



Civil Resolution Tribunal

Date Issued: February 15, 2019

File: SC-2018-003354

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Demontigny v. Saunders*, 2019 BCCRT 192

B E T W E E N :

Samar Demontigny

APPLICANT

A N D :

Christopher Saunders

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about responsibility for a veterinarian's bill. The applicant, Samar Demontigny, says that her dog was injured by a dog belonging to the respondent, Christopher Saunders, and that he should pay the costs of the associated veterinary care. The respondent says that he is not responsible for these costs.

2. The parties are 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 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

7. The issue in this dispute is whether the respondent is liable for his pets' actions and the \$2,100 claimed by the applicant for veterinary bills.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities. Both parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. The applicant's Staffordshire bull terrier, Jett, was staying with a tenant on the respondent's property while the applicant's home was undergoing renovations. The respondent has his two labs, Corb and Nash, and a border collie cross, Mia, living with him on the property.
10. On March 4, 2018, an altercation occurred between Jett and the respondent's dogs. The evidence suggests that some children were encouraging the dogs to play tug of war with a toy when one of the respondent's dogs attacked Jett. There were no adult witnesses and, although there is some suggestion that Mia pinned Jett to the ground, the exact nature of the incident is not clear. There is no indication that there were any other dogs present on the property when this incident occurred.
11. Veterinary records show that Jett suffered puncture wounds, a hernia that required surgical repair, abrasions, and a corneal injury. The veterinarian described the injuries as traumatic in nature, and there is no evidence that they were present previously. I am satisfied that Jett's injuries resulted from the altercation with the respondent's dogs.
12. The applicant says the respondent is responsible for the cost of Jett's veterinary care as the incident occurred on his property and was caused by his dogs. She also says that the respondent was negligent in that he failed to supervise or secure his dogs, and thereby failed to ensure the safety of everyone on his property. According

to the applicant, Jett has no history of aggressive behaviour. She suggested that the same cannot be said for the respondent's dogs, and provided a text message from the tenant who stated that Mia was not socialized properly and is an "alpha" and "a bit off".

13. The respondent says that the incident occurred when Jett was left unsupervised on his property. He says there is no evidence to suggest that his dog initiated the altercation, or that he was negligent. The respondent denied that any of his dogs are aggressive. The respondent suggested that Jett has a history of problematic behaviour and provided a copy of a social media post from 2015 in which the applicant sought a trainer for her dog by stating "I need help before snaps turn into bites".
14. The identity of the dog (or dogs) which instigated the altercation is not determinative of the respondent's liability for Jett's injuries. In British Columbia, there are 3 ways for an owner to bear liability for a pet's actions: a) the legal maxim of scienter, b) occupier's liability under the *Occupiers Liability Act*, and c) negligence.
15. 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)).
16. There is no dispute that the respondent owns the three dogs that were present at the time of the incident with Jett. There is no indication in the evidence, including the information from the municipality, that the respondent's dogs had ever been formally declared to be aggressive or dangerous. I acknowledge the views of the tenant that Mia is "alpha", "a bit off", and poorly socialized, as well as the applicant's statement that the respondent's dogs approached her and attempted to enter her vehicle when she visited the property. However, I am not satisfied that this shows that any of the respondent's dogs had, or the respondent knew of, a propensity to

cause harm. I find that liability in scienter has not been established in these circumstances.

17. I will deal with occupier's liability and negligence together as both impose a duty of care on the respondent to ensure that his dogs did not attack any people or animals. Under section 3(1) of the *Occupiers Liability Act*, an occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person, and the person's property, on the premises, and property on the premises of a person, whether or not that person personally enters on the premises, will be reasonably safe in using the premises.
18. To establish negligence, the applicant must prove that the respondent knew or ought to have known that his dogs were likely to create a risk of injury, and that he failed to take reasonable care to prevent such an injury (see *Xu*, as cited above).
19. As noted above, the applicant's evidence is that the respondent's dogs approached her and tried to get into her vehicle when she visited the property. She says this establishes aggressive behaviour, and a lack of control and supervision on the part of the respondent. I do not agree with the characterization of the dogs' behaviour as aggressive. This conclusion is supported by the fact that the applicant chose to leave Jett at the property, and the fact that the tenant chose to leave Jett loose and unsupervised. Further, the evidence before me also shows that the respondent's dogs are responsive to his commands, and that Jett and the respondent's dogs interacted without difficulty before the incident.
20. Based on the evidence before me, I am satisfied that the respondent had no reason to believe that his dogs would cause the type of harm that occurred in their interaction with Jett. In these circumstances, I find that it was reasonable for the respondent to allow his dogs to run free on his own property. I do not find that the respondent failed to take reasonable care to ensure the safety of people and dogs on his property such that liability would be established under occupier's liability or negligence.

21. I find that the applicant has not proven that the respondent is liable for Jett's injuries. Accordingly, she is not entitled to the damages she claims.
22. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicant was unsuccessful, I dismiss her claim for reimbursement of \$125.00 in tribunal fees. The respondent did not make a claim for fees or expenses.

ORDER

23. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member