



Civil Resolution Tribunal

Date Issued: July 18, 2019

File: SC-2019-001311

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chou v. Guzhel*, 2019 BCCRT 863

BETWEEN:

NI-YING CHOU

APPLICANT

AND:

DMITRI GUZHEL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. It is undisputed that on October 27, 2018 the respondent Dmitri Guzhel's dog Nelson attacked the applicant's dog Ginger, while both dogs were in the applicant's care. The applicant, Ni-Ying Chou, claims \$1,024.79 as reimbursement for related veterinary surgery and medications.

2. The parties agree the applicant took Nelson as a “trial run” to see if she wanted to adopt Nelson and if he would get along with Ginger. The respondent denies liability given the trial run scenario and because before the attack Ginger had snapped at Nelson but the applicant still wanted to keep Nelson at that point.
3. The parties are each self-represented. For the reasons that follow, I dismiss the applicant’s claims.

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 (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 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.
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.

ISSUE

8. The issue in this dispute is whether the respondent is responsible for his dog's attack on the applicant's dog, while both dogs were in the applicant's care.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant to prove her claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.
10. As noted, it is undisputed that Nelson bit Ginger. The need for veterinary treatment and the amount of the associated bills are not challenged by the respondent. The respondent's position is that he is not responsible for Ginger's injuries because Nelson was in the applicant's care, during the parties' agreed 'trial run' to see if the applicant wanted to adopt Nelson. It is undisputed that the the respondent was expecting a new baby in his family and this plus the expected lack of time to walk and care for Nelson was the reason he wanted to re-home Nelson.
11. First, the relevant facts. The parties agree that as part of the 'trial run', the respondent would retrieve Nelson if it did not work out. The respondent agreed that he would keep paying Nelson's pet insurance while in the applicant's care. Neither of these things make the respondent liable for Ginger's injuries, as discussed further below.
12. The applicant says she never became Nelson's owner. The respondent says the applicant did, as of September 13, 2018 when she 'adopted' him, but that ownership would revert to him when he retrieved Nelson. I find the weight of the evidence,

including the respondent's offer to retrieve Nelson and later request that the applicant keep the dog another week while he was on vacation in late October 2018, shows the applicant was not Nelson's owner, the respondent was. However, given my conclusion below, nothing turns on whether the applicant or the respondent was Nelson's legal owner. The relevant chronology is below.

13. During the first 10 days in the applicant's care, the parties exchanged a few messages but the applicant expressed no concern. Then, the applicant wrote that Nelson was snapping at Ginger, but that it was not a major concern and she wanted to continue the trial run with Nelson. The applicant describes the first "initial signs of aggression" as Nelson charging at Ginger while eating or drinking. The applicant says the respondent reassured her to "keep an eye out" and if the situation did not improve the respondent would "back her up" on the issue.
14. A few days later, the applicant texted the respondent that she was having trouble with the dogs sharing toys, and that the situation had escalated to Nelson showing aggression to the applicant. The respondent texted back asking the applicant to keep him posted, and suggested dog daycare as an option. The applicant agreed to daycare as it would keep the dogs separated and the respondent answered that he would take Nelson back as no one "should feel unsafe in their own home".
15. On October 15, 2018, the applicant texted the respondent there were 2 further incidents of Nelson showing aggression towards Ginger. The applicant told the respondent it was "not a good fit" and asked for information on next steps. The respondent thanked the applicant for "trying [Nelson] out", and that he would retrieve Nelson the coming Monday.
16. However, on Sunday, October 21, 2018, the respondent asked the applicant a "super favour", that she watch Nelson another week as he was going on a family vacation. The respondent suggested the applicant use the prepaid dog daycare so the pets would not be together. The applicant says she agreed to this request. I agree with the respondent that there is no evidence the applicant could not have refused to keep Nelson if she felt unable to avoid further aggressive incidents.

17. On October 25, 2018, the applicant messaged the respondent that Nelson was aggressive and asked what she should do, given the respondent was away. The respondent wrote that the applicant should drop Nelson off at the daycare as there were 2 months of prepaid classes that could be used as a hotel stay. The respondent texted the applicant that he had arranged and prepaid Nelson's stay at the daycare until his November 6, 2018 return from holiday, and that she should just drop Nelson off at the daycare with his bed, collar, and a leash, and "tell them I'll get him November 6th". While the respondent also mentioned they only worked "10-12" on weekends and "7-8 weekdays", in the whole context I find the time references relate to when the applicant was able to drop Nelson off, rather than a suggestion she had to keep Nelson outside of those times.
18. Yet, on October 27, 2018, the applicant attended a party with around a dozen people and brought both Nelson and Ginger. She says she picked up Nelson and brought him because the daycare was closed. I have addressed this immediately above and find there was no reasonable basis for the applicant to feel obliged to pick up Nelson. The applicant says she informed the host and other guests that it was best to keep Nelson separated. However, shortly after Nelson left his "area of the room" and approached Ginger, charged and attacked her. Quite apart from the daycare issue, the applicant does not explain why she brought both dogs to the party, knowing the past aggression, instead of leaving one of them at her home.
19. I turn then to the applicable law, which I set out below but note the facts of this dispute are similar to those in my earlier decision in *Grunewald v. Buchamer*, 2018 BCCRT 312. That decision is not binding on me but I consider it still valid in terms of the applicable law. I say similar because like the applicant in *Grunewald* who was caring for the respondent's dog with known aggression issues at the time of its attack on her pet, the applicant in the dispute before me here was caring for the respondent's dog Nelson at the relevant time.
20. The onus is on the applicant to show the respondent is responsible for Ginger's injuries. 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 her dog was not dangerous.

21. Thus, in BC there are generally 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.

22. Occupier's liability is where damage happens on property controlled by the occupier. I find occupier's liability is not relevant here, because Nelson's attack occurred at a third party's residence while under the applicant's care. There is no suggestion the respondent was the occupier of the home where the attack occurred.

23. 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)).

24. I find the applicant has failed to prove scienter against the respondent. First, there is no evidence or even submission before me that the respondent knew or ought to have known Nelson was aggressive before the applicant started the 'trial run'.

25. Second, at the time of Nelson's first 'snap', later aggression, and ultimate attack on Ginger, the applicant was Nelson's 'keeper', as referenced in the scienter case law. In other words, at the time of the attack the applicant temporarily held the role of "owner", in place of the respondent. This is because the applicant had agreed to care for Nelson. Further, the applicant expressly knew Nelson might be aggressive, because of the snapping incident and later episodes of aggression. The applicant chose to keep Nelson while the respondent was on vacation, knowing this. She

chose to take Nelson to a party and left him with access to Ginger, trusting Nelson would remain occupied with a dog bone. I find the applicant is the person responsible for leaving Nelson in a situation where he was capable of getting at Ginger, given the recent aggression the applicant herself had witnessed.

26. On balance, I find the applicant herself is responsible in scienter for Nelson's attack on Ginger. My conclusion that the applicant was Nelson's 'keeper' at the material time, and akin to the dog's owner, is supported by the decision in *McLean v. Thompsons*, 2009 BCPC 415.

27. I note section 4.14 of the City of Vancouver's Animal Control Bylaw 9150 states a "person who keeps a dog" must not allow it to bite or attack another person or domestic animal. The word "keep" is defined in the bylaw as "to own, possess, or harbour" a dog, cat, or other animal. I find this bylaw also supports my conclusion above, namely that the applicant was Nelson's keeper at the time of Nelson's attack on Ginger and is the person responsible.

28. I turn then to negligence. As noted above, the applicant had agreed to care for Nelson. If anyone was negligent, I find it was the applicant in failing to keep the dogs separate as she had essentially agreed to do, noting the daycare arrangement that acknowledged the need. There is no evidence before me that the respondent could have had any input into preventing Nelson's specific attack on Ginger at the party. I find the applicant has not proven the respondent was negligent in handling the applicant's care of Nelson.

29. Finally, I turn to what amounts to an allegation of breach of contract by the respondent. In other words, the applicant argues the respondent agreed to be responsible for any consequences arising from her care of Nelson. I reject this submission. While the respondent agreed to pay for Nelson's pet insurance and the daycare cost, I find this agreement does not extend to covering the applicant's own failure to reasonably "watch" Nelson as she had agreed to do, particularly given the accepted need to keep Nelson separate from Ginger. I find the respondent's agreement to "back up" the applicant referred to an agreement to take Nelson back,

not to pay for any damage that Nelson might do while in the applicant's care. Given I find the applicant was solely responsible for creating the situation where Nelson had the opportunity to bite Ginger, I find there is no basis to hold the respondent responsible.

30. I find the applicant has not proven the respondent is liable for Nelson's attack on Ginger or for her claimed damages. Given this conclusion, I find I do not need to address the applicant's damages claims in any detail.

31. The applicant was unsuccessful. In accordance with the Act and the tribunal's rules, I find she is not entitled to reimbursement of tribunal fees paid.

ORDER

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

Shelley Lopez, Vice Chair