



Civil Resolution Tribunal

Date Issued: August 9, 2021

File: SC-2021-002088

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rowe v. Mills*, 2021 BCCRT 872

BETWEEN:

CAROL ROWE

APPLICANT

AND:

BRANDON MILLS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a dog injuring another dog. The applicant, Carol Rowe, says the respondent, Brandon Mill, owns a dog that attacked her dog. Ms. Rowe says Mr. Mills is liable because he allowed his roommate CF, to walk his dog, and Mr. Mills knew or should have known CF was incapable of controlling the dog. Ms. Rowe claims \$2,734.23 as reimbursement for veterinary expenses.

2. Mr. Mill acknowledges the attack occurred but disagrees he should be liable for it.
3. The parties are self-represented.
4. For the reasons that follow, I find Ms. Rowe has not proven her claims.

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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The 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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
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. Mills is responsible for the dog attack, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Ms. Rowe must prove her claims on a balance of probabilities. I have read all the parties' submissions, including case law, but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed facts. On the evening of November 1, 2020, Ms. Rowe's family member, CR, took her dog outside for a walk. Mr. Mills' roommate, CF, took Mr. Mills' 2 dogs outside for a walk as well. All dogs were leashed. Ms. Rowe says, and I find, that her dog was a Sheltie. Mr. Mills says, and I find, that one of his dogs was a Chihuahua and the other was a Staffordshire mix.
12. CR and CF both provided statements to municipal animal services about the attack. The statements are consistent about the following facts. CR encountered CF during their respective walks. CF stopped and warned CR to keep their distance. At the time, the dogs and their walkers were on the sidewalk. CR decided to walk around them by going on the adjacent grass. As CR approached, Mr. Mills' Staffordshire mix attacked the Sheltie, dragging CF forward across the grass. CF picked up the Chihuahua and tried to help CR free the Sheltie. The Staffordshire mix eventually let go and CR carried the Sheltie away.

13. Ms. Rowe immediately sought medical treatment for her Sheltie. Veterinarian records show they diagnosed the Sheltie with soft tissue injuries to its head and neck as well as a traumatic brain injury. In December 2020 a neurologist noted the Sheltie's condition had improved somewhat.
14. On November 30, 2020, a municipal officer, DB, emailed Mr. Mills to advise they had investigated the dog attack. DB wrote that there was insufficient evidence to suggest Mr. Mills' Staffordshire mix was at fault. DB also commented that they found CR's evidence inconsistent. I note DB's findings and decision are not binding on me.

Is Mr. Mills responsible for the dog attack?

15. In BC there are 3 ways a dog owner can be liable for a dog attack: 1) occupier's liability, 2) the legal doctrine of 'scienter', and 3) negligence.
16. CR and CF's statements indicate the dog attack occurred next to a church. So, I find occupier's liability does not apply as the dog attack was not on property owned or controlled by Mr. Mills.
17. Scienter is proven when the respondent is the dog's owner, the dog had shown a propensity to cause the type of harm at issue, and the owner knew of that propensity. See *Xu v. Chen & Yates*, 2008 BCPC 234 at paragraph 57. It is undisputed that Mr. Mills owns the Staffordshire mix. To prove scienter, I find Ms. Rowe must show the Staffordshire mix had shown a propensity to bite or attack another dog and Mr. Mills knew this.
18. Mr. Mills does not deny Ms. Rowe's submission that his Staffordshire mix is a type of pit bull. Some BC municipalities make specific restrictions about pit bulls in their bylaws. Vancouver, where the attack occurred, is not one of them. Case law suggests that a dog's breed, by itself, does not establish that it had a propensity for aggression or that the owner knew of this propensity. See, for example, *Levesque v. Miko*, 2001 BCPC 96 and the non-binding decision of *Abbott v. Kirsty MacGregor (dba Canine Adventure Den Day Care)*, 2019 BCCRT 155. There is no evidence before me, expert

or otherwise, about pit bulls and aggression. Given this, I put little significance on the dog's breed in this dispute.

19. CF wrote in their statement the Staffordshire mix had “never hurt anyone or anything” and it was “a very sweet, loving, gentle dog”. Mr. Mills also submitted the Staffordshire mix had “never once shown any aggression towards people or other animals”. Against that, I have considered CF's written statement that they warned CR when they met that the Staffordshire mix was “not good with other dogs”. CR notes in their written statement that they were warned “to keep a distance”. Ms. Rowe also wrote that when walking her dog, she would walk on the other side of the street to avoid the Staffordshire mix. She said this was because it had a “nervous and aggressive nature”.
20. Ultimately, I find it significant that no one said the Staffordshire mix previously attacked or attempted to attack another person or another dog. As such, I find the Staffordshire mix had not previously shown a propensity to bite or attack another dog. So, I do not find Mr. Mills liable under the doctrine of scienter.
21. This leaves whether Mr. Mills was negligent. To prove negligence, Ms. Rowe must show Mr