



Civil Resolution Tribunal

Date Issued: December 24, 2019

File: SC-2019-004505

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yemchuk v. Aqua Paws Hydrotherapy Inc.*, 2019 BCCRT 1435

B E T W E E N :

MARLENE YEMCHUK

APPLICANT

A N D :

AQUA PAWS HYDROTHERAPY INC.

RESPONDENT

A N D :

MARLENE YEMCHUK

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, and respondent by counterclaim, is Marlene Yemchuk. She brought her dog to a hydrotherapy centre operated by the respondent, and applicant by counterclaim, Aqua Paws Hydrotherapy Inc. The applicant says the respondent used abusive practices, particularly “dominance theory”, and caused her dog to submissively urinate in the respondent’s reception area.
2. The applicant seeks a refund of \$102.90 for the therapy session, and \$400 for her dog’s emotional abuse and the applicant’s psychological pain. She also requests an order that the respondent stop its allegedly abusive practices toward dogs.
3. The respondent says it opposes dominance theory-based training methods and did not employ them on the applicant’s dog. It says it does not owe the applicant any money. The respondent counterclaims for \$500 for time spent dealing with the dispute and \$300 for stress and anguish arising from the applicant’s allegations of abuse.
4. The applicant is self-represented. The respondent is represented by Jacqueline Gibson, an owner and director. For the reasons that follow, I dismiss the applicant’s claims and the respondent’s counterclaims.

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. In some respects,

both parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.

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.

ISSUE

9. The issue in this dispute is whether the applicant is entitled to damages or a refund for the aqua therapy session for the way the respondent treated her dog.
10. In the counterclaim, the issue is whether the respondent is entitled to compensation for time spent dealing with the dispute, or damages for stress and anguish.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, each party must prove its claim or counterclaim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
12. The undisputed events are as follows. On June 22, 2018, the applicant and her dog, Conner, attended the respondent's business for an aqua therapy session. It was their first visit. In the reception area before the session, Conner urinated. The parties disagree about the cause. Conner proceeded with his aqua therapy session in the pool with a therapist and the applicant. The next day, the therapist called the applicant and the applicant booked a second session for June 30, 2018. Shortly afterward, Ms. Gibson called the applicant, cancelled the second session and declined her future business. The applicant asked for, and received, an emailed receipt for the first therapy session for \$102.90 including tax.
13. The applicant says the respondent used "dominance theory" on Conner. She says that in the reception area, the respondent's therapist intimidated Conner into submissive urination by staring at Conner from a standing position, which she says is intimidating to dogs. The applicant says she did not see the therapist do this because the therapist was behind her while she stood at the counter answering Ms. Gibson's questions about Conner's medication. However, the applicant heard urine splashing on the floor, turned, and saw the terrified look on Conner's face. The applicant also says that the therapist had a "Cheshire cat smile" on her face and told the applicant not to worry. The therapist then cleaned up the urine.
14. The applicant says the respondent's practice is to force dogs into submissive urination for two reasons. First, it ensures continued submissive behaviour from the dogs, making them easier to control in the therapy session. The applicant says that in the aqua therapy session Conner exhibited signs of submission, such as avoiding eye contact.

15. Second, the applicant says that submissive urination ensures that the dogs do not urinate in the pool. She says draining and cleaning the pool can cost up to \$400, plus the cost of missed appointments.
16. The applicant argues that the urination incident “was practised and executed with finesse” and is the respondent’s “modus operandi.” She says the design of the waiting room was such that only 1 dog entered at a time. She says Ms. Gibson locked the door behind her when she arrived. She says Ms. Gibson asked her to list and spell Conner’s medications to occupy the applicant so that she could not observe the therapist’s intimidation of Conner. She says neither Ms. Gibson nor the therapist acknowledged Conner, used his name, talked to him, or used gentle touches to reassure him, all of which contributed to the intimidation. She says the therapist acted the same way in the pool.
17. The respondent denies that any of its therapists used “dominance theory” on Conner or any dog, and says the theory was debunked several years ago. The respondent says its procedures are based on positive reinforcement and are designed to reduce stress and help dogs feel safe as quickly as possible.
18. The respondent says that although Conner was sweet-natured and easy-going, the applicant refused to follow instructions and became hostile and argumentative. Conner experienced the same procedures that every dog experiences for their first session. The respondent says that Ms. Gibson and the therapist explained to the applicant that they would ignore Conner until he approached them, as their view is that dogs prefer to approach new people at their own pace.
19. So, is the applicant entitled to a refund, damages, or both? There is no written contract between the parties, and no evidence about any refund policy. However, I find that the parties did have an agreement. The terms of that agreement were that the respondent would provide an initial aqua therapy session and the applicant would pay the agreed price. I find that the respondent also owed the applicant a duty of care not to abuse or mistreat the applicant’s dog.

20. Did the respondent intentionally cause Conner to submissively urinate? I find that it did not. The applicant admitted that she did not notice that Conner was urinating until she heard the sound, because her back was turned. She did not observe the therapist do anything to Conner, she merely suspects that the therapist stared at him. Suspicion is not enough. The applicant's suggestion that the respondent's practice was to force dogs to urinate on the respondent's reception floor defies common sense.
21. The applicant provided emails from experienced dog rehabilitation specialists stating that it is abnormal to not speak to a dog or provide reassurance. However, in light of the respondent's explanation that it prefers to let the dog make the first approach, I find that the respondent's practices were not harmful. Even accepting the applicant's evidence about the therapist's cold demeanor in the pool, the most that could be said about such behaviour is that it was not what the applicant expected. I find that it was not negligent or abusive. Moreover, the applicant booked a second session for Conner. I find it unlikely that she would have done this had she had serious concerns about the respondent's treatment of Conner.
22. I find that the respondent's treatment of Connor was not negligent or abusive and did not breach the parties' contract. As a result, the applicant is not entitled to the requested remedies.
23. Even if I had found evidence of abuse, I would be unable to grant the requested order that the respondent stop abusing dogs. This is because the tribunal does not have jurisdiction to grant injunctive relief (an order to do something or stop doing something), other than what is set out in section 118 of the CRTA.
24. I also dismiss the respondent's counterclaims for \$500 for time spent dealing with the dispute and \$300 for stress and anguish. Section 20 of the CRTA provides a general rule that parties are to represent themselves in tribunal proceedings. Generally, claims for time spent on the dispute are not allowed, consistent with self-representation where legal fees are not reimbursed. I see no reason to deviate from that practice here.

25. While I accept that this situation may have been stressful and unpleasant for Ms. Gibson, there is no evidence that the respondent suffered any economic loss as a result of the applicant's abuse allegations. I dismiss the counterclaims.
26. 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. As neither party was successful, I make no order about tribunal fees. Neither party claimed any dispute-related expenses.

ORDER

27. I dismiss the applicant's claims, the respondent's counterclaims, and this dispute.

Micah Carmody, Tribunal Member