



Civil Resolution Tribunal

Date Issued: November 6, 2018

File: SC-2018-001879

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mitchell v. Menezes*, 2018 BCCRT 694

B E T W E E N :

Christie Mitchell

APPLICANT

A N D :

Johnny Menezes

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about \$300, which the applicant Christie Mitchell says was a loan to the respondent, Johnny Menezes so that the puppy she was considering buying could be vaccinated and microchipped. The respondent says the \$300 was paid as a non-refundable deposit. The parties are self-represented.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
4. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

6. The issue in this dispute is whether the \$300 paid by the applicant to the respondent was a reimbursable loan or a non-refundable deposit.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
8. It is undisputed that the applicant considered buying a puppy from the respondent and first contacted him on February 19, 2018. It is also undisputed that the applicant gave the respondent \$300 on February 21, 2018. It is undisputed that there is nothing in writing about the purpose of the \$300. It is also undisputed that there is nothing in writing about the \$300 being a loan. Verbal agreements are enforceable, but not surprisingly they are often harder to prove than those reduced to writing. Nonetheless, for the reasons that follow, I find the applicant has proved she is entitled to the return of the \$300.
9. As discussed below, this dispute turns on 2 different scenarios, and my assessment of which is more likely than not. First, whether the \$300 was a loan, so the respondent could get the puppy vaccinated and microchipped. The applicant says the respondent would not let her take the puppy off his property without these treatments. Or, second, whether the \$300 was a non-refundable deposit for the purchase of the puppy.
10. The applicant said she paid the \$300 because she knew from her first meeting with the respondent that he could not afford the veterinarian costs. The applicant cited a number of personal details about the respondent to support her assertion that they had a detailed discussion about his circumstances. The applicant says she understood the \$300 would be credited to her if she bought the puppy, and if she did not buy it, the respondent would simply repay her.

11. The applicant says the respondent's communications with her about the veterinarian appointment support her version of events, because he knew she expected the information as the \$300 was for the treatment. In particular, on February 22, 2018, the respondent texted the applicant at 6:05 p.m. that she should attend his house at 8:45 a.m. on Saturday for the veterinarian appointment.
12. About half an hour before the scheduled veterinarian appointment on Saturday February 24, 2018, the applicant went to the respondent's house to talk about the negative information she had heard about his dogs. It is undisputed that she asked him to cancel the veterinarian appointment at that time. However, when she asked for the return of the \$300, the respondent refused and told her it was a non-refundable deposit.
13. The applicant submits it would not make sense for her to ensure the veterinarian appointment was cancelled if the \$300 was a deposit for the puppy. She says if she understood the \$300 was a deposit, she would have wanted the appointment to proceed so she could take the puppy home right away if and when she decided to buy it. I agree.
14. The applicant also submits that the respondent is in the business of selling puppies, and his website does not describe deposits being required. She says this is evidence in support of her position that the \$300 was never a deposit. The respondent provided 2 statements from other dog purchasers, stating that a deposit was paid, but none of those pre-dated the applicant's payment of the \$300. The applicant also notes the \$300 does not match the deposits the respondent collected from these other 2 clients, which she says shows the respondent has at best an inconsistent practice with deposits. On balance, I find the later statements from these 2 other clients are not particularly helpful in establishing whether the respondent asked the applicant for a non-refundable deposit. At most they establish that the respondent was clearer in making such a request after his conflict with the applicant.

15. I find the respondent booked the veterinarian appointment in response to the applicant's inquiry about the puppy, and the applicant says she texted "we want the sable pup" so the respondent would know which dog to take to the vet. In a partially recorded discussion with the applicant about the return of the \$300, the respondent says that this does not change the fact that the \$300 was a non-refundable deposit for the "booking of the puppy". It is not clear to me if the respondent meant the trip to the veterinarian by "booking of the puppy" or if he meant some sort of reservation pending the puppy's purchase. Nothing turns on the distinction.
16. I accept that the respondent said he needed the \$300 for "shots and microchipping", which as noted above is not particularly disputed. I find the respondent's point is essentially that he set a deposit amount to cover the veterinarian treatment, and I note he told the applicant that he should have asked for 50% as was his usual practice. I accept that the respondent intended the \$300 as a deposit.
17. However, I find that at the time the \$300 was paid, there was no 'meeting of the minds' between the parties that it was a non-refundable deposit. Thus, I find there was no binding agreement or contract about the \$300 being a non-refundable deposit. On balance, I find the respondent's request for the \$300 for shots and microchipping reasonably led the applicant to believe that she was giving the \$300 for that purpose. The tenor of the parties' verbal discussion following the applicant's request for the return of the \$300, as heard on the partial recording submitted by the applicant, supports this conclusion.
18. Given my conclusions above, I find the \$300 was not a non-refundable deposit. It is undisputed that the veterinarian treatment did not happen and the applicant did not buy the dog. In these circumstances, I find the applicant is entitled to the return of the \$300. I do not need to address the reasons why the applicant did not buy the dog. I find the applicant is entitled to pre-judgment interest on the \$300 under the *Court Order Interest Act* (COIA), from February 24, 2018.
19. In accordance with the Act and the tribunal's rules, as the applicant was successful in this dispute I find she is also entitled to reimbursement of \$125 in tribunal fees.

She is also entitled to reimbursement of \$10.50 in dispute-related expenses for serving the Dispute Notice on the respondent by registered mail.

ORDERS

20. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$438.29, broken down as follows:
 - a) \$300 in debt,
 - b) \$2.79 in pre-judgment interest under the COIA, and
 - c) \$135.50, for \$125 in tribunal fees and \$10.50 in dispute-related expenses.
21. The applicant is entitled to post-judgment interest under the COIA, as applicable.
22. Under section 48 of the Act, the tribunal 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 tribunal's final decision.
23. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal 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 tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair