Civil Resolution Tribunal

Date Issued: May 25, 2021

File: SC-2021-000123

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Prouty v. Hegglund*, 2021 BCCRT 559

B E T W E E N :

DALLAS PROUTY

**APPLICANT**

A N D :

SHERRI-LYNN HEGGLUND

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member: Sarah Orr

## INTRODUCTION

1. The applicant, Dallas Prouty, owns a chihuahua named Pepper. The respondent, Sherri-Lynn Hegglund, owns an American Bully dog. Ms. Prouty says Ms. Hegglund's dog attacked Pepper, causing Pepper to suffer injuries requiring veterinary care. Ms. Prouty says Ms. Hegglund agreed to reimburse her $4,999.40

for her veterinary bills but has paid only $1,499.40. Ms. Prouty claims reimbursement of the $3,500 balance.

2. Ms. Hegglund says she only agreed to pay Ms. Prouty's first veterinary bill, though she does not expressly admit liability for the incident. She also says the second veterinary bill was for unnecessary veterinary services.

3. Both parties are self-represented.

## 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. 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. Ms. Prouty says that in Ms. Hegglund's submissions she refers to some of the parties' confidential communications from the facilitation stage of the dispute resolution process. As there is no evidence the parties waived the confidentiality of these communications, I have not considered these communications in my decision.

## ISSUE

9. The issue in this dispute is whether Ms. Hegglund is required to reimburse Ms. Prouty $3,500 for her veterinary bills.

## EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant Ms. Prouty must prove her claims on a balance of probabilities. This means I must find it is more likely than not that her position is correct.

11. Ms. Hegglund chose not to provide evidence despite having the opportunity to do so. I have considered all of Ms. Prouty's evidence and the parties' submissions but refer only to what I find necessary to explain my decision.

12. It is undisputed that on the evening of July 22, 2019, Ms. Hegglund let her dog out in her backyard and when she went outside to retrieve him, he was gone. She then noticed her backyard gate was open. She says landscapers working in her backyard earlier that day must have left the gate open without her knowledge. Ms. Hegglund went to the front of her house where Ms. Prouty and her daughter were walking Pepper and their other chihuahua on the sidewalk in front of her home. Both chihuahuas were on leash. Ms. Hegglund asked Ms. Prouty and her daughter if they had seen her dog. They replied that they had not seen the dog and continued walking. A few moments later Ms. Hegglund's dog ran from across the street towards Ms. Prouty, her daughter, and their chihuahuas.

13. Ms. Prouty says Ms. Hegglund's dog grabbed Pepper in his mouth and would not let go until she pried his jaws open. Ms. Hegglund says her dog landed on Pepper, she

heard Ms. Prouty yell, and she ran over, grabbed her dog, and returned to her house. It is undisputed that Ms. Hegglund's dog was 100 pounds at the time of the incident, and that Pepper was injured by their interaction.

14. Ms. Prouty immediately drove Pepper to a veterinary hospital in Nanaimo which conducted tests and x-rays and kept Pepper overnight for monitoring. The next morning the Nanaimo hospital advised Ms. Prouty to transfer Pepper to a specialty veterinary hospital in Langford to be examined by an internal specialist. Ms. Prouty drove Pepper to the Langford hospital that morning, July 23, 2019, where Pepper stayed for 3 nights until he was discharged on July 26, 2019. The invoice from the Langford hospital says Pepper suffered multiple broken ribs, bruised and damaged lungs, and significant bruising. None of this is disputed.

15. The amounts of the invoices are also undisputed. The July 23, 2019 invoice from the Nanaimo hospital was $1,861.26 and the July 26, 2019 invoice from the Langford hospital was $3,138.14. As noted, Ms. Hegglund has already paid Ms. Prouty $1,499.40 towards the bills, and it is the remaining balance of $3,500 that is at issue in this dispute.

## ***Is Ms. Hegglund required to reimburse Ms. Prouty $3,500 for veterinary bills?***

16. Despite paying for some of Ms. Prouty's veterinary bills, Ms. Hegglund has not expressly admitted liability for the incident. So, I must first determine whether Ms. Hegglund is liable for Pepper's injuries.

17. 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 'scienter', and negligence. The incident did not occur on property owned or controlled by Ms. Hegglund, so I find occupier's liability is not relevant here. Scienter is when a dog has previously shown a tendency to cause the type of harm that happened and the dog's owner knew of that tendency (see *Janota-Bzowska v. Lewis*, 1997 CanLII 3258 (BC CA)). There is no evidence that Ms. Hegglund's dog had previously attacked or shown aggression

towards another dog, so I find scienter does not apply here. I turn now to negligence.

18. I find Ms. Hegglund owed Ms. Prouty a duty of care to reasonably control her dog and prevent attacks on other animals. I find that by allowing her dog out in her backyard without checking whether the gate was open, she breached the required standard of care. The parties dispute exactly how Pepper was injured, but it is undisputed that Ms. Prouty was with the dogs at the time of the incident, while Ms. Hegglund was at least a few steps away. So, I place greater weight on Ms. Prouty's evidence that Ms. Hegglund's dog grabbed Pepper in his mouth. I also find the severity of Pepper's injuries is more consistent with the dog grabbing Pepper in his mouth, rather than simply landing on him as Ms. Hegglund alleges. On balance, I find Ms. Hegglund's dog grabbed Pepper in his mouth which caused Pepper's injuries. So, I find Ms. Hegglund was negligent because her breach of the required standard of care caused Pepper's injuries.

19. The parties gave evidence and submissions about the extent to which Ms. Hegglund agreed to pay for Ms. Prouty's veterinary bills. However, having found Ms. Hegglund liable for Pepper's injuries, I find she must reimburse Ms. Prouty for her reasonable veterinary bills regardless of whether or not she agreed to pay for them.

20. Ms. Hegglund says she should not have to pay for the second veterinary bill because the care Pepper received at the Langford hospital was unnecessary and many of the tests were repeated. She did not provide any evidence to support this allegation. Ms. Prouty submitted a March 11, 2021 letter from Dr. Erin Simmonds, a veterinarian who cared for Pepper at the Langford hospital, confirming that all tests, x-rays, and care Pepper received at the hospital were medically necessary. Specifically, the letter states that repeating diagnostic tests is standard procedure after a serious traumatic injury, and that the tests would have been repeated regardless of whether Pepper had been transferred.

21. The letter states that Dr. Simmonds is a member of the American College of Veterinary Emergency and Critical Care, and I accept it as expert evidence under CRT rule 8.3. The letter sets out a detailed explanation of the care Pepper received and the protocols that were followed, and I place significantly more weight on this expert evidence than on Ms. Hegglund's unsupported assertions. I am satisfied that the veterinary care Pepper received at the Langford hospital was necessary. So, I find Ms. Hegglund must reimburse Ms. Prouty the $3,500 balance of her veterinary bills.

22. The *Court Order Interest Act* applies to the CRT. Ms. Prouty is entitled to pre-judgment interest on the $3,500 owing calculated from July 26, 2019, which is the date of the second invoice, to the date of this decision. This equals $77.92.

23. 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. Since Ms. Prouty was the successful party, I find she is entitled to reimbursement of $175 in CRT fees. She did not claim any dispute-related expenses.

## ORDERS

24. Within 60 days of the date of this order, I order Ms. Hegglund to pay Ms. Prouty a total of $3,752.92, broken down as follows:

    a. $3,500 as reimbursement for veterinary bills,

    b. $77.92 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in CRT fees.

25. Ms. Prouty is entitled to post-judgment interest, as applicable.

26. 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.

27. 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.

Sarah Orr, Tribunal Member