



# Civil Resolution Tribunal

Date Issued: January 13, 2020

File: SC-2019-006792

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dzenkiw v. Graham*, 2020 BCCRT 47

**B E T W E E N :**

DAWN DZENKIW

**APPLICANT**

**A N D :**

MICHELLE GRAHAM

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Kathleen Mell

### **INTRODUCTION**

1. This dispute is about a contract for the sale of a bulldog. The applicant, Dawn Dzenkiw, says that the respondent, Michelle Graham, sold her the dog but when the dog did not settle in her new environment the applicant followed the terms of the contract and returned the dog to the respondent. She says that the respondent did

not provide her with a new puppy or a sphinx cat as promised to reimburse her for the value of the dog.

2. The applicant claims reimbursement of \$2,500.00 plus \$350.00 in shipping charges for a total of \$2,850.00. The applicant says that she did not pay to ship the dog back but that she is claiming the cost of getting the dog shipped to her. The applicant represents herself.
3. The respondent says that she did not provide a replacement animal because she had concerns over the dog's weight loss when she was returned and the reports of the dog's behavior when it was with the applicant. She says that the contract does not allow for cash refunds. She says she would consider providing the applicant with another animal as compensation if guarantees were in place about how the animal would be treated. The respondent represents herself.

## **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. In some respects, this dispute amounts to a "she said, she said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the

court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether the respondent breached the parties' contract by failing to reimburse the applicant for the returned dog and, if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, the applicant must prove her claim. She bears the burden of proof on a balance of probabilities.
10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
11. It is undisputed that the parties entered into a contract for the respondent to sell the applicant a dog. The dog was born on October 16, 2017 and the applicant bought her on June 12, 2018 when the dog was 8 months old.

## ***The Contract***

12. The crux of this dispute is the interpretation of the parties' written contract and what should have happened once the applicant realized that the dog was not adjusting to her home and family.
13. The contract contains health guarantee terms that I find are more specifically aimed at a customer buying a puppy and afterward finding out the puppy has an illness. The contract states that the customer should take the puppy to a licensed veterinarian within 72 hours presumably of obtaining the puppy. There is a handwritten note on the contract that says that taking the dog to a veterinarian was unnecessary in this dog's sale. This was initialed by the respondent.
14. The contract also states that there are no refunds, just a replacement puppy from the same bloodlines and price range if the dog is diagnosed with something threatening. It notes that there may be a wait time for a replacement puppy of up to a year.
15. The contract further says that a puppy must be returned to the seller in good condition, other than the identified problem that led to its return. The buyer will then qualify for a replacement puppy. It notes that temperament is not covered as this is something outside of the seller's control once the puppy is sold.
16. The contract also says that the buyer must take good care of the dog at all times including feeding and housing the dog properly. The contract further indicates that if the buyer becomes unable to keep the puppy or dog for any reason the buyer agrees to offer the breeder first chance to "take the dog back." The contract does not say how the parties will decide the buyer's compensation if the seller decides to take the dog back.

## ***History of the dog with the applicant***

17. When the applicant first received the dog in June 2018, she thought the dog was adapting well and sent the respondent texts saying this but by August 2018 the

applicant began sending the respondent texts saying that the dog did not like being on a leash and that the dog was uncomfortable around her son. The applicant told the respondent that the dog was afraid when she took her out in public. Things worsened with the applicant telling the respondent that the dog was baring her teeth and was so frightened around people that she was soiling herself.

18. The initial texts between the parties at this point were still supportive and friendly with the respondent agreeing to take the dog back and the applicant saying she was sad to have to let her go. However, the applicant also told the respondent that she was not willing to just return the dog without a promise that she would be compensated. The respondent refused to say what she would offer as reimbursement indicating that she needed to see the dog's health before making any promises.
19. The applicant ultimately returned the dog to the respondent on October 2, 2018. The respondent sent the applicant a picture of the dog playing in the yard with the other dogs. There is also a video of the dog at the veterinarian's office. This evidence is relevant as the respondent began to claim that the dog was severely underweight when returned and that her ribs were showing. I find this is not evident in the picture or on the video.
20. The respondent also says that the veterinarian indicated that there was a concern with the dog's weight. However, the respondent has not provided any evidence that the veterinarian said this and in fact she sent a text to the applicant saying that the trip to the veterinarian went well. The respondent says that when she sent this text she meant that the dog did not show any of the behaviours that the applicant said were happening.
21. After this the parties disagreed about how the applicant would be compensated for the dog's value. Initially in October 2018 the respondent said that she would give the applicant a new puppy. The respondent did bring up the issue about the dog's weight but in her communications with the applicant she did not suggest that she was reluctant to provide her with a new puppy.

22. The respondent did not immediately arrange for delivery of a puppy and several communications indicate this was because of difficulty in making travel arrangements. The respondent then offered the applicant a puppy in December 2018 but said that the applicant had to travel to her community to pick it up. The applicant had family obligations that prevented her from travelling. The respondent also stated that the puppy could only leave on strict feeding conditions and that she would want updates. The respondent submitted that she wanted to meet the applicant and see her with the puppy before letting her have one.
23. The applicant responded to this text by challenging the respondent and noted that the dog with crate weighed 30 pounds when shipped back and that this was a healthy weight for a bulldog of that age. She said that she thought the respondent was just giving her the run around and that if she really had concerns about her ability to care for an animal the respondent should just give her the money back.
24. The respondent's reply was again about difficulties with air transportation. By the spring the respondent had still not provided the applicant with the promised puppy. The applicant received information that there might have been behavioural issues with other dogs bred by the respondent and passed this along to her. At around this time the respondent offered the applicant a sphinx cat. The cat was worth about half the cost of the dog. The applicant agreed to take the cat.
25. The respondent never sent the applicant the cat. The respondent again says that her reluctance to provide the applicant with a replacement pet was because she was concerned about the dog's weight loss and its behavioural changes while in the applicant's care.
26. I have read the emails and texts and viewed the picture and videos. The respondent did express concern about issues with the dog's weight loss, but I find these are not supported by the evidence. Further, the respondent spoke of this concern in October and again in December 2018 but then engaged the applicant in conversations for months about giving her a new puppy or a cat.

27. The respondent submits that she wanted the applicant to pick up a new puppy from her directly and that she wanted the applicant to provide her with updates and a veterinarian reference. This does not explain why she then continued to offer her a puppy and then offered her a cat but did not deliver it. The communications between the parties also do not show that the respondent continued to tell this to the applicant and as late as May 2018 the applicant was asking the respondent why she was not fulfilling their agreement.
28. Based on the evidence, I find that the contract is unclear as to what compensation should be given to a buyer who is obligated to give the seller the first opportunity to take back the pet. The clauses about a new puppy from the same litter do not apply to this situation as the dog was not diagnosed with something “threatening.” The contract is silent as to what compensation the buyer is entitled to if she returns a pet that does not have a “threatening” diagnosis. The contract also says that temperament is not covered, and it could be argued that the issue involving this dog was its temperament.
29. However, I find the respondent made it clear in her communications with the applicant that she would provide her with a replacement animal. I find that this was an enforceable amendment to the parties’ agreement especially since the applicant agreed to the return of the dog even though the issue seemed to be her temperament. The respondent initially told the applicant that she could have a new puppy of the same breed and then later a sphinx cat. The respondent did not deliver either.
30. I do not accept the respondent’s explanation that she did not fulfill her promise to provide the applicant with a replacement pet because she was concerned about the dog’s state when it was returned to her. As noted, the picture and video show the dog as looking healthy. There is no medical evidence from a veterinarian that the dog was mistreated. The respondent herself texted that the dog was fine.
31. I find that the respondent breached the agreement when she took the dog back but did not compensate the applicant by providing a replacement animal as promised.

## **Remedy**

32. The applicant paid \$2,500.00 for the dog. The respondent failed to deliver on her promise to provide a replacement pet. Because of the parties' history I find that it would be impractical to order the respondent to provide the applicant with a pet of a similar value. Rather, I find it is more appropriate for the respondent to reimburse the applicant the \$2,500.00 she paid for the dog.
33. The applicant also requests \$350.00 as reimbursement for the cost of shipping the dog. The applicant has not provided any receipts to indicate that this is how much she paid to ship the dog. Further, the applicant has not provided any reasons to support her claim that she is entitled to reimbursement of the shipping costs. She did ask for the dog to be shipped to her. The fact that the placement of the dog in her home did not work out does not mean she is entitled to get the money back spent on shipping. Therefore, I find that applicant is not entitled to reimbursement of this amount.
34. The applicant is also entitled to pre-judgement interest under the *Court Order Interest Act* (COIA) from October 2, 2018, when she returned the dog, to the date of this decision which totals \$59.92.
35. 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 the applicant was successful in her claim, she is entitled to have her \$125.00 tribunal fees reimbursed.

## **ORDERS**

36. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$2,684.92 broken down as follows:
  - a. \$2,500.00 as reimbursement for the value of the dog,
  - b. \$59.92 in pre-judgement interest, and



c. \$125.00 in tribunal fees.

37. The applicant is entitled to post-judgement interest under the COIA. The applicant's remaining claims are dismissed.
38. 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.
39. 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 passes. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Kathleen Mell, Tribunal Member