



Civil Resolution Tribunal

Date Issued: October 11, 2019

File: SC-2019-004096

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Walker v. Malek-Afzali*, 2019 BCCRT 1188

B E T W E E N :

JULIE WALKER

APPLICANT

A N D :

SHAHAB MALEK-AFZALI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Julie Walker says that while her friend was walking her leashed dog, Muffin, the respondent Shahab Malek-Afzali's unleashed dog, Bibi, attacked Muffin.

The applicant claims \$870.74 for the veterinary expenses needed to treat Muffin's bite.

2. While the respondent did not witness the bite, she agrees that at the time Bibi was off leash in the front yard, with only her children. The respondent says that Bibi has no history of aggressive behavior. The respondent says Bibi has never attacked another dog unprovoked. She asks that the dispute be dismissed.
3. The parties are each 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* (CRTA). 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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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.

ISSUE

- 8. The issue in this dispute is whether the respondent is responsible for Muffin's injury and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

- 9. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I only refer to the evidence and submissions below as I find necessary to provide context for my decision.
- 10. On May 19, 2019, the applicant's friend, IT, was walking Muffin down on a residential street, on a leash, when Bibi charged out of her yard and bit Muffin.
- 11. The respondent agrees she opened the door and let Bibi out into her front yard with her children while she unpacked some groceries inside. She does not dispute, and I find, that Bibi was off leash.
- 12. The respondent submits that because she did not witness the encounter between Bibi and Muffin, it is not likely that Bibi bit Muffin. I disagree.
- 13. IT was the only first-hand witness to the bite, aside from the respondent's children, who did not provide evidence. For this reason, I accept her statement. I find that Bibi came onto public property and bit Muffin on the behind, without provocation. Muffin suffered one small, deep puncture wound to her perianal region.
- 14. The same day, the applicant took Muffin to Mountainside Animal Hospital for treatment, including stitches. The applicant paid \$783.09 for this veterinary care.

15. On May 21, 2019, the veterinarian did a follow-up exam and prescribed pain medication for Muffin. The applicant paid \$87.65 for this visit. Taken together, these two payments add up to the claimed \$870.74.
16. After the dog bite, the applicant handed out flyers in the neighborhood, asking people to respond if they saw or heard the incident, or had any “prior experience with this dog being aggressive”.
17. Another neighborhood resident, TF, wrote that before May 2019 she observed Bibi off leash and behaving aggressively toward her 2 dogs. TF recounted seeing Bibi charge out of the yard onto the street, barking and approaching her black lab’s backside in an aggressive way.
18. Another neighbor, LN, wrote that in April 2019 Bibi attacked and bit her Maltese dog. LN approached a female occupant at Bibi’s address, who agreed to pay the veterinary bill. However, the bite was small, and LN decided not to go to the veterinarian.
19. The applicant obtained records from the North Vancouver District (District) showing that Bibi was observed at large years before, in February 2016.
20. The respondent asserts that Bibi has no history of aggressive behavior and that she is unaware of Bibi ever attacking other dogs unprovoked. I find this assertion is inconsistent with her evidence that Bibi would get “really upset” when other dogs came onto their property. The respondent also did not deny or address LN’s evidence specifically. For these reasons, I accept LN’s evidence and find Bibi bit her dog, prior to the incident with Muffin. I also find that LN informed a female adult occupant, likely the respondent, at the respondent’s home. I find it more likely than not that the respondent knew that Bibi bit LN’s dog, prior to the incident with Muffin.
21. The respondent filed several photographs of other dogs off leash in unidentified locations. However, I find the respondent cannot excuse her responsibility for Bibi by demonstrating that sometimes other dogs are off leash.

22. The legal basis for the respondent's responsibility is as follows. Since the repeal of the *Animals Act* in 1981 there is no legislation in BC reversing the onus to require the respondent dog owner to prove her dog was not dangerous. The applicant bears the burden of proof. 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 bite did not take place on land the respondent controls.
23. For 'scienter' to apply, the applicant must prove that Bibi had a tendency to cause the type of harm that occurred, and that the respondent knew about that tendency.
24. I turn now to negligence. To prove negligence, the applicant must prove the respondent knew or ought to have known that Bibi was likely to create a risk of injury and that the respondent failed to take reasonable care to prevent such injury. The applicant has proven negligence.
25. I say this because
- a. before May 2019, Bibi was observed at large and off the respondent's property, as recorded by neighbors and the District,
 - b. on another occasion, Bibi was off leash and at large, behaving aggressively toward TF's dogs, and
 - c. in April 2019, Bibi bit LN's leashed dog, after bolting into the street.
26. In the circumstances, I find it was negligent to leave Bibi unleashed in the front yard, without adult supervision, even leaving aside the previous bite to LN's dog. I say this because the respondent admits that Bibi would become upset when other dogs entered the yard. The respondent also should have known that keeping Bibi leashed and under adult supervision while in the unfenced front yard were reasonable steps to take to prevent a further incident. I find that leaving Bibi unleashed and without adult supervision in a yard open to the street was not reasonable. The risk of injury was created by leaving Bibi unsupervised, with access

to the street. This failure to keep Bibi reasonably leashed or supervised was the cause of the bite.

27. Given that I have found the respondent negligent, I find it unnecessary to draw conclusions on a scienter analysis.
28. The respondent submits that the applicant should have taken Muffin to a less expensive veterinarian. The applicant says the veterinary hospital selected was open at the time of the incident, which was on a long weekend. The applicant also says that the bite was serious enough to require veterinary care that day.
29. The respondent filed an invoice from a different veterinary office, showing \$140 in charges for Bibi's April 2019 vaccinations. The invoice does not permit a price comparison for care after a dog bite.
30. I find that the \$870.74 for the veterinary care described in the May 19, 2019 invoice was reasonable in the circumstances. The respondent did not present evidence of a reasonable but less expensive alternative that was open at the time.
31. I find that the applicant must pay the respondent the \$870.74 for veterinary expenses to treat Muffin's injury.
32. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$870.74 from May 19, 2019, the date she paid for the veterinary services, to the date of this decision. This equals \$6.79.
33. Under section 49 of the CRTA 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim dispute-related expenses.

ORDERS

34. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,002.53, broken down as follows:
- a. \$870.74 for veterinary services to treat the dog bite,
 - b. \$6.79 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 tribunal fees.
35. The applicant is entitled to post-judgment interest, as applicable.
36. Under section 48 of the CRTA, 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.
37. Under section 58.1 of the CRTA, 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.

Julie K. Gibson, Tribunal Member