



Civil Resolution Tribunal

Date Issued: May 24, 2019

File: SC-2018-006536

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Timms v. Battrum*, 2019 BCCRT 627

B E T W E E N :

Laura Timms

APPLICANT

A N D :

Deborah Battrum

RESPONDENT

A N D :

Laura Timms

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant (and respondent by counterclaim), Laura Timms, says the respondent (and applicant by counterclaim), Deborah Battrum, wrongly took possession of some ducks and chickens (birds) that belong to Ms. Timms' child, and refused to return them. Ms. Timms requests payment of \$1,500 for a chicken coop and a bird aviary, which remain at Ms. Battrum's farm (farm). Ms. Timms' original Dispute Notice included additional claims, including a claim for emotional damage, which were later withdrawn.
2. By way of background, Ms. Battrum's farm has a horse rescue operation, and Ms. Timms previously volunteered, worked at, and kept animals at the farm.
3. Ms. Battrum denies the claim. She says Ms. Timms has been given the opportunity to collect all her personal property, including the birds. Ms. Battrum also says the chicken coop and aviary are "ramshackle structures" that she did not request or want, and Ms. Timms has not proved their claimed value.
4. In her counterclaim, Ms. Battrum seeks payment of \$800 in boarding fees for Ms. Timms' 2 mini horses, for July and August 2018. Ms. Battrum says their agreement was that Ms. Timms would do volunteer labour in exchange for part of the boarding fees, but she did not perform that labour. Ms. Battrum also seeks \$1,450 for the cost of removing the coop and aviary, and for fixing gates and fences she says Ms. Timms dismantled.
5. Ms. Timms denies the counterclaims. She disputes Ms. Battrum's characterization of their horse boarding agreement, and says Ms. Battrum never informed her of any rate increase. Ms. Timms also says she offered to remove the aviary, but Ms. Battrum declined, so she is not liable to pay for its removal.
6. The parties are each self-represented. For the reasons that follow, I dismiss Ms. Timms' claim and Ms. Battrum's counterclaims.

JURISDICTION AND PROCEDURE

7. 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.
8. 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 "he said, he said" scenario. Credibility of interested 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. 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. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
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 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

11. The issues in this dispute are:

- a. Must Ms. Battrum pay Ms. Timms \$1,500 for the coop and aviary?
- b. Must Ms. Timms pay Ms. Battrum \$800 for horse boarding?
- c. Must Ms. Timms pay Ms. Battrum \$1,450 for dismantling the coop and aviary, and for fixing gates and fences?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means Ms. Timms must prove her claim, and Ms. Battrum must prove her counterclaims. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. Neither party requested a remedy about possession of the birds. From the parties' amended Dispute Notices, I infer that matter was resolved during the tribunal facilitation process. I therefore have not addressed that issue in this decision.
14. The background facts are complicated. Ms. Timms says the parties were friends, and the text messages she provided in evidence support that conclusion. Ms. Timms says she did volunteer work on the farm from October 2015, and some paid work at the farm after that. Ms. Timms says she began boarding her horses at the farm in May 2016.
15. Ms. Battrum does not dispute these facts. She also says that since Ms. Timms was a single mother, and Ms. Timms' child, L, had a health problem, she agreed to let them hatch duck and chicken eggs at the farm as a hobby, which they did. Ms. Battrum says that while her own flocks of ducks and chickens increased as a result of these hatching activities, she did this solely as a benefit for Ms. Timms and L, as she had no time or inclination to take on more birds.

\$1,500 for Coop and Aviary

16. Ms. Timms seeks payment of \$1,500 for the coop and aviary, which were constructed on the farm. The photos in evidence show that these are building-like structures. The chicken coop resembles a shed, and the aviary is a medium-sized wood frame structure is covered in wire mesh, with a smaller enclosure inside.
17. Ms. Timms provided receipts for building supplies she says were used in constructing the coop and aviary. She says she also paid GM, Ms. Battrum's handyman, \$275 cash for his labour on the structures, but did not get a receipt.
18. I find Ms. Timms has not proved that Ms. Battrum is obligated to pay for the building supplies, or for GM's labour. I note that I would not order payment of GM's labour without a receipt, invoice, or other confirmation in any event.
19. I find the evidence before me indicates that while Ms. Battrum agreed to allow the aviary and coop to be constructed on her property, she did not request the construction, she did not agree to pay for it, and it was not done for her benefit. Rather, on her December 20, 2018 Dispute Response form, Ms. Timms wrote that HS, Ms. Battrum's former farm manager, was interested in the ducks, and wanted to house them in the garden next to her house on the farm. Ms. Timms says that HS requested and was granted Ms. Battrum's permission to build the aviary, which HS designed.
20. I find that this submission does not support the conclusion that Ms. Battrum is obligated to pay for any building materials. Rather, it suggests that any payment obligation lies with HS, in her personal capacity. While Ms. Timms says she paid for the building materials and labour, it is unclear why she never asked for reimbursement between May 2016, when the aviary was built, and the time this dispute was filed. There is no mention of costs or reimbursement in the extensive text messages between the parties. There is also no evidence that Ms. Battrum ever agreed to pay for the materials or labour.

