



Civil Resolution Tribunal

Date Issued: May 31, 2021

File: SC-2020-007839

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leffler v. Lee*, 2021 BCCRT 593

BETWEEN:

JAMES LEFFLER

APPLICANT

AND:

JAMES LEE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about an alleged dog attack.
2. The applicant, James Leffler, says his dog Gucci was attacked by a dog owned by the respondent, James Lee, on September 10, 2020. Mr. Leffler says Gucci was

injured in the incident, requiring medical attention. Mr. Leffler claims \$1,424.12 in veterinary costs.

3. Mr. Lee acknowledges the 2 dogs had an altercation but denies that his dog bit or otherwise injured Gucci. Mr. Lee says the veterinary costs are unrelated to the altercation. I infer he asks that the claim be dismissed.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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.

ISSUE

9. The issue in this dispute is whether Mr. Lee is responsible for Gucci's injuries and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this one, the applicant Mr. Leffler must prove his claim on a balance of probabilities. I have reviewed the submissions and weighed the evidence provided by both parties. I only refer to that evidence I find relevant to this dispute.
11. On September 10, 2020, Mr. Leffler and Gucci were in their building elevator. Mr. Lee and his dog were outside the elevator in the parkade. When the elevator door opened Mr. Lee's dog lunged at Gucci. None of this is disputed. I address further below Mr. Leffler's allegations about Gucci's injuries.
12. In British Columbia there are three ways for an owner to be responsible for a dog's actions: a) the legal concept known as "scienter", b) negligence, and c) occupier's liability under the *Occupier's Liability Act*. As the incident did not occur on property owned or controlled by Mr. Lee, I find occupier's liability does not apply here.
13. Scienter means knowledge of the animal's poor behavior or propensity to be aggressive. For scienter to apply, Mr. Leffler must prove that, at the time of the attack:
 - a. Mr. Lee was the dog's owner,
 - b. The dog had manifested a propensity or tendency to cause the type of harm that happened, and
 - c. Mr. Lee knew of that propensity (see *Xu v. Chen & Yates*, 2008 BCPC 0234, citing *Janota-Bzowska v. Lewis* [1997] B.C.J. No. 2053 (BCCA)).
14. Mr. Leffler says Mr. Lee's dog is dangerous, and that he has seen it acting in an aggressive manner on other occasions. However, Mr. Leffler does not explain what he saw, when he saw it, the context, or why Mr. Leffler concluded that Mr. Lee's dog

was behaving aggressively on these other occasions. So, I place little weight on Mr. Leffler's statement. Given I have no evidence supporting that Mr. Lee's dog previously attacked or showed aggression toward another dog, I find scienter does not apply here. I now turn to negligence.

15. To succeed in proving negligence, Mr. Leffler must show that Mr. Lee owed a duty of care, failed to meet the expected standard of care, and that the failure caused the claimed damages that were reasonably foreseeable. In *Martin v. Lowe*, 1980 CanLII 546 (BC SC), the court said a dog owner has a duty to ensure its dog is sufficiently under control so that it will not escape to injure someone or damage their property. In that case an unleashed dog knocked down the plaintiff on a sidewalk, causing injury.
16. I turn back to the incident details. Mr. Lee provided video footage from the building elevator. The video shows that at approximately 5:04 p.m., Mr. Leffler and Gucci were in their building elevator. When the elevator door opened into the parkade Gucci began to exit the elevator and Mr. Lee's dog lunged at Gucci. Mr. Lee's dog was leashed. Mr. Lee's dog then slipped out of its collar and continued to pursue Gucci backward into the elevator as Mr. Lee tried to grab his dog. Mr. Lee picked up his dog and removed him from the situation. The dog interaction lasted 4 seconds, according to the video footage time stamp.
17. Mr. Lee says his dog got out of his leash "some how" and lunged at Gucci, but that Mr. Lee stopped his dog before any biting occurred. I agree. There is no indication that Mr. Lee's dog bit or scratched Gucci. Further, Gucci's veterinarian records do not indicate any bite marks or puncture wounds. I find Mr. Lee reacted as soon as his dog slipped from his collar and brought his dog under control quickly.
18. Mr. Leffler filed a dog attack complaint with the City of Coquitlam (City) on October 6, 2020. He submitted a copy of the City's computer notes about the complaint. The notes show that 2 bylaw tickets were issued to Mr. Lee, for failing to have a dog licence contrary to animal control bylaw 7.1 and for the dog displaying aggressive behaviour contrary to bylaw 10.3.1. The City did not cite Mr. Lee for having his dog off leash, or not having the dog sufficiently under control. Further, any bylaw violation

tickets issued by the City do not determine Mr. Lee's responsibility for his dog's behaviour in the civil law system. Rather, the bylaw violation tickets are evidence of the duty of care that exists (see *Martin*).

19. On balance, I find Mr. Lee had his dog sufficiently under control. The dog was initially leashed when the elevator door opened, and Mr. Lee attempted to pull his dog back from the interaction when Gucci stepped out of the elevator. Further, although Mr. Lee's dog slipped from his collar, Mr. Lee immediately tried to grab his dog and succeeded in removing the dog from the situation, all in less than 4 seconds. Mr. Leffler has not shown that there was anything more Mr. Lee could have done to control his dog in the circumstances. I do not find Mr. Lee failed to meet the standard of care set out in *Martin*.
20. Even if I had found Mr. Lee negligent in failing to control his dog, I would have found that Mr. Leffler failed to prove such alleged negligence caused injury to Gucci.
21. Photos submitted by both parties show blood between 2 digits of Gucci's paw. Veterinary notes dated September 10, 2020 indicate the 5th digit toenail on Gucci's right hind paw had sloughed off and that the veterinarian cauterized the nail. The notes say that "as per the client", Gucci's paw was injured when attacked by another dog. Given the words used, I find the veterinarian was documenting Mr. Leffler's explanation as to how Gucci's paw was injured. I give those notes no weight about the cause of Gucci's nail sloughing off. The notes contain no other opinion from the veterinarian about the cause of Gucci's paw injury.
22. Mr. Leffler relies on the comments and conclusions of "SB" in the City's notes. After reviewing the elevator video footage SB wrote that the video did not show Mr. Lee's dog "making contact with teeth to [Gucci]'s rear right paw". However, SB concluded that Gucci's right rear paw was injured during the incident, as a result of the aggressive behaviour of Mr. Lee's dog.
23. I do not accept SB's notes as an expert opinion under the CRT rules. This is because the notes do not set out SB's full name or how SB is qualified to give an opinion on

the cause of Gucci's paw injury. Further, even if SB was qualified to give an opinion, they do not explain what they base their opinion on. Rather, they note there is no contact between the animals but then conclude Gucci's injury was caused by the aggressive behaviour of Mr. Lee's dog without explaining how. I give no weight to the conclusions of SB, as recorded in the City's notes.

24. As noted, the video footage does not indicate that Mr. Lee's dog bit or scratched Gucci, pushed him or came into physical contact with Gucci. Specifically, Mr. Lee's dog did not contact Gucci's right hind paw. The video shows Gucci stepping halfway out of the elevator before Mr. Lee's dog lunges, then Gucci steps backward into the elevator and backs into the corner to avoid Mr. Lee's dog. The video does not show the elevator door closing on Gucci's paw, or his paw getting caught in the gap between the elevator and the parkade floor. In other words, I find the video does not show how Gucci's right hind paw was injured, or even that it was injured during the incident. There is no blood in the elevator, or any indication that Gucci is limping or favouring his right hind paw as he exits the elevator.
25. I accept that Gucci's paw was bloody as shown in Mr. Leffler's September 10, 2020 photo. I also accept that Gucci's right hind paw was injured when Gucci arrived at the veterinarian on September 10, 2020. However, in the absence of any contact between the dogs and with insufficient explanation as to how Gucci's paw was injured, I find Mr. Leffler has failed to prove that Gucci's paw injury was caused by Mr. Lee's dog. Although I acknowledge that the paw injury was discovered on the same day the elevator incident occurred, here I find that is not enough of a connection to prove causation. It is up to Mr. Leffler to prove that it is more likely than not that Mr. Lee's dog caused Gucci's right hind paw injury and I find he has failed to do so.
26. In summary, I find Mr. Leffler has not proven that Mr. Lee was negligent or that the alleged negligence caused injury to Gucci. For this reason, I dismiss Mr. Leffler's claim for reimbursement of Gucci's veterinarian bills.
27. 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. As Mr. Leffler was unsuccessful in this dispute, I find he is not entitled to reimbursement of his CRT fees. Although Mr. Lee was the successful party, I find he is not entitled to any reimbursement because he paid no CRT fees and claimed no dispute-related expenses.

ORDER

28. I dismiss Mr. Leffler's claim and this dispute.

Sherelle Goodwin, Tribunal Member