



Civil Resolution Tribunal

Date Issued: April 16, 2021

File: SC-2020-008870

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lee v. Zhang*, 2021 BCCRT 392

BETWEEN:

RANIO LEE

APPLICANT

AND:

EMMA ZHANG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a dog attack. The applicant, Ranio Lee, claims against the respondent, Emma Zhang, for \$2,625.87 in damages for pain and suffering plus the

costs of a replacement jacket, laser skin treatment, and veterinary care for her dog (Mini) after both she and Mini were attacked by Ms. Zhang's dog (Momo).

2. In her Dispute Response, filed at the outset of this proceeding, Ms. Zhang denied that Momo attacked Ms. Lee or Mini. However, in her submissions, Ms. Zhang admits that Momo attacked Ms. Lee and Mini. Ms. Zhang says Ms. Lee and Mini did not suffer any injuries or damage as a result of the attack. She asks that Ms. Lee's claims be dismissed.
3. Ms. Lee is self-represented. Ms. Zhang is represented by a family member, JW.

JURISDICTION AND PROCEDURE

4. 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.
5. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. 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.

7. 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.
8. The parties communicated both in English and a Chinese dialect, and the evidence before me contains documents in both languages. Ms. Zhang submitted two video recordings with people speaking in a Chinese dialect. Ms. Lee submitted a number of text messages written in a Chinese dialect. CRT rule 1.7(5) says evidence must be submitted in English or translated into English. Given no translations were provided, I have given no weight to this non-English evidence.

ISSUES

9. The issues in this dispute are:
 - a. Whether Ms. Zhang is responsible for the attack.
 - b. Whether Ms. Lee or Mini suffered any injuries or damage as a result of the attack, and if so what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant, Ms. Lee, must prove her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. It is undisputed that Momo attacked Ms. Lee and Mini on August 11, 2020 in a public green space on the side of a roadway near both parties' homes, which are across the street from each other. The issues in this dispute are whether Mr. Zhang is responsible for the attack, and whether Ms. Lee or Mini suffered any injuries or damage as a result of the attack.

Is Ms. Zhang responsible for the attack?

12. I find Ms. Zhang is not responsible for the dog attack. My reasons follow.
13. In BC there are currently 3 ways for a pet owner to be held legally responsible for the action of their pet: a) occupier's liability, b) the legal maxim known as 'scienter' (explained below), and c) negligence.
14. Occupier's liability is where damage happens on property controlled by the occupier. I find occupier's liability is not relevant here, because the attack occurred on a public green space on the side of a roadway.
15. Scienter means knowledge of the animal's poor behaviour or propensity to be aggressive. For scienter to apply, Ms. Lee must prove that at the time of the attack:
 - a. Ms. Zhang was the dog's owner,
 - b. The dog had manifested a propensity or tendency to cause the type of harm that happened, and
 - c. Ms. Zhang knew of that propensity (see *Xu v. Chen & Yates*, 2008 BCPC 0234, citing *Janota-Bzowska v. Lewis* [1997] B.C.J. No. 2053 (BCCA)).
16. It is undisputed that Ms. Zhang and her husband, who is not a named party in this dispute, are Momo's owners. However, Ms. Lee did not provide any evidence that Momo was aggressive or had previously attacked anyone, or that Ms. Zhang knew or ought to have known that Momo would engage in aggressive behaviour or try to attack anyone. Therefore, I find Ms. Lee has failed to prove scienter against Ms. Zhang.
17. I turn then to negligence. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure did cause the claimed damages.

18. I accept Ms. Zhang, as one of Momo's owners, owed Ms. Lee a duty of care at the time of the attack, as it is undisputed Ms. Lee and Mini were using a public greenspace on the side of a roadway when the attack occurred. I find the reasonable standard of care was to have sufficient control of one's dog in the circumstances.
19. Ms. Lee says Momo came running toward her and began trying to bite her and Mini. While there is no video footage of the attack itself, Ms. Zhang submitted August 11, 2020 security video footage from what I infer is her home's front entryway. The footage did not have any sound. The footage showed two dogs standing on the front steps of Ms. Zhang's home. One of the two dogs then ran down the front steps and into the roadway, trailing its leash. It is undisputed that the dog that ran into the roadway was Momo, just prior to the attack. A person walked down the front steps after Momo with the other dog on its leash, and then started sprinting across the roadway. Based on Ms. Zhang's submissions where she says that "from the footage of our security camera, it was only few seconds between our dog got loose and my husband arriving at the scene" (reproduced as written), I find the person who sprinted after Momo was Ms. Zhang's husband, who is not a named party in this dispute.
20. Based on the security video footage, I find that Ms. Zhang was not with Momo prior to, or at the time of the attack. I find it was not negligent for Ms. Zhang to leave Momo with Momo's co-owner. The fact that Momo's co-owner was also Ms. Zhang's husband is not sufficient to establish Ms. Zhang's liability in negligence for her husband's conduct. I find it was reasonable for Ms. Zhang to assume that as Momo's co-owner, her husband would ensure he had sufficient control of Momo while in his care. So, I find Ms. Lee has not met the burden of proving Ms. Zhang breached the standard of care or was otherwise negligent in the circumstances.

Did Ms. Lee or Mini suffer any injuries or damage as a result of the attack?

21. Given my findings above that Ms. Zhang is not legally responsible for the attack, it is not necessary to address Ms. Lee's or Mini's alleged injuries, or Ms. Lee's claimed damages arising from the attack.

22. 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. Ms. Zhang has not paid any CRT fees or claimed any dispute-related expenses, and so I award none.

ORDER

23. I dismiss Ms. Lee's claims and this dispute.

Leah Volkers, Tribunal Member