21. While the coop and aviary remain on the farm, again the evidence does not show that Ms. Battrum ever wanted or requested their construction. Thus, I find she is not required to pay.
22. For these reasons, I conclude that Ms. Timms has not met the burden of proving her claim for \$1,500, and I dismiss it.

Counterclaim - \$800 for Horse Boarding

23. Ms. Battrum says the regular rate for horse boarding is \$400 per horse per month. She also says the parties agreed that Ms. Timms would pay \$240 per month for her 2 horses, and contribute “volunteer time” to the farm’s horse rescue operation in lieu of the remaining amount. Ms. Battrum says this volunteer work included feeding, cleaning paddocks, and administering medication.
24. Ms. Battrum says Ms. Timms did not pay boarding fees in July and August 2018, and also did no volunteer labour, so must pay \$800 for her 2 horses for 2 months.
25. I find Ms. Battrum has not proven her claim for horse boarding fees. Most significantly, there is no indication in the evidence that the parties ever tracked how many hours, if any, Ms. Timms contributed in volunteer labour. Ms. Battrum says that in fact, Ms. Timms never actually paid for boarding, and instead Ms. Battrum generally paid Ms. Timms for “overages” on her time spent working with the rescue horses, at the rate of \$12 per hour. This flexible and undocumented arrangement clearly worked for the parties, until their relationship broke down for other reasons.
26. I find that it is unreasonable and insupportable for Ms. Battrum to rely on a strict interpretation of a past verbal agreement starting in July 2018, when the evidence shows that initial agreement was not tracked or followed in the previous months or years. In the circumstances here, I find that the past practice of the parties does not support Ms. Battrum’s claim for payment of the full \$800.
27. Even accepting that Ms. Battrum’s standard rate for horse boarding is \$400 per month (which she has not proved), there is no agreement that Ms. Timms ever

agreed to this amount. There is no evidence before me that the parties agreed that that Ms. Timms would pay \$400 per month per horse in any month in which she did not do volunteer labour. Just because a rate is standard does not mean that it automatically applies to every customer, without evidence of notice or agreement.

28. Also, the parties' text messages from July and August 2018 show extensive correspondence about the farm, and at no time did Ms. Battrum remind Ms. Timms about her obligation to work volunteer hours in exchange for boarding, or ask her to perform specific tasks. Rather, in a July 2, 2018 text message she told Ms. Timms that volunteers were not asked to feed animals during the summer, in order to give the volunteers a break. Further, there is no indication that Ms. Battrum ever warn Ms. Timms that she was in arrears, or produce an invoice asking for payment. Rather, there was no request for boarding payment until the counterclaim was filed.
29. For these reasons, I find Ms. Battrum is not entitled to payment for horse boarding.

\$1,450 for Dismantling Coop and Aviary

30. Ms. Battrum seeks payment of \$1,450 for the cost of dismantling the coop and the aviary, plus repairing 3 gates Ms. Timms dismantled and building new fences to fill gaps Ms. Timms made.
31. I find Ms. Battrum has not proven these claims. First, regarding the fences and gates, Ms. Battrum provided no evidence, such as photos, to show the claimed damage. Ms. Battrum bears the burden of proving these counterclaims, and I find she has not provided sufficient proof.
32. Second, I find Ms. Battrum has also not proven her claim for the cost of dismantling the coop and aviary. The only evidence she provided was a handwritten document from handyman GM. I am unpersuaded by this document, and place little weight on it. First, GM is Ms. Battrum's employee or contractor, and I find he is not a neutral witness. Also, his document does not include the hours he worked, the hourly rate, supply costs, or taxes. While GM referred to "work done", I cannot tell from the

document whether the dismantling was actually performed, or whether the document is an estimate. There are no photos or landfill receipts to confirm the dismantling, and given that this is a central aspect of the claim, I find Ms. Battrum has not provided sufficient proof that the coop and aviary were dismantled and removed.

33. Finally, I find the amounts set out on GM's document to be unreasonable, based on the other evidence. Ms. Battrum submitted that Ms. Timms spent hours working with a drill to dismantle the structures. Thus, having viewed the photos of the structures, I do not accept that it would reasonably cost \$1,295 in labour to remove these structures. Again, I note there is not breakdown as to hourly rate or time required. Moreover, Ms. Battrum submitted that the structures were "ramshackle" and "rickety", and already partly dismantled, which does not support the amount claimed for dismantling.
34. For these reasons, I find Ms. Battrum has not proved her claim for \$1,450 for dismantling. I dismiss Ms. Battrum's counterclaims.
35. Both parties were unsuccessful in this dispute. Therefore, pursuant to the Act and the tribunal's rules, I find neither party is entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDERS

36. I dismiss Ms. Timms' claim, Ms. Battrum's counterclaims, and this dispute.

Kate Campbell, Tribunal Member