



Civil Resolution Tribunal

Date Issued: March 13, 2020

File: SC-2019-007260

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Carrothers v. Zacchia*, 2020 BCCRT 293

BETWEEN:

HANNAH CARROTHERS

APPLICANT

AND:

NICHOLAS ZACCHIA

RESPONDENT

AND:

HANNAH CARROTHERS

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about dog sitting services.
2. The applicant and respondent by counterclaim, Hannah Carrothers, says she agreed to dog sit for the respondent and applicant by counterclaim, Nicholas Zacchia, in exchange for \$600. Ms. Carrothers says there was a misunderstanding about the dog sitting's time frame, so the parties eventually agreed to increase the rate to \$2,000. She says Mr. Zacchia has only paid \$1,000, and so she seeks payment of the outstanding \$1,000.
3. In contrast, Mr. Zacchia says he was unreasonably pressured into agreeing to pay Ms. Carrothers \$2,000. He says although he agreed to pay it, he should not have to. Additionally, he says Ms. Carrothers failed to provide adequate care for the dog, and in his counterclaim he seeks a \$400 refund, \$313.80 as compensation for a missed hotel booking, and \$120 he paid to a subsequent dog sitter.
4. The parties are both 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 "she said, he said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an 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. In resolving this dispute the tribunal may make one or more of the following orders, where permitted by 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.

ISSUES

9. The issues in this dispute are:
 - a. Is Ms. Carrothers entitled to \$1,000 for agreed dog sitting services?
 - b. Did Ms. Carrothers provide inadequate dog care, such that Mr. Zacchia is entitled to a \$400 refund?
 - c. Is Mr. Zacchia entitled to \$313.80 for a missed hotel booking?
 - d. Is Mr. Zacchia entitled to \$120 for third party dog sitting services?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Ms. Carrothers must prove her claim on a balance of probabilities. In his counterclaim, Mr. Zacchia bears this same burden. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. It is undisputed that in June 2019, the parties agreed Ms. Carrothers would care for Mr. Zacchia's dog, Bailey, for a "few weeks" while he went traveling. Mr. Zacchia told Ms. Carrothers he would "give [her] a little cash" for her troubles. Bailey was dropped off at Ms. Carrothers' home on June 14.
12. On June 15, 2019, Mr. Zacchia e-transferred Ms. Carrothers \$600. Later that day, he told her he would "probably be gone for close to 2 months". It is undisputed the parties anticipated there would be additional help from others in caring for Bailey while Mr. Zacchia was away. As time went on, the parties stayed in contact while Mr. Zacchia traveled, and Ms. Carrothers cared for Bailey.
13. At the end of July 2019, Ms. Carrothers followed up with Mr. Zacchia, asking when Mr. Zacchia would be returning home, and he responded with between August 15 and 21, 2019. In response, Ms. Carrothers advised Mr. Zacchia caring for Bailey was longer and more difficult than expected. The parties agreed there was a miscommunication about the length of Mr. Zacchia's trip. The parties discussed moving Bailey to a boarding shelter, but this was not done. Instead, the parties agreed Ms. Carrothers would continue to look after Bailey until August 16, and Mr. Zacchia paid an additional \$400.
14. A week later, the parties again discussed the "miscommunication" about the size of the dog sitting job, and Ms. Carrothers advised she would continue to look after Bailey, but felt she was not being fairly compensated. In response, Mr. Zacchia acknowledged the job was larger than expected and offered to pay an additional \$1,000. By Facebook message on August 8, 2019, Mr. Zacchia further stated

“Would that be alright? \$2000 for watching Bailey until August 16th?”. Ms. Carrothers agreed.

15. Two days later, Mr. Zacchia advised Ms. Carrothers that his trip was delayed, and he would not be home by August 16. He said he was arranging for a different sitter as he was going to be away longer than anticipated, and noted “I’ll still give you the money I promised.” It is undisputed that a third party dog sitting company, R, picked up Bailey from Ms. Carrothers on August 12, 2019.

Is Ms. Carrothers entitled to \$1,000 for agreed dog sitting services?

16. I find that although the parties initially had not agreed on a price for Ms. Carrothers’ dog sitting services, it was eventually agreed that Mr. Zacchia would pay \$1,000 in total, and later, \$2,000 in total.
17. Mr. Zacchia says he only agreed to pay the additional \$1,000 on August 8, 2019 because Ms. Carrothers was threatening to leave town and “otherwise neglect” Bailey. He says he was extorted and harassed for more money. I disagree. Mr. Zacchia put the entirety of the parties’ written communications into evidence. I find Mr. Zacchia’s allegations are not consistent with the mostly friendly tenor of the conversation.
18. I do not accept that Mr. Zacchia was pressured into agreeing to pay more money. In fact, based on the parties’ correspondence summarized above, I find that the respondent proposed and agreed to the price increase to \$2,000 and that the parties’ agreement was amended accordingly.
19. What about Bailey being picked up early? As noted above, Bailey was removed from Ms. Carrothers’ care by R on August 12, 2019, four days earlier than the parties initially agreed. There is no indication Ms. Carrothers was unable or unwilling to continue looking after Bailey until August 16. Mr. Zacchia says he removed Bailey from Ms. Carrothers’ care because he felt Bailey was unsafe.

