



Civil Resolution Tribunal

Date Issued: January 3, 2019

File: SC-2018-004928

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Torrens v. Johnston*, 2019 BCCRT 7

BETWEEN:

Diana Lynn Torrens

APPLICANT

AND:

Alanna Johnston

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about claimed injuries to the applicant's 12-year old Cocker Spaniel dog Jesse, on June 30, 2018. The applicant, Diana Lynn Torrens, says Jesse was

injured by the respondent's dog Theo, a then 30-pound, 5-month old, Wheaton terrier. The applicant says the respondent, Alanna Johnston, is responsible for Jesse's injuries because Theo was unleashed on a public roadway and "bounded over" to Jesse and jerked his large head up suddenly, striking Jesse on the chin. Jesse was diagnosed with whiplash and treated with medication for about a week. The applicant claims \$1,141.71 as reimbursement of her veterinarian expenses and \$10 in gas.

2. The respondent says the applicant's spouse abruptly jerked Jesse away once Theo approached. The respondent denies Theo's conduct could have caused Jesse's injuries. The respondent says the dog incident was innocuous and at the time no one thought there was anything awry.
3. The parties are each self-represented. For the reasons that follow, I dismiss the applicant's claims.

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 118 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. Some of the evidence in this dispute amounts to a "she 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 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 is liable for injuries to the applicant's dog and if so, what is the appropriate remedy.

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. First, I accept that all parties love their pets and that none of the parties are happy that Jesse needed veterinarian treatment. Second, I accept that whichever version of the incident I accept, Jesse's injuries were not the result of aggressive behaviour by Theo. Rather, the applicant's position is that Theo caused the injuries and therefore the respondent must be held responsible. The applicant incorrectly

submits that “surely the legal position must be that as pet owners we are responsible for our pets at all times”. I will discuss the law on animals below. The applicant admits that Theo’s behaviour was “admittedly in normal canine interaction and without any intentional aggression”.

11. It is undisputed that at the time, Theo was unleashed. I accept that Jesse was leashed using a harness, rather than a leash around a neck collar.
12. For the purposes of this decision, I will assume the applicant’s alleged facts are true, and make no findings about whose version of events is accepted. I say this because even on the applicant’s evidence, her claim must fail. My reasons follow.
13. 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 her dog was not dangerous. There is no “strict liability” or automatic fault if a pet owner’s dog causes injury to another. As noted above, the applicant bears the burden of proof.
14. 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.
15. 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 occurred on a public roadway, in a relatively quiet cul de sac just past the driveway of friends of the respondent.
16. 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)).

17. As referenced above, I find there is no suggestion that Theo was aggressive, and certainly no evidence that the respondent knew or ought to have known that Theo would engage in aggressive behaviour. As noted, the applicant acknowledges that Theo's "head butting" of Jesse was part of a normal dog interaction. Therefore, I find the applicant has failed to prove scienter against the respondent.
18. I turn then to negligence. 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.
19. I accept the respondent owed the applicant a duty of care at the time of the dog incident, as all parties were using the common roadway. I find the reasonable standard of care was to have sufficient control of one's dog in the circumstances.
20. The applicant's position is that the incident was "the usual dog meet and greet" where Theo came "bounding over to sniff". The applicant expressly acknowledges that Theo did not intentionally cause injury to Jesse but that the incident was "part of puppy exuberance and being non-restrained". As noted above, Theo was unleashed.
21. I find that the failure to leash Theo, even if that was a breach of the standard of care, did not cause Jesse's injuries. I say this because the applicant does not point to anything the respondent could have done differently to prevent Jesse's injury, even if Theo had been leashed. In particular, there is no suggestion that Theo should have been withheld from sniffing Jesse or that the applicant or her spouse did not welcome Theo's sniffing. Rather, the applicant's evidence is that Theo suddenly lifted his head from below Jesse's jaw, and that this sudden movement in play is what caused Jesse's injuries.

22. I therefore find that the fact that Theo was unleashed made no difference in these circumstances. In other words, Theo's being unleashed cannot be said to have been a cause or contributing factor to Jesse's injuries. I find the respondent was not negligent, because the only possible breach of the standard of care was the failure to leash Theo, and as noted the applicant has not proved this made any difference to the outcome.
23. I find the applicant has not proven the respondent is liable for Jesse's injuries. Given this conclusion, I find I do not need to address the applicant's damages claims in any detail. I dismiss the applicant's claims.
24. The applicant was unsuccessful. In accordance with the Act and the tribunal rules, I find she is therefore not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

25. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair