



Civil Resolution Tribunal

Date Issued: June 19, 2020

File: SC-2020-001174

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Blore v. Kalish*, 2020 BCCRT 683

BETWEEN:

KATHERINE BLORE (Doing Business As WESTCOTT EQUESTRIAN)

APPLICANT

AND:

ANNMARIE KALISH and CHRISTOPHER ALLAN FORTIN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is horse boarding and riding costs.
2. The applicant Katherine Blore, doing business as Westcott Equestrian, says she boarded a horse, Pepper, belonging to the respondents Annmarie Kalish and her

spouse Christopher Allan Fortin, but that they failed to pay the agreed \$650 per month boarding charge.

3. Ms. Blore also says that Ms. Kalish took 35 horse rides, but then failed to provide personal training services to Ms. Blore in exchange, as agreed. Ms. Blore claims a total of \$1,525, made up of \$650 for December 2019 boarding and \$875 for 35 horse rides valued at \$25 each.
4. Mr. Fortin and Ms. Kalish say boarding was on a month-to-month basis. They say they do not owe \$650 for December 2019, having removed Pepper on December 7.
5. The respondents agree that Ms. Kalish was to trade personal training services for horse rides. However, Mr. Fortin and Ms. Kalish now say that because the horse used for rides did not belong to Ms. Blore, they do not need to pay. They also say Ms. Kalish felt unable to fulfill her part of the trade because the relationship with Ms. Blore soured and her behavior became “aggressive”.
6. Ms. Blore is self-represented. Mr. Fortin represents himself and Ms. Kalish.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
8. 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. 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 the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

9. 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. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
10. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
11. Where permitted by section 118 of the CRTA, resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

12. The issues in this dispute are:
 - a. To what extent, if any, must Ms. Kalish or Mr. Fortin pay Ms. Blore for Pepper's boarding fees for December 2019, and
 - b. Whether, or to what extent, Ms. Kalish or Mr. Fortin must pay Ms. Blore for horse rides that Ms. Kalish took in fall 2019?

EVIDENCE AND ANALYSIS

13. In this civil claim, Ms. Blore bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.

Background Facts

14. The parties agree to the following facts:

- a. In August 2019, Ms. Kalish and Mr. Fortin purchased Pepper from Ms. Blore.
- b. The parties verbally agreed that Mr. Fortin and Ms. Kalish would pay Ms. Blore \$650 per month to board Pepper at her property.
- c. In late November 2019, Mr. Fortin and Ms. Kalish informed Ms. Blore that they would no longer be boarding Pepper at her property.
- d. On December 7, 2019, Mr. Fortin and Ms. Kalish removed Pepper from Ms. Blore's property.

15. On January 12, 2020, Ms. Blore issued an invoice to Ms. Fortin for \$1,525, broken down as \$650 for December 2019 boarding fees, and 35 rides at \$25 per ride.

16. I turn to the relevant chronology. On September 11, 2019 Ms. Kalish suggested that she be permitted to ride one of Ms. Blore's horses daily, in exchange for chores. However, Ms. Blore responded to say she could not afford to offer Ms. Kalish that option.

17. After some further negotiation, on October 3, 2019 Ms. Kalish agreed to clean 12 paddocks in exchange for each horse ride. I find that the agreement that Ms. Blore would trade the horse rides for a service by Ms. Kalish was reached on this date. Later, they varied their agreement about what service Ms. Kalish would provide.

18. Based on texts exchanged in late October, I find Ms. Kalish continued riding but was not cleaning paddocks as agreed.
19. In another undated text, Ms. Blore wrote that she had not been charging Ms. Kalish to ride for “three months now”, and that the cost for full board and training 5 days a week should be \$1,150/month. I find that Ms. Blore meant to point out that as Ms. Kalish was not providing the paddock cleaning service as agreed, she expected payment for the rides. In response, Ms. Kalish suggested that she may move Pepper. Ms. Blore then wrote that if Ms. Kalish moved Pepper, 30 days’ notice would be required.
20. Based on a November 10, 2019 text chain, I find that Ms. Kalish and Ms. Blore then agreed to vary the barter between them. In particular, Ms. Kalish would pay for the horse rides by providing Ms. Blore personal training, in place of the paddock cleaning.
21. Then, on November 30, 2019 Ms. Kalish informed Ms. Blore that she would be moving Pepper. Ms. Kalish texted that she would still provide the personal training.
22. On December 3, 2019, Ms. Kalish texted Ms. Blore offering to start the personal training 3 times per week.
23. The parties agree that the personal training never occurred.

Boarding

24. The parties disagree about whether Mr. Fortin and Ms. Kalish must pay Ms. Blore \$650 for boarding Pepper for December 2019.
25. Based on the text messages between Ms. Blore and Ms. Kalish, I find that Ms. Kalish agreed to provide 30 days’ notice to end Pepper’s boarding arrangement. As well, Ms. Kalish later texted that she would pay “650 for dec”, which I find was a commitment to pay \$650 for December 2019.

26. Because Ms. Kalish gave notice to Ms. Blore on November 30, 2019 and removed Pepper less than 30 days later on December 7, 2019, I find that Ms. Kalish owes Ms. Blore \$650 in boarding fees for December 2019.

Horse Rides

27. The parties agree that Ms. Blore and Ms. Kalish verbally agreed that Ms. Kalish would be permitted to ride a horse other than Pepper, in exchange for Ms. Kalish providing personal training services to Ms. Blore.

28. An agreement to exchange goods and services is sometimes called a barter, or an arrangement for payment “in kind”: see *Ted Walton Excavating Ltd. v. Cameron*, 2015 BCSC 1862 at paragraph 13 and *Ruddell v. McKay*, 2019 BCCRT 579 at paragraph 14.

29. Because Ms. Kalish never provided the personal training services to Ms. Blore, the question becomes whether Ms. Kalish or Mr. Fortin owe Ms. Blore any money for 35 horse rides Ms. Kalish took between September 9, 2019 and November 27, 2019.

30. Mr. Fortin submits that because the horse used for Ms. Kalish’s rides was not owned by Ms. Blore, Ms. Kalish should not have to pay for the rides.

31. Ms. Blore provided an email from BC, the owner of a horse named Sama. BC explains that she leases Sama to Ms. Blore, and in exchange Ms. Blore pays Sama’s fees. As part of the lease, BC agrees that Ms. Blore can use Sama for lessons and rides for other patrons.

32. Ms. Blore also explains that Ms. Kalish took some of the contested rides on Dakota, Margo and Aryanna, horses owned by Ms. Blore. Based on BC’s email and Ms. Blore’s evidence about her other horses, I find that Ms. Blore was entitled to offer Sama or any of her own horses for Ms. Kalish to ride, for whatever trade or price was agreed between them.

33. Mr. Fortin also submits that Ms. Kalish could not provide personal training services due to Ms. Blore’s aggressive behavior. I find the text messages do not support that

version of events. Instead, the messages suggest that Ms. Kalish and Ms. Blore continued to plan for the personal training, even after Pepper left the boarding arrangement.

34. Because Ms. Kalish failed to provide the personal training services as agreed, I find that she breached the barter agreement. I find that Ms. Kalish must pay Ms. Blore for the value of the rides taken under the agreement.
35. Turning to setting a value for the rides, or what the law refers to as *quantum meruit*, I find that the horse rides taken should be counted from October 3, 2019, when Ms. Blore and Ms. Kalish agreed to the barter. Before that, Ms. Blore was permitting Ms. Kalish to take horse rides but I find there was no agreement that she would pay or provide a service in return.
36. Ms. Blore's uncontested evidence is that rides are valued at \$25 each. This is consistent with her November 2019 text message to Ms. Kalish explaining that the price for full board and training 5 days/week for one horse is \$1,150/month. Based on Ms. Blore's invoice, I find that Ms. Kalish took 22 rides between October 3 and November 27, 2019. Valuing the rides at \$25 each, I order that Ms. Kalish pay Ms. Blore \$550 for the rides. In total, Ms. Kalish must pay Ms. Blore \$1,200.

Claims Against Mr. Fortin

37. I find that Mr. Fortin was not a party to the agreements between Ms. Kalish and Ms. Blore for horse riding and boarding costs. For this reason, I dismiss the claims against Mr. Fortin.

Interest, Tribunal Fees and Dispute-Related Expenses

38. The *Court Order Interest Act* applies to the CRT. Ms. Blore is entitled to pre-judgement interest on the \$1,200 from January 12, 2019, the date of the invoice, to the date of this decision. This equals \$33.66.
39. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable

dispute-related expenses. I see no reason in this case not to follow that general rule. I find Ms. Blore is entitled to reimbursement of \$125 in CRT fees. Ms. Blore did not claim dispute-related expenses.

ORDERS

40. Within 30 days of the date of this order, I order Ms. Kalish to pay Ms. Blore total of \$1,358.66, broken down as follows:

- a. \$1,200 in debt, for payment for Pepper's board for December 2019 and for 22 rides,
- b. \$33.66 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

41. Ms. Blore is entitled to post-judgment interest, as applicable.

42. I dismiss the claims against Mr. Fortin.

43. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

44. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member