submission that the respondent agreed to find an alternative more suitable dog, but failed to do so. Given the respondent failed to provide any evidence or submissions, I accept the applicant's evidence. In all of these circumstances, I find the respondent must refund the applicant the \$450 he paid for the dog that he has returned to the respondent.
15. The applicant is entitled to pre-judgment interest under the Court Order Interest Act (COIA) on the \$450, from October 31, 2017, when the evidence indicates the applicant had requested the \$450 in writing and a decision of the respondent's Board was expected but never provided.
16. In accordance with the Act and the tribunal's rules, as the applicant was successful I find he is entitled to reimbursement of \$125 in tribunal fees. There were no dispute-

ORDERS

17. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$581.25, comprised of:
 - a. \$450 in debt,
 - b. \$6.25 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
18. The applicant is entitled to post-judgment interest, as applicable.
19. 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.
20. 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