



Civil Resolution Tribunal

Date Issued: April 5, 2019

File: SC-2018-005650

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Holly Newman dba Wewag Dog Services v. Gauthier*, 2019 BCCRT 425

B E T W E E N :

Holly Newman (Doing Business As Wewag Dog Services)

APPLICANT

A N D :

Natalie Gauthier

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Holly Newman (Doing Business As Wewag Dog Services) says it provided daycare and boarding for the respondent Natalie Gauthier's dog, a toy breed poodle named Halia, but was not paid. The applicant claims \$829.98 that she says the respondent owes.

2. The respondent disagrees and says that the applicant misrepresented the services that would be provided. She asks that the dispute be dismissed.
3. The applicant is represented by Wewag Dog Services owner Holly Newman. The respondent is self-represented.

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*. 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 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.
6. 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.
7. 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.

8. 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

9. The issue in this dispute is whether the respondent must pay the \$829.98 claimed by the applicant.

EVIDENCE AND ANALYSIS

10. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
11. On June 1, 2018, the applicant invoiced the respondent for a 10 pack of full day daycare for Halia, for \$469.99.
12. On June 26, 2018, the applicant invoiced the respondent for dog care services for Halia, in the amount of \$459.99. The invoice includes another 10 pack of full day pre-paid daycare at \$247.61, and two late payment charges of \$100 each for July and August 2018. That is, the applicant charged \$100 a month for overdue payments.
13. Because I was not given any evidence that the respondent agreed to a term that late payments would be subject to a \$100 charge per month, I do not allow that \$200 portion of the applicant's claim.

14. Although the invoice labelling calls the 10 packs “pre-paid”, I find that the applicant was selling them to the respondent but allowing her to use them up prior to payment.
15. Text messages exchanged between the parties in the summer of 2018 show that the respondent promised to pay the invoices but was having financial difficulty. She did not raise concerns about the quality of care given to Halia at that time.
16. In submissions, the respondent says that in June 2018 she boarded Halia at the applicant’s facility. She says that the applicant’s staff were smoking in the pickup van while Halia was in it, and leaving Halia in the van unattended and unsecured, ignoring her cries. The respondent says that when she picked up Halia after being away in England, the applicant’s staff gave back the food she had specially left for Halia to eat while she was away. Staff told her that Halia must have been given “something else.” At pickup, the respondent says she found Halia to be thin and gaunt. However, she did not file evidence to prove this observation.
17. The respondent says she became dissatisfied with the applicant’s services but continued to use them while knowing “I wasn’t going to pay”, because she did not have other options for Halia’s care.
18. While it is unfortunate that the respondent was struggling with financial and personal matters during this time frame, I find that the evidence does not prove any deficiency with the applicant’s care of Halia. I say this because in the text messages exchanged between the parties at the time, the respondent did not raise any concerns about the quality of service. By contrast, she texts that Halia has been missing attending at the daycare.
19. I find that the respondent owes the applicant the claimed \$717.60 for services rendered. I calculate prejudgment interest under the *Court Order Interest Act* from July 30, 2018 to the date of this decision, which I find reasonable.
20. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

21. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$850.56, broken down as follows:
 - a. \$717.60 in payment for services rendered,
 - b. \$7.96 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 for tribunal fees.
22. The applicant is entitled to post-judgment interest, as applicable.
23. 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.
24. 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.

Julie K. Gibson, Tribunal Member