



# Civil Resolution Tribunal

Date Issued: December 10, 2020

File: SC-2020-004987

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Craig v. Meuckon*, 2020 BCCRT 1403

BETWEEN:

JAMES ROBERT CRAIG and PEGGY KERR

**APPLICANTS**

AND:

KEN MEUCKON and LANA MEUCKON

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about a dog attack. The applicants, Peggy Kerr and James Robert Craig, owned a chihuahua mix named Sparky. The respondents, Ken Meuckon and Lana Meuckon, own a St. Bernard named Ruby.

2. On May 10, 2019, Ms. Kerr was walking Sparky on a public road in front of the respondents' home when Sparky and Ruby clashed. Sparky was taken to a veterinarian and euthanized.
3. The applicants seek compensation of \$1,615.21, which includes \$1,079.12 in veterinary costs, \$800 for a replacement dog, and \$336 in legal fees, less \$600 the respondents already paid toward Sparky's veterinary costs.
4. The respondents say Sparky was not leashed and attacked Ruby in the respondents' yard. They also say Sparky was not harmed in the incident. They say the claim should be dismissed.
5. Mr. Craig represents the applicants. The respondents represent themselves.

## **JURISDICTION AND PROCEDURE**

6. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
7. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the 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 able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that

includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions

8. Section 42 of the CRTA says 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.
9. Where permitted by section 118 of the CRTA, in 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.

### ***Animal control fine and related reports***

10. The respondents say that after the incident, an animal control officer issued the respondents a “dangerous dog fine” of \$500. I have no information about the animal control officer’s decision or any underlying findings. The applicants say they are waiting for a copy of the animal control file as well as a police file from the day of the incident, but they did not request the pause the CRT proceedings to obtain this evidence. This dispute is about responsibility for veterinary and other costs and does not hinge on Ruby’s status as a dangerous dog. Given the CRT’s mandate for speedy dispute resolution, I have decided this dispute on the evidence before me.

### **ISSUE**

11. The issue in this dispute is whether the respondents are responsible for the death of the applicants’ dog Sparky, and if so, what remedies are appropriate.

### **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities. I have considered all the parties’ evidence and submissions, but only refer to what is necessary to explain my decision.

13. It is undisputed that the respondents paid the applicants \$600, via the animal control officer, toward Sparky's veterinary bill. Mr. Meuckon says he did so on the condition that the officer cancel the dangerous dog order and "they absolve Ruby verbally to her." It is unclear whether "they" refers to the animal control officer or the applicants. In any event, there is no evidence that the applicants agreed not to pursue the respondents by accepting the \$600 payment. I find that this payment did not absolve the respondents of responsibility for Ruby's actions, nor was it an admission of legal responsibility for the incident.
14. The parties agree that on May 10, 2019, Ms. Kerr was walking Sparky on the road in front of the respondents' home. They disagree about whether Sparky was leashed, which dog was the aggressor, and whether the incident occurred on the respondents' property or on the public road.
15. Mr. Meuckon says he witnessed the incident. He says neither dog was leashed and Sparky lunged toward Ruby, who was inside his fenced yard, near the front gate. He says Ruby defensively picked up Sparky by the scruff of his neck and dropped Sparky in Ms. Kerr's hands. Mr. Meuckon says when he apologized, Ms. Kerr said she was not afraid of Ruby, and smiled with Sparky wrapped tightly in her arms. He says he suggested walking elsewhere or keeping Sparky on a leash.
16. Ms. Kerr did not provide a statement or make submissions. Mr. Craig, who was not present at the time of the incident, says Sparky was leashed at the time of the incident. He says the applicants always kept Sparky leashed when walking on public roads. I find Mr. Craig's evidence about the incident is hearsay evidence because it is his version of what Ms. Kerr told him happened. The CRT may accept hearsay evidence, but where Mr. Craig's second-hand evidence conflicts with Mr. Meuckon's direct observations, I prefer Mr. Meuckon's evidence. There is no explanation for the absence of direct evidence from Ms. Kerr, which I would expect to be available given she is a co-applicant.
17. Mr. Meuckon provided a statement from RO, a resident of the respondents' home. RO said that on or about May 6, 2019 they noticed a small chihuahua nipping and

barking at the respondents' other dog, a black labrador, on the respondents' property. They said this was not the first time the chihuahua had been running loose on the property, but it was the first time he seen such behaviour. The applicants do not dispute any of this, and they say they walked Sparky past the respondents' home daily, so I find that the chihuahua was likely Sparky. RO's evidence is consistent with Mr. Meuckon's observations. Relying on both, I find Sparky was not leashed at the time of the attack and was more likely the aggressor.

18. It is undisputed that Ruby was not leashed. I find that Ruby was also not contained to the respondents' yard, as otherwise it would not have been possible for Ruby to, as Mr. Meuckon says, drop Sparky in Ms. Kerr's hands. Mr. Meuckon did not say Ms. Kerr entered his yard at any point.
19. Although Mr. Meuckon said Sparky did not appear harmed, Mr. Meuckon is not a veterinarian, and I find it unlikely he had the chance to closely inspect Sparky given he says Ms. Kerr held Sparky tightly in her arms. Moreover, Mr. Meuckon admits Ruby had Sparky in her mouth. Mr. Craig says Sparky went into cardiac arrest at the veterinary clinic and on the veterinarian's advice they decided to euthanize. The veterinary invoice, which documents x-rays, pain relief, is consistent with a traumatic event. In the absence of another explanation, I find Sparky was euthanized as a result of injuries suffered in the attack.
20. I turn to the applicable law. In British Columbia there are 3 ways a dog owner may be liable for their dog's actions: occupier's liability, the legal concept of 'scierter', and negligence. Because I find liability under scierter and negligence, I have not considered occupier's liability, which means I do not need to determine whether the attack started on the respondents' property.
21. To prove scierter, the applicants must show that at the time of the attack:
  - a. Ruby was the respondents' dog,
  - b. Ruby had shown an inclination or tendency to cause the type of harm that happened, and

- c. The respondents knew of that tendency (see *Janota-Bzowska v. Lewis* [1997] B.C.J. No. 2053 (BCCA)).
22. The respondents do not dispute that Ruby is their dog. They also do not dispute that in 2017, Ruby attacked Sparky near the respondents' home and the respondents' paid the veterinary bill. I therefore find Ruby had shown a tendency to cause the type of harm that happened. I find the respondents knew of that tendency because they paid the veterinary bill. I therefore find scienter is proven here.
23. Where scienter is made out, courts may still rely on negligence principles, particularly where the injured person or dog owner was partially at fault (see e.g., *Xu v. Chen & Yates*, 2008 BCPC 234).
24. Turning to negligence, I find the respondents had a duty, knowing that Ruby had attacked Sparky in the past, to keep Ruby contained in their yard or, when beyond the yard, on a leash. By failing to keep Ruby fenced in or leashed, the respondents failed to take reasonable care to prevent a known risk, which ultimately caused Sparky's death.
25. That said, I find Ms. Kerr was also negligent. I find she failed to keep Sparky on a leash so as to minimize interactions with Ruby and reduce the potential for an incident. I note the Regional District of Nanaimo bylaws say a dog owner, away from the owner's property, must not permit their dog to be "at large," which means not under "immediate charge and control." I find that without a leash, Sparky was not under Ms. Kerr's immediate charge and control (see *Walia v. Favia*, 2006 BCPC 669). I find by walking Sparky without a leash, Ms. Kerr fell below the standard expected of dog walkers in the community. Given that Ms. Kerr knew Sparky had been attacked in that area before, I find Ms. Kerr contributorily negligent for 50% of the damage.

### **Damages**

26. The veterinary invoice has an "invoice balance due" of \$981.57 and a total "balance due" of \$1,079.12. The invoice does not explain the difference and neither do the

applicants. I find the total may reflect a previous outstanding charge unrelated to the May 10 incident, so I find only the \$981.57 proved as damages.

27. The applicants provided an \$800 receipt for another chihuahua mix dog. The CRT has previously granted both veterinary expenses and replacement dog costs (see the non-binding decision in *Rasmussen v. Peebles et al*, 2018 BCCRT 179). The respondents did not say the replacement dog was of a different type or that \$800 was too much for that type of dog. I find \$800 is reasonable for the replacement dog.
28. The applicants provided a \$336 receipt from a law firm that wrote a July 19, 2019 letter to the respondents demanding payment for the same things claimed in this dispute. Under the CRT Rules, except in extraordinary cases, the CRT does not award legal fees as a dispute-related expense. While these fees were incurred before this CRT proceeding began, I find they are sufficiently related to the issues in this dispute and this is not an extraordinary case. I do not allow the applicant's claim for legal fees.
29. The total proved damages is \$1,781.57. The respondents' liability is half that amount, or \$890.79. They have already paid \$600, so I order them to pay the applicants \$290.79.
30. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the \$290.79 damages from May 18, 2019, the date the replacement dog was purchased, to the date of this decision. This equals \$6.97.
31. 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. The applicants were partially successful, so I order the respondents to reimburse half the applicants' CRT fees of \$125 and dispute-related expenses of \$100 for a process server, which I find reasonable in the circumstances where the CRT was unable to serve by mail. This equals \$112.50.

## ORDERS

32. Within 14 days of the date of this order, I order the respondents to pay the applicants a total of \$410.24, broken down as follows:
  - a. \$290.79 in damages,
  - b. \$6.95 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$112.50, for \$62.50 in CRT fees and \$50 for dispute-related expenses.
33. The applicants are entitled to post-judgment interest, as applicable.
34. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.



35. 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.

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Micah Carmody, Tribunal Member