However, I find Mr. Zacchia has not proved Ms. Carrothers' care was negligent, more on this below.

20. It is unclear why Mr. Zacchia chose to have Bailey moved on August 12 instead of August 16, but I find it was not a result of any misconduct by Ms. Carrothers. Additionally, I note that Mr. Zacchia's August 10, 2019 message noted he would still pay Ms. Carrothers the \$1,000 he owed. The parties' conversation is inconsistent with Mr. Zacchia's allegation he removed Bailey due to concerns for his safety.
21. I find it was Mr. Zacchia's own choice to remove Bailey from Ms. Carrothers' care early. On balance, I find she is entitled to the full \$2,000 as agreed upon. It is undisputed that Mr. Zacchia has already paid \$1,000. I find he must pay Ms. Carrothers the additional \$1,000, as agreed.
22. Ms. Carrothers is also entitled to pre-judgment interest on this amount, under the *Court Order Interest Act*. Calculated from August 16, 2019, the date the agreement was originally to end, this amounts to \$11.27.
23. I turn then to Mr. Zacchia's counterclaim.

Did Ms. Carrothers provide inadequate dog care, such that Mr. Zacchia is entitled to a \$400 refund?

24. Mr. Zacchia says he should receive a refund of \$400 he paid to Ms. Carrothers because she initially agreed to watch Bailey in exchange for \$600, but he paid her more money anyway. He also says Ms. Carrothers failed to provide Bailey with proper care and unreasonably left him in the care of others while she went out of town for over 3 weeks. He also says he overpaid Ms. Carrothers when he gave her the \$400 because he subsequently found a third party sitter for \$25 per day.
25. Ms. Carrothers denies improperly caring for Bailey, and outlines the various steps she took for Bailey, including ordering and paying for specialty food and administering twice daily eye drops. She says she was only unable to care for Bailey when she visited her family in the United States, and when she went

camping for one weekend, but took responsibility for Bailey's substitute care while she was away. Ms. Carrothers further says that both times Mr. Zacchia was aware of the situation and did not raise any concerns.

26. I find Mr. Zacchia has not proven Ms. Carrothers was negligent in her care of Bailey. I note Mr. Zacchia was actually quite complimentary of Ms. Carrothers' caretaking skills up until the breakdown of their friendship (after Bailey was removed from her care). Additionally, I find an alternative dog sitter's rate irrelevant to the parties' agreement. I dismiss this claim.

Is Mr. Zacchia entitled to \$313.80 for a missed hotel booking?

27. As noted above, Mr. Zacchia seeks reimbursement of \$313.80 for missing a night in a hotel, which he says was due to having to remain in a WiFi zone trying to make alternate arrangements for Bailey's care. He said he had to cancel the booking outside of the hotel's cancellation window, and therefore had to pay a full night's rate.
28. I am not satisfied that Ms. Carrothers' conduct resulted in Mr. Zacchia reasonably having to alter his travel plans to remain in a WiFi zone to arrange for another dog sitter. In fact, Ms. Carrothers always stated she was ready, willing and able to care for Bailey until Mr. Zacchia's scheduled return on August 16, 2019. Additionally, Mr. Zacchia did not provide any evidence in support of this claim, such as an invoice outlining the alleged fees paid. I dismiss this claim.

Is Mr. Zacchia entitled to \$120 for third party dog sitting services?

29. Mr. Zacchia says that as a result of Ms. Carrothers' negligent behaviour of repeatedly leaving the dog, he had to hire a third party dog sitting company, R, to take over. It is undisputed Bailey was picked up by R on August 12, 2019. Mr. Zacchia says the cost was \$20 for pick up and \$25 per day for 4 days, from August 12 to August 16, the day which he would have collected Bailey from Ms. Carrothers.

30. I also dismiss this claim. I say this partially because I find Mr. Zacchia would have needed additional dog sitting services in any event. As noted above, Mr. Zacchia contacted Ms. Carrothers on August 10, 2019 and advised his trip was delayed and he would be unable to collect Bailey on August 16 as agreed. R's invoice indicates Bailey was in its care for 13 days, from August 12 to 25, 2019. Mr. Zacchia arranged for the alternative care, which started on August 12, 2019.
31. Based on my earlier findings, it was Mr. Zacchia's own choice to remove Bailey from Ms. Carrothers' care early, and was not a result of any negligence on Ms. Carrothers' behalf.
32. Given all of the above, I dismiss Mr. Zacchia's counterclaim in its entirety.
33. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Ms. Carrothers was the only successful party, I find she is entitled to reimbursement of the \$125 she paid in tribunal fees. I dismiss Mr. Zacchia's claim for tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

34. Within 30 days of the date of this decision, I order the respondent, Nicholas Zacchia, to pay the applicant, Hannah Carrothers, a total of \$1,136.27, broken down as follows:
 - a. \$1,000 in debt for unpaid dog sitting services,
 - b. \$11.27 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
35. Ms. Carrothers is also entitled to post-judgment interest, as applicable.
36. Mr. Zacchia's counterclaim is dismissed.

37. 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.
38. 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.

Andrea Ritchie, Vice Chair