



# Civil Resolution Tribunal

Date Issued: November 29, 2019

File: SC-2019-000688

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rockett v. Forst*, 2019 BCCRT 1344

BETWEEN:

ALAN ROCKETT

**APPLICANT**

AND:

JENNY FORST

**RESPONDENT**

AND:

ALAN ROCKETT

**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 an alleged dog attack. The applicant and respondent by counterclaim, Alan Rockett, owns a Shiba Inu dog named Joshua. The respondent and applicant by counterclaim, Jenny Forst, owns a Bichon dog named Dudley. Mr. Rockett says Ms. Forst allowed Dudley to attack Joshua, causing Joshua injuries requiring surgery. He wants Ms. Forst to reimburse him \$945.46 for Joshua's veterinary bills.
2. Ms. Forst says Dudley never attacked Joshua and that she should not be required to pay for Joshua's veterinary bills. She counterclaims and says Mr. Rockett left rat poison outside her door, left broken glass next to her car, and kicked Dudley, all of which injured Dudley and required veterinary care. She wants Mr. Rockett to reimburse her \$1,150 for Dudley's veterinary bills. She also says Mr. Rockett has made false claims against her, stalked, harassed and threatened her, and kicked Dudley. She wants the tribunal to order Mr. Rockett to stop doing all of these things.
3. Mr. Rockett denies leaving rat poison outside Mr. Forst's door or broken glass next to her car. He acknowledges that he kicked Dudley but says he did so in self-defense and to defend Joshua from Dudley's attack.
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* (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.

6. 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 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.
7. 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.
8. 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.
9. Ms. Forst requested anonymity but did not provide a reason for her request. The tribunal does not typically anonymize parties unless there is a specific privacy interest which overrides the “open court” principle of transparency. I find the evidence before me does not disclose a privacy interest warranting anonymization in this case, and therefore I have used the parties’ full names in the published version of this decision.

## ISSUES

10. The issues in this dispute are:

- a. Did Dudley attack Joshua such that Ms. Forst is required to reimburse Mr. Rockett \$945.46 for Joshua's veterinary bills?
- b. Is Mr. Rockett required to reimburse Ms. Forst \$1,150 for Dudley's veterinary bills?
- c. Should the tribunal order Mr. Rockett to stop making false claims, stop stalking, harassing, and threatening Ms. Forst, and stop kicking Dudley?

## EVIDENCE AND ANALYSIS

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

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

***Did Dudley attack Joshua such that Ms. Forst is required to reimburse Mr. Rockett \$945.46 for Joshua's veterinary bills?***

13. Mr. Rockett and Ms. Forst live in the same condominium building. It is undisputed that on December 17, 2018 at 6:00 p.m. Mr. Rockett and Joshua were waiting for the elevator on the second floor of the building and Ms. Forst and Dudley were already in the elevator. Mr. Rockett says when the elevator door opened on the second floor, Dudley "came bolting out" and started nipping at Joshua, causing 2 puncture wounds to Joshua's stomach. He says Dudley was on an extend-a-leash that Ms. Forst did not control, and she remained in the elevator during the incident. He says that at some point Dudley wriggled out of his collar. Mr. Rockett admits to kicking Dudley to get him off Joshua, and says he finally managed to get Joshua

away from the area and took him down the stairs. Mr. Rockett says Joshua was on leash throughout the incident.

14. Ms. Forst denies that Dudley attacked Joshua on December 17, 2018 and says she does not recall Mr. Rockett kicking Dudley that day. She says when the elevator door opened on the second floor Mr. Rockett stood in the doorway preventing her from exiting the elevator. She recalls that Dudley slipped out of his collar, ran away from her, and waited in front of her door because he is scared of Mr. Rockett and Joshua.
15. It is undisputed that there were no other witnesses to the alleged incident.
16. Ms. Forst submitted a statement from her friend K.J. who said she was waiting for Ms. Forst outside of her building at the time of the alleged incident. She says immediately after the alleged incident she saw Mr. Rockett and Joshua walk past her and Joshua showed no signs of injury.
17. Mr. Rockett says that immediately after the incident he walked Joshua around the block then returned home to tend to Joshua's wounds. He says he cleaned the wounds and monitored Joshua but by the next morning, December 18, 2018, Joshua was not doing well. Mr. Rockett says his partner took Joshua to a veterinarian that morning who gave him medication and recommended returning the following day for surgery. However, Mr. Rockett says Joshua's condition deteriorated throughout the day and at 11:00 p.m. that night he took Joshua to an emergency veterinarian clinic where he underwent surgery.
18. Mr. Rockett submitted a December 18, 2018 invoice from Sunshine Plaza Animal Hospital for \$398.69 for a veterinary examination, tests, and medication. He also submitted a December 19, 2018 invoice from Intercity Animal Emergency Clinic for \$546.77 for a veterinary examination, wound repair, and medication. I find these invoices support Mr. Rockett's version of events and the amount of his claim.
19. Mr. Rockett reported the incident to the City of Vancouver Animal Services, which initiated an investigation. The evidence indicates that the City of Vancouver ticketed

Ms. Forst for a bylaw violation for allowing her dog to bite a domestic animal, and that she disputed the ticket. Mr. Rockett submitted an August 19, 2019 email he received from the City of Vancouver indicating that a first appearance was scheduled in the BC Provincial Court (BCPC) for August 20, 2019, and that the trial will likely be scheduled between December 2019 and April 2020. Mr. Rockett says the trial date has not been confirmed. Since that trial is about whether or not Ms. Forst violated the City of Vancouver's bylaw and Mr. Rockett's claim in this dispute is for reimbursement of Joshua's veterinary bills, I find it is appropriate for me to decide Mr. Rockett's claim even though the trial for the bylaw infraction is pending. Nothing in my decision affects the outcome of that trial.

20. While the parties provided different versions of what happened during the incident, for the following reasons, I prefer Mr. Rockett's evidence. It is undisputed that Joshua was injured and received veterinary care the day after the alleged incident. While K.J. says Joshua did not appear injured immediately after the incident, her statement is consistent with Mr. Rockett's evidence that he first walked Joshua around the block before tending to his wounds. I find it unlikely Mr. Rockett would walk Joshua around the block if his injuries appeared serious immediately after the incident. This is consistent with Mr. Rockett waiting until the next morning to seek veterinary care. I also find there is no other likely cause of Joshua's injuries.
21. Mr. Rockett also provided evidence that Dudley has a history of biting. He submitted evidence establishing that Dudley approached and bit his partner, B.P., unprovoked, on March 14, 2015. The evidence shows that the City of Vancouver ticketed and fined Ms. Forst for allowing Dudley to be off leash and to bite a person in breach of its bylaws. Ms. Forst disputed the charges, and in October 2015 the BCPC found her guilty of the charges and fined her \$850. Ms. Forst says the person deciding that case did not like dogs and that they preferred Mr. Rockett's evidence because he and his partner work for the City of Vancouver. However, she provided no evidence to support these assertions. She says she would have been successful if she had appealed the decision, but she chose not to do so for various reasons. I

do not find Ms. Forst's explanations for the BCPC's decision compelling, and I find Mr. Rockett has established that Dudley bit his partner in 2015.

22. On the evidence before me, I find Mr. Rockett has established it is more likely than not that Dudley caused Joshua's injuries during the incident on December 17, 2018. Next, I must determine whether Ms. Forst is responsible for paying Joshua's veterinary bills.
23. In British Columbia there are currently 3 ways a pet owner may be liable for their pet's actions: the legal concept of 'scienter,' occupier's liability, and negligence. For 'scienter' to apply, Mr. Rockett must prove that Dudley had a tendency to cause harm, and that Ms. Forst knew about that tendency. Mr. Rockett is not required to prove that Dudley caused the same kind of harm in the past. It is enough if Mr. Rockett can show that Ms. Forst knew Dudley previously manifested a trait to cause the kind of harm caused in this case (see *Xu v. Chen & Yates*, 2008 BCPC 234).
24. For the reasons explained above, I find Mr. Rockett has established that Dudley previously showed a propensity to bite, and that Ms. Forst was aware of this before the December 17, 2018 incident. Although Ms. Forst maintains that Dudley never bit Mr. Rockett's partner, I have found the evidence shows otherwise. I find Mr. Rockett has established the elements of scienter, and therefore Ms. Forst is strictly liable for Dudley's actions regardless of her own actions during the incident (see *Gallant v. Sloomweg*, 2014 BCSC 1579). Having found Ms. Forst liable for 'scienter,' I find it is unnecessary for me to address occupier's liability or negligence. I find Ms. Forst is required to reimburse Mr. Rockett \$945.46 for Joshua's veterinary bills.

***Is Mr. Rockett required to reimburse Ms. Forst \$1,150 for Dudley's veterinary bills?***

25. Ms. Forst says Mr. Rockett left rat poison outside her door which made Dudley ill and cost \$331.82 in veterinary care. She also says Mr. Rockett left broken glass on the passenger side of her car on which Dudley injured himself, which cost \$157.50 in veterinary care. While Ms. Forst submitted the veterinary bills for each of these

alleged incidents, she provided no evidence to prove that Mr. Rockett had anything to do with either the rat poison or the broken glass, which he denies. I find the fact that the parties do not get along does not prove that Mr. Rockett took the alleged actions. I dismiss these claims.

26. Ms. Forst also says Mr. Rockett kicked Dudley and injured him, requiring 2 veterinary visits for \$200. She did not specify the date on which she says Mr. Rockett kicked Dudley, nor did she submit evidence of the care Dudley received or the associated costs. While Mr. Rockett does admit to kicking Dudley during the December 17, 2018 incident, Ms. Forst says she did not recall Mr. Rockett kicking Dudley that day, implying that Mr. Rockett kicked Dudley on a different date. Without more, I find there is insufficient evidence to establish that Mr. Rockett kicked Dudley and injured him, or that Dudley required veterinary care for such injuries. I dismiss this aspect of Ms. Forst's counterclaim.

***Should the tribunal order Mr. Rockett to stop making false claims, stop stalking, harassing, and threatening Ms. Forst, and stop kicking Dudley?***

27. Ms. Forst says Mr. Rockett has made false claims against her, stalked, harassed and threatened her, and kicked Dudley. However, Ms. Forst's request for the tribunal to order Mr. Rockett to stop taking these actions is a claim for injunctive relief, which is outside the tribunal's small claims jurisdiction set out in section 118 of the CRTA. I therefore make no findings about whether Mr. Rockett took any of the alleged actions, and I refuse to resolve this claim under section 10 (1) of the CRTA.
28. The *Court Order Interest Act* applies to the tribunal. Mr. Forst is entitled to pre-judgment interest on the \$945.46 calculated from December 19, 2018, which is the latest date of his veterinary bill, to the date of this decision. This equals \$17.31.
29. 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. Since Mr. Rockett was successful, I find he is entitled to reimbursement of \$125 in tribunal fees. He also claims \$32.63 in dispute-related expenses for courier and postage expenses, which I find reasonable in the circumstances. Therefore, I find Mr. Rockett is entitled to \$32.63 in dispute-related expenses. Ms. Forst did not claim reimbursement of tribunal fees or a specific amount for dispute-related expenses.

## **ORDERS**

30. Within 14 days of the date of this decision, I order Ms. Forst to pay Mr. Rockett \$1,120.40, broken down as follows:

- a. \$945.46 for Joshua's veterinary bills,
- b. \$17.31 in pre-judgment interest under the *Court Order Interest Act*,
- c. \$157.63 for \$125 in tribunal fees, and \$32.63 in dispute-related expenses.

31. Mr. Rockett is entitled to post-judgment interest, as applicable.

32. I refuse to resolve Ms. Forst's request for an order preventing Mr. Rockett from making false claims, stalking, harassing and threatening her, and kicking her dog Dudley.

33. I dismiss the remainder of Ms. Forst's counterclaim.

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Sarah Orr, Tribunal Member