



# Civil Resolution Tribunal

Date Issued: July 5, 2019

File: SC-2019-002436

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Furseth v. Galloway*, 2019 BCCRT 814

BETWEEN:

LUCAS FURSETH

**APPLICANT**

AND:

COURTNEY GALLOWAY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This is a dispute about a cat named Simon. The parties lived together in a marriage-like relationship for 3 years. The applicant, Lucas Furseth, says the respondent, Courtney Galloway, moved out of their shared home and improperly took his cat

with her. The respondent says Simon was jointly owned by them both, and that the applicant does not have the capacity to look after Simon.

2. The applicant wants an order returning Simon to him, and compensation of \$150 for new locks for his apartment.
3. The parties are both 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. 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 British Columbia Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is an 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 section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal’s jurisdiction. A dispute that involves one or more

issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction. I have addressed below the issue of jurisdiction under the *Family Law Act* (FLA).

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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Does the tribunal have jurisdiction over all the claims in this dispute? If not, should the tribunal refuse to resolve this dispute or any part of it?
  - b. Is the applicant entitled to payment of \$150 from the respondent?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

***Does the tribunal have jurisdiction over all the claims in this dispute? If not, should the tribunal refuse to resolve this dispute or any part of it?***

11. The main claim in this dispute is about the ownership / possession of a cat named Simon, which the applicant says he owned and was taken by the respondent. The

applicant seeks sole possession of the cat. The respondent disagrees that Simon was solely the applicant's.

12. Based on the evidence and arguments before me, the parties agree that they lived together as a common law couple for approximately 3 years before their relationship ended in February / March of 2019. This is confirmed by a written statement from the respondent's mother, who says the parties lived together approximately 3 years. This means that they were spouses, as defined in section 3 of the FLA.
13. Pets are considered property under the law. Thus, ownership of a cat generally falls within the tribunal's personal property jurisdiction under section 118 of the Act. However, the tribunal does not have jurisdiction over the division of "family property", as defined in the FLA.
14. Section 10 of the Act says that the tribunal must refuse to resolve a dispute that it considers is not within the tribunal's jurisdiction. Thus, if the cat Simon was "family property", then the tribunal must refuse to resolve this dispute.
15. "Family property" is defined in sections 84 and 85 of the FLA. Section 84 says that family property includes all personal property owned by at least one spouse on the date of separation. Section 85(1) says that property acquired by a spouse before the relationship between the spouses began is excluded from family property.
16. Based on the evidence before me, I find that Simon was family property, as defined by the FLA. According to the evidence, the parties acquired Simon while they were in a relationship, and the parties lived together for more than 2 years.
17. Section 88 of the FLA says that a spouse may make an application to the British Columbia Supreme Court for an order respecting division of family property, and section 94 says that the British Columbia Supreme Court may make such an order. This means that the British Columbia Supreme Court has exclusive jurisdiction to make orders about the division of family property, and the tribunal therefore cannot take jurisdiction over such orders.

18. For these reasons, I must refuse to resolve this claim under section 10(1) of the Act, as the tribunal does not have jurisdiction over the applicant's claim for ownership of Simon.

***Is the applicant entitled to payment of \$150 from the respondent?***

19. The applicant seeks \$150 in compensation from the respondent for new locks to his apartment as he claimed the keys had not been returned. The respondent says she gave the applicant her keys when she next saw him after moving out, at their shared workplace, and that she provided them with no hesitation. The applicant does not dispute that the keys were returned.

20. Based on the evidence, I am satisfied the applicant's keys have been returned to him and there is no need for new locks to his apartment. The respondent says she did not make any copies of the keys and has not returned to the apartment since the day she moved out. The applicant has not proved that he has any reasonable concern that the respondent made a copy of the keys or has any intention to try and return to his apartment. I dismiss the applicant's claim for \$150 in compensation for new locks. Even if I had found the keys had not been returned, I find the applicant has not proven the amount of compensation he requested as he failed to produce any evidence as to the cost of a new lock.

21. Under section 49 of the Act, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was not successful, I find that he is not entitled to reimbursement of his tribunal fees. No dispute-related expenses were claimed.

**ORDERS**

22. I refuse to resolve the applicant's claim for the return of Simon under section 10(1) of the Act, as the tribunal does not have jurisdiction over the applicant's claims for ownership of Simon.

23. I dismiss the applicant's remaining claims.

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Andrea Ritchie, Vice Chair