



# Civil Resolution Tribunal

Date Issued: April 26, 2019

File: SC-2018-008435

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pope v. Howell*, 2019 BCCRT 505

**B E T W E E N :**

Terry Pope

**APPLICANT**

**A N D :**

Nathan Howell

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. The applicant Terry Pope says the respondent Nathan Howell's dog, Keira, bit his dog, Hunter, causing significant injury. The applicant says the respondent promised to pay his \$1,107.49 veterinary bill but failed to do so.

2. The respondent says Keira did not bite Hunter. He says that the applicant's dog was at an off-leash area with many other dogs. The respondent says his dog was not there at the time. The respondent says no one witnessed his dog biting the applicant's dog. The respondent asks that the dispute be dismissed.
3. The parties are each 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 "he said, he 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 9.3(2), 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 is responsible for the injury to the applicant's dog Hunter and, if so, to what extent is the applicant entitled to reimbursement of a veterinary bill?

## **EVIDENCE AND ANALYSIS**

10. 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 arguments to the extent necessary to explain my decision.
11. On November 6, 2018, SR, was walking with the applicant and his dogs. She observed, from a distance, as Hunter played with two other dogs, one small beige dog she thought might be a Staffordshire terrier, and a larger dog.
12. SR says the dogs were interacting in a friendly way, until the female owner of the small beige dog said her dog was not behaving, put him on a leash and left. After she left, SR says the applicant noticed that Hunter had suffered a large bite.

13. The respondent says his mother was walking his dogs that day. The respondent was not there and cannot provide first-hand evidence as to what happened. I therefore reject his assertion that Keira and Hunter did not interact near the time of the injury.
14. The applicant says Keira started to chase Hunter and then “T-boned” him. The applicant says he heard Hunter yelp. A few minutes later, Hunter went into a pond and then came back to the applicant. At that point, the applicant noticed the wound on Hunter’s shoulder. From this, the applicant presumes that Keira bit Hunter during their earlier collision.
15. Hunter’s injuries were treated at the Parksville Animal Hospital the same day. He was sedated, and sutures were applied to the bite. A receipt shows that the applicant paid \$1,107.49 for veterinary care.
16. 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 his dog was not dangerous. As noted above, the applicant bears the burden of proof.
17. 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.
18. Occupier’s liability is where damage happens on property controlled by the occupier. I find occupier’s liability is not relevant here as the incident is alleged to have occurred on public property.
19. 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)).
20. Several witnesses provided evidence that Keira had no propensity to bite or injure other dogs. RB provided a statement describing Keira as a well-mannered, gentle dog who is well-trained. RB says he has observed Keira on many occasions, including in her interactions with children and other dogs. He has seen her off-leash. He has not observed any signs of aggression in Keira.
21. RR has also observed Keira on several occasions, including at her own home and playing with other dogs. She too has observed Keira off-leash and has not observed her being aggressive with other dogs.
22. MJ, another person who knows Keira, describes her as a friendly puppy who has played well with her own German Shepherd.
23. Similar statements were provided by SO and AA, the applicant's landlord.
24. I find the applicant has failed to prove scienter against the respondent. I say this because, although the respondent owns Keira, the evidence proves that Keira is a gentle dog with no reputation for aggression. No one witnessed Keira bite Hunter. There is no proof that Keira had a propensity to hurt other dogs, and no proof that such a propensity was known to the respondent.
25. I turn then to negligence. Even on the applicant's own evidence, he did not observe Keira bite Hunter. At best, he presumed that the injury occurred when the dogs collided, but he did not notice the injury until later in his walk.
26. The evidence does not prove that the respondent fell below a reasonable standard of care in supervising Keira or delegating that supervision to his mother.
27. In terms of causation, there is veterinary evidence that Hunter's injury may not even be a dog bite. Specifically, a veterinarian, Dr. PW, provided her opinion that whippets, of which Hunter is one, are "a notoriously thin-skinned breed and predisposed to skin tears." She describes Hunter as having sustained a laceration

of “unknown origin”, identified sometime after an off-leash run in a heavily treed area. This evidence falls far short of proving that Keira bit Hunter or that any conduct by the respondent caused the injury to Hunter.

28. As such, the applicant has not proven a claim against the respondent in negligence.
29. The applicant also suggested that the respondent had promised to pay the veterinary bill. I will address this suggestion that, even absent scienter or negligence, there may have been a promise to pay. This account is not consistent with the text messages filed in evidence. I find that the applicant has not proved that the respondent committed to paying the veterinary bill. There was no contract formed.
30. I find the applicant has not proven the respondent is liable for the injury Hunter sustained, or for his claimed damages. Given this conclusion, I find I do not need to address the applicant’s damages claims in any detail.
31. 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 the respondent paid no tribunal fees, I make no order in this regard. I dismiss the applicant’s claim for reimbursement of tribunal fees.

## **ORDER**

32. I dismiss the applicant’s claims and this dispute.

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Julie K. Gibson, Tribunal Member