



# Civil Resolution Tribunal

Date Issued: June 13, 2019

File: SC-2018-009248

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Walton v. Day*, 2019 BCCRT 723

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

Colton Walton

**APPLICANT**

**A N D :**

Amber Day

**RESPONDENT**

**A N D :**

Colton Walton

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. This is a dispute about ownership of a dog and shared household expenses. The applicant and respondent by counterclaim, Colton Walton, was in a relationship and lived with the respondent and applicant by counterclaim, Amber Day, until approximately December 2018. In March 2018 they bought a dog, Kora. Ms. Day has had Kora in her care since shortly after the parties separated.
2. Mr. Walton wants Ms. Day to return Kora to him and pay him \$600. He also wants her to pay him \$2,541 for her share of common living expenses, and to reimburse him \$400 for equipment he purchased for her employment.
3. Ms. Day brings a counterclaim for Kora to remain in her care and for Mr. Walton to pay her \$1,346.42. She does not deny that she owes Mr. Walton some money for common living expenses, but she says she spent \$2,223.60 on common living expenses and this amount should be deducted from the amount Mr. Walton is claiming.
4. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. Ms. Day has requested special accommodation for a hearing impairment. I find conducting the hearing by written submissions is the most appropriate format to accommodate Ms. Day's hearing impairment, and I am satisfied that I can fairly decide this dispute through written submissions.

7. 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, she 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.
8. 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.
9. 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.
10. The parties were in a relationship that has now ended. There is no evidence to indicate the parties lived together in a marriage-like relationship continuously for 2 years, or that they have a child together, and so they do not meet the definition of spouses in the *Family Law Act*. I find the tribunal has jurisdiction to resolve the dispute.

## **ISSUES**

11. The issues in this dispute are:

- a. Is Ms. Day required to return Kora to Mr. Walton?
- b. Does Ms. Day owe Mr. Walton for common living expenses, and if so, how much?
- c. Is Ms. Day required to reimburse Mr. Walton for equipment he purchased for her employment?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim like this one, Mr. Walton must prove his claim on a balance of probabilities. This means I must find it is more likely than not that Mr. Walton's position is correct. Likewise, Ms. Day is responsible for proving her counterclaim.

13. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

### ***Is Ms. Day required to return Kora to Mr. Walton?***

14. Mr. Walton wants Ms. Day to return Kora to him and to pay him \$600. Ms. Day wants to keep Kora and for Mr. Walton to pay her \$1,346.42. Neither of the parties have explained the reason they are seeking payment along with ownership of Kora or explained the basis for the amounts they are seeking.

15. Mr. Walton says he and Ms. Day each paid \$200 to buy Kora, while Ms. Day says she paid the entire purchase price for Kora. She submitted a receipt dated March 25, 2018 in her name for \$450 from Jakob Elliot, who sold Kora to the parties. Ms. Day obtained this receipt after the parties separated, and Mr. Walton says this document is falsified, as it should also have his name on it. There is no other evidence before me to indicate which of the parties paid for Kora, or how much either of them paid.

16. Ms. Day says she was the one who wanted to get a dog, and she picked out Kora and named her. She says before she and Mr. Walton picked up Kora they agreed

that Kora would be her dog unless she was unable to care for her on her own if their relationship ended. Mr. Walton denies this.

17. Mr. Walton says he was off work with an injury at the time they bought Kora, so he was her primary caregiver which included training, daily care, and taking her outside in the night. Ms. Day says both she and Mr. Walton trained and cared for Kora.
18. After the parties separated Mr. Walton initially agreed that Kora could remain in Ms. Day's care, however he says that once he learned of Kora's living conditions he changed his mind.
19. Both parties allege that the other did not take proper care of Kora while they lived together, and Mr. Walton alleges that Kora's current living conditions with Ms. Day and her family are substandard as he claims she is left outside or alone in a mudroom much of the time. Ms. Day denies this, says she provides a loving home for Kora, and says that aside from work and grocery shopping, she takes Kora everywhere with her. She submitted several statements from friends and family members stating that she is a responsible and loving dog owner.
20. In March 2018, \$150 of Kora's veterinary bill was paid for in cash and both parties say they paid this amount. The evidence shows Ms. Day paid the \$11.95 balance of that bill on her debit card. Likewise, in August 2018, \$65 of Kora's veterinary bill was paid for in cash, and both parties say they paid this amount. The evidence shows Ms. Day paid the \$16.19 balance of that bill on her debit card. There is no documentary evidence to indicate who paid the cash portions of these expenses.
21. The bank records in evidence indicate that between March and December 2018 Ms. Day spent \$601.40 on Kora's expenses and Mr. Walton spent \$368.53 on Kora's expenses. These amounts do not include Kora's purchase price or the \$215 in contested cash amounts. However, regardless of the contested amounts, both parties contributed to Kora's expenses during their relationship, and they also shared many other expenses. Therefore, I do not find the amount the parties spent on Kora during their relationship to be a determining factor in her ownership.

22. On balance, I am not satisfied that Ms. Day is required to return Kora to Mr. Walton. The only documentary evidence before me to indicate who bought Kora has Ms. Day's name on it. Mr. Walton initially agreed that Kora could stay with Ms. Day until he learned of the conditions she would live in, but I find Mr. Walton's allegation that Kora is often left alone outside is not borne out by the evidence. Kora has been in Ms. Day's care since December 2018, and I find the evidence does not establish that it is more likely than not that Mr. Walton is Kora's primary owner. I dismiss Mr. Walton's claim, and I find Ms. Day may keep Kora in her care. I dismiss both parties' monetary claims in relation to ownership of Kora, as I find neither of these claims are supported by any evidence.

***Does Ms. Day owe Mr. Walton for common living expenses, and if so, how much?***

23. Mr. Walton says Ms. Day agreed to pay half of the parties' living expenses while they lived together, and that she made some payments to him but eventually stopped paying him.

24. Ms. Day does not deny that she owes Mr. Walton for some of their common living expenses, but she says there were several months during their cohabitation when Mr. Walton was not earning income, and she says she paid for many of the expenses during that time. She wants these expenses she paid for to be deducted from the expenses Mr. Walton paid for. Mr. Walton denies this and says that although he had some financial difficulties during that time, he continued to pay for his portion of common expenses.

25. Both parties submitted bank statements covering most of 2018, and after carefully reviewing this evidence I make the following findings.

26. Between January and November 2018, I find Mr. Walton spent \$2,888.37 on groceries while Ms. Day spent \$1,247.15 on groceries. Therefore, I find Ms. Day owes Mr. Walton \$820.61 for groceries. I note that Ms. Day categorized all of her Walmart expenses as groceries, but she admits that she also bought makeup and

other items for herself at Walmart. In the absence of Walmart receipts to determine what exactly she bought on each occasion, I did not include any of Ms. Day's Walmart purchases as common grocery expenses.

27. During the same time period I find Mr. Walton spent \$1,350.37 on cable, and Ms. Day did not make any cable payments, and therefore I find Ms. Day owes Mr. Walton \$675.19 for cable.

28. During the same time period I find Mr. Walton spent \$770 on electricity and Ms. Day spent \$150 on electricity, and therefore I find Ms. Day owes Mr. Walton \$310 for electricity. I did not include in this calculation Mr. Walton's electricity payment in February 2019 as it was more than 2 months after the parties separated and I am unable to determine how much of that payment was for the period when the parties lived together.

29. During the same time period I find Mr. Walton sent Ms. Day a total of \$650 in e-transfers, while Ms. Day sent Mr. Walton a total of \$645 in e-transfers. Therefore, I find Ms. Day owes Mr. Walton \$2.50 for the difference.

30. I find I cannot determine based on the bank statements alone whether expenses for fuel or eating out were actually common expenses, as each of the parties may have eaten out alone or with other people or driven alone or with other people. Since there are no explanations or receipts in evidence for any of these individual purchases, I did not count any of them as common expenses. I also did not count any expenses for which I could not determine the purpose.

31. In total, I find Ms. Day must pay Mr. Walton \$1,808.30 for common living expenses. Mr. Walton is entitled to pre-judgment interest on this amount under the *Court Order Interest Act* calculated from December 1, 2018 which is the approximate date the parties separated.

***Is Ms. Day required to reimburse Mr. Walton \$430 for equipment he purchased for her employment?***

32. Mr. Walton says Ms. Day agreed to reimburse him \$430 for the cost of professional grade hair dressing clippers he bought for her, but she never did. Ms. Day says the clippers were a gift and that Mr. Walton never asked her to reimburse him. She says she offered to reimburse him anyway, but he said not to worry about it.

33. Mr. Walton submitted a bank statement showing payment of \$35.41 at a beauty supply store on June 5, 2018, but he says he paid the remainder, over \$364.59 in cash. However, I find there is insufficient evidence to establish the exact amount Mr. Walton spent on the clippers, and I find he has not established that Ms. Day owes him for this purchase, as I find Ms. Day's explanation that the clippers were a gift to be reasonable. I dismiss this claim.

34. 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 both parties were partly successful, I find they are responsible for their own tribunal fees. Neither party claims any dispute-related expenses.

## **ORDERS**

35. Ms. Day may keep Kora in her care.

36. Within 14 days of the date of this order, I order Ms. Day to pay Mr. Walton a total of \$1,826.37, broken down as follows:

- a. \$1,808.30 as reimbursement for common living expenses, and
- b. \$18.07 in pre-judgment interest under the COIA.

37. Mr. Walton is entitled to post-judgment interest, as applicable.

38. The remainder of Mr. Walton's claims are dismissed.



39. 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.

40. 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.

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Sarah Orr, Tribunal Member