



Civil Resolution Tribunal

Date Issued: March 15, 2019

File: SC-2018-006625

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ibrahim v. Roberta Henry, (dba Darling Dogs)*,
2019 BCCRT 320

B E T W E E N :

Yasmeen Ibrahim

APPLICANT

A N D :

Roberta Henry (Doing Business As Darling Dogs)

RESPONDENT

A N D :

Yasmeen Ibrahim

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Yasmeeen Ibrahim's female Maltese cross Moza spent 16 days at the kennel operated by the respondent Roberta Henry, Doing Business As Darling Dogs (Darling Dogs). While there, Moza mated with the respondent's stud Jax. Ms. Ibrahim says Darling Dogs was negligent in leaving Moza and Jax together and that Moza's unwanted pregnancy was the result.
2. Ms. Ibrahim says she told Ms. Henry that Moza was not fixed and that she was unsure when her next heat would be. Ms. Ibrahim says Ms. Henry said she would make sure Jax was not left with Moza. In contrast, Ms. Henry says Ms. Ibrahim assured her that Moza's heat cycle had finished three weeks earlier and that she approved of Moza staying with the other small dogs during boarding.
3. Ms. Ibrahim claims \$200 for the cost of terminating Moza's pregnancy, and a refund of the \$400 she paid to board Moza at Darling Dogs. Darling Dogs asks that the dispute be dismissed.
4. In its counterclaim, Darling Dogs asks to be reimbursed \$600 for time and money spent dealing with this dispute.
5. Ms. Ibrahim is self-represented. Darling Dogs is represented by principal Roberta Henry.

JURISDICTION AND PROCEDURE

6. 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*. 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.

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a “she said, she said” scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
8. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
9. 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.
10. 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

11. The issue in this dispute is whether Darling Dogs was negligent in leaving Moza and Jax together and, if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

12. This is a civil claim where the burden of proof is on the applicant to prove her claim on a balance of probabilities. The respondent must also prove her counterclaim. I have reviewed all of the evidence but only refer to it to extent needed to explain my decision.
13. To succeed in a claim in negligence against Darling Dogs, Ms. Ibrahim must prove that it fell below a reasonable standard of care while boarding Moza, and that the failure caused the damage, in this case Moza's pregnancy.
14. On August 4, 2018, Ms. Ibrahim contacted Ms. Henry to ask about boarding her Staffordshire bull terrier male Zulu and her small female dog Moza.
15. It is undisputed, and I find, that Ms. Henry asked Ms. Ibrahim a series of questions to see if the dogs qualified to stay at Darling Dogs. Unfortunately, neither dog had been fixed so Ms. Henry declined to take the dogs. This is consistent with the Darling Dogs website that says male dogs must be neutered and female dogs not be in their heat cycle.
16. At this point, Ms. Henry says Ms. Ibrahim pleaded for an exception because she needed somewhere to board the dogs while going on a last-minute trip. Ms. Ibrahim, in submissions, agreed that Ms. Henry made an exception.
17. The parties disagree about what happened next.
18. Ms. Henry says she agreed to make an exception only if Moza was not in or near her heat cycle because, although she some separate space for Zulu or might be able to keep him with larger fixed females, Moza would have to stay with the other small dogs, including the stud Jax, who was part of Darling Dogs' breeding program.
19. Ms. Henry says Ms. Ibrahim told her that Moza had finished her heat cycle three weeks earlier, meaning she would not be in heat while at the kennel.

20. Ms. Henry says small dogs have a heat cycle about every six months to one year. A textbook excerpt Darling Dogs filed in evidence says that most females come into heat about every six months, though it can vary. Some female dogs will come into season every four months. Either way, if Moza had finished her cycle three weeks earlier, I accept that one would not expect her to have been in heat while boarding at Darling Dogs.
21. In contrast, Ms. Ibrahim says she told Ms. Henry that she was unsure when Moza had last been in heat, and that Ms. Henry assured her that Moza would be kept separate from their stud.
22. Darling Dogs filed an email chain in evidence which shows Ms. Ibrahim checking on her dogs on August 15, 2018. At that time, Ms. Henry responded saying, in part “Moza has been hanging out with all the small dogs...” Ms. Ibrahim does not reply to raise concern about this arrangement, as one would expect if it was contrary to the agreement reached before she departed.
23. Later, on August 20, 2018, Ms. Henry wrote to Ms. Ibrahim saying “Dogs are doing good except your little girl was in heat after all. I thought she was nowhere close to her cycle? She was caught tonight by my stud Jax (morkie).”
24. In response, Ms. Ibrahim writes back on the same day saying, in part, “I’m pretty shocked, I thought she finished it weeks ago. We are planning on getting her spayed when we return.”
25. On August 26, 2018 Ms. Ibrahim wrote to Ms. Henry again. This time, Ms. Ibrahim said that “You clearly specified to us when we dropped off the dogs are your facility that you would separate Moza and your stud so that no such accident would happen.”
26. On the central issue of whether Ms. Henry promised to keep Moza and Jax apart, I find it more likely that she did not. I say this because Ms. Ibrahim’s first response upon being told of Moza’s heat cycle was a reaction of surprise, saying she thought the previous heat cycle finished weeks ago. This is consistent with Ms. Henry’s

evidence that Ms. Ibrahim told her that Moza had been in heat three weeks earlier, meaning it was unlikely she would be in heat again while kenneled.

27. This is also consistent with the situation Ms. Henry described, where Ms. Ibrahim was eager to have her make an exception to her policies and take the dogs, so that she could go out of the country.
28. In reaching this determination I place particular weight on that fact that, when informed that Moza was in with all the small dogs, on August 15, 2018, Ms. Ibrahim did not reply to say that Moza should not be mixing with other small dogs due to a risk that she would be in heat.
29. I also considered Ms. Ibrahim's argument that Ms. Henry was obliged to keep the Moza and Jax, if together, under constant supervision which, say says, also would have prevented them from mating. However, Ms. Ibrahim provided no evidence that this level of supervision is the required standard for a boarding facility.
30. On September 12, 2018, Moza was spayed by a veterinarian who confirmed an early pregnancy with two fetuses.
31. Given my factual findings above, I find that Ms. Ibrahim has not met the burden upon her to prove that Darling Dogs was negligent. Ms. Ibrahim did not provide an opinion from another kennel as to the standards for boarding intact dogs in this situation. I have found that no one reasonably expected Moza to be in heat, so there was no requirement for her to be kept separate from Jax. Aside from Moza's unwanted pregnancy, Ms. Ibrahim offers no proof of negligence.
32. Turning to the counterclaim, the tribunal generally does not award costs for time spent on disputes, consistent with the tribunal's rule that legal fees usually are not recoverable except in extraordinary cases. As the counterclaim is a bare claim to be compensated for time spent, and this is not an extraordinary case, I dismiss it.
33. 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. I see no reason in this case not to follow that general rule. As Ms. Ibrahim was unsuccessful, I find she is not entitled to reimbursement of tribunal fees. Similarly, as Darling Dogs did not succeed in its counterclaim, it must bear its own tribunal fees for the counterclaim.

ORDERS

34. I order Ms. Ibrahim's claim and her dispute dismissed.

35. I also dismiss Darling Dogs' counterclaim.

Julie K. Gibson, Tribunal Member