



# Civil Resolution Tribunal

Date Issued: May 22, 2019

File: SC-2018-002562

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Solowan v. Jensen*, 2019 BCCRT 614

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

Linda Solowan

**APPLICANT**

**A N D :**

Raymond Jensen

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

### **INTRODUCTION**

1. The applicant, Linda Solowan, owns a wolf cross dog named Tritan. The respondent, Raymond Jensen, owns a black Labrador retriever dog named Angus. The applicant says that on February 2, 2018, Angus and another dog came onto her property and injured Tritan. The applicant wants the respondent to reimburse her \$796.73 for Tritan's veterinary bill, \$1,000 to compensate her grandson for having to

watch the dog attack, \$1,000 to compensate her for her negative experience and gas bills to drive to the veterinarian, and \$1,000 to compensate her mother who she says is unsettled by Tritan's injury.

2. The respondent says Angus was involved in an incident on February 2, 2018 which left him injured, but he believes Angus was attacked by a bear or a cougar. He says there is no evidence Angus injured Tritan.
3. Both parties are 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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. 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 recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's

process and 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 9.3 (2), 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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Is the respondent required to reimburse the applicant \$796.73 for her veterinary bill?
  - b. Is the respondent required to pay the applicant \$3,000 to compensate her, her son, and her mother for their negative experiences associated with the alleged attack?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. Both parties submitted evidence, but neither of them made submissions despite having the opportunity to do so. The respondent said he had no other comments or arguments to make. I have only addressed the parties' evidence and pleadings to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.

11. In February 2018 the respondent owned 2 black Labrador retrievers, Angus and Bella, and a 5-month-old chocolate Labrador retriever. The respondent says that all the dogs in the area know each other and have historically played together without incident until early 2018. In late January 2018 the respondent says Tritan attacked their neighbour's elderly dog but did not injure her. He provided no documentary evidence to support this claim.
12. The applicant submitted a statement dated November 16, 2018, in which she said that her dog Tritan was attacked on her property by 2 other dogs, 1 black and 1 brown. The applicant submitted a statement from her mother, G.S. which confirms this. The applicant said the 2 dogs injured Tritan's face and body and that she paid \$1,000 for the veterinary fees and medicine. The statement from G.S. says the 2 dogs "had my dog down, he was yelping, we went to try to break it up. One went to the back of my land to home." It says "the other black one" went to the highway, down to another neighbour's property, and tried to kill a goat and chickens. Neither of these statements identify the respondent's dogs as being the attackers.
13. The applicant submitted a statement from M.K. which says they heard "a bunch of loud yelping" and they saw a black Labrador retriever and a brown Labrador retriever "beating up" Tritan. M.K. said they shooed the 2 Labrador retrievers away, and that 1 went through the bush and 1 went up to the highway. She says, "We thought they were going to kill him." This statement does not identify the respondent's dogs as being the attackers.
14. The respondent submitted a statement from his wife who said that on the morning of February 2, 2018 she was in her backyard with Angus, and her other 2 dogs were inside, when she noticed Tritan in her driveway. She said Angus and Tritan ran off together without any commotion. She left for work and told the respondent that Angus was out playing with Tritan and would probably be back soon.
15. The respondent says his other 2 dogs remained inside, and later that morning Angus returned to the house injured. The respondent says he assumed Angus had been attacked by a bear or a cougar. The respondent's wife came home from work

to tend to Angus' injuries which she said were on the underside of his body and lower back leg.

16. The respondent says later that morning M.K. came to his house to tell him that while she was walking earlier that morning she heard a commotion but did not see anything.
17. The applicant said she went to the respondent's home to talk to him about the incident and he told her to get off his property and that he would not pay for anything. She said the respondent told her his 2 dogs had been missing all morning and he had no idea where they were. The respondent agrees the applicant came to his house that morning, but says she demanded that he pay her veterinary bill and yelled, "my dog is part wolf and could've killed your dog!"
18. The respondent's wife said the neighbour living between her family and the applicant owns 1 black Labrador retriever, 1 chocolate Labrador retriever, and 1 golden retriever, and there are 7 other black Labrador retrievers within their country block.
19. The respondent submitted several statements from neighbours and friends who all said they had never seen Angus be aggressive towards other dogs. The respondent submitted a statement from his former property caretaker who said they had been accosted by Tritan on several occasions.

***Is the respondent required to reimburse the applicant \$796.73 for her veterinary bill?***

20. In British Columbia there are currently 3 ways a pet owner may be liable for their pet's actions: occupier's liability, the legal concept of 'scienter,' and negligence. I find that occupier's liability does not apply to this dispute because the alleged attack did not take place on land the respondent controls.
21. For 'scienter' to apply, the applicant must prove that Angus had a tendency to cause the type of harm that occurred, and that the respondent knew about that

tendency. There is no evidence before me to indicate that Angus had a history of causing any harm to other dogs, and therefore I find the applicant has not proven liability in scienter.

22. This leaves me to address negligence. In *Martin v. Lowe*, 1980 CanLII 546 (BCSC) the court said a dog owner has a duty to ensure its dog is sufficiently under its control that it will not escape to injure someone or damage their property. It is undisputed that Angus was not within the respondent's control at the time of the incident, and therefore I find the respondent breached this duty.
23. However, the applicant must prove that the respondent's breach caused Tritan's injuries, and I find the applicant has failed to do so. The 3 statements the applicant submitted all state that 1 brown dog and 1 black dog attacked Tritan. None of these statements stated it was the respondent's dog that was the black dog involved in the incident. The respondent's uncontested evidence is that there are many other black Labrador retrievers in the neighborhood and that all of the neighborhood dogs have historically played together without incident. The applicant does not explain how she knew the black dog involved in the incident was Angus, as opposed to a different black Labrador retriever from the neighborhood. While the respondent's evidence is that Angus ran off with Tritan earlier that morning, that does not mean Angus was the dog involved in the incident. The respondent says Angus was injured that morning in an incident, however he did not witness it, and he suspects that given the nature of Angus' injuries it is more likely he was attacked by a cougar or a bear. For all of these reasons I find the applicant has not established the respondent's breach of his duty caused the incident to occur.
24. Even if the applicant could establish that the respondent's breach caused the incident to occur, I find the applicant has not proven that she incurred any damages from the incident. She says Tritan's face and body were injured in the incident, but she did not provide any evidence or detail of the nature or extent of these injuries. The applicant is claiming \$796.74 for veterinary fees, but in her statement she says she spent \$1,000 on veterinary fees and medication. However, she did not provide

an invoice or receipt from a veterinarian or pharmacy indicating she incurred any costs to treat Tritan's injuries. It is the applicant's responsibility to prove her claim and I find she had not done so. I dismiss this claim.

***Is the respondent required to pay the applicant \$3,000 to compensate her, her son, and her mother for their negative experiences associated with the alleged attack?***

25. I have already found the applicant has not established that the respondent's negligence caused Tritan's injuries, and therefore, I find there is no legal basis for the respondent to compensate the applicant for her negative experiences associated with the incident. Neither the applicant's son nor her mother are parties to this dispute, and the applicant cannot receive compensation on their behalf for their alleged losses. Even if there was a legal basis for compensating the applicant, she submitted no medical or other evidence to establish that she or her family members suffered any health issues or any other damages that are compensable at law. Again, I find it is the applicant's responsibility to prove her claim and I find she has not done so. I dismiss this claim.

26. Under section 49 of the Act, and tribunal rules, since the applicant was unsuccessful I find she is not entitled to reimbursement of her tribunal fees. She has not claimed any dispute-related expenses.

**ORDER**

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

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Sarah Orr, Tribunal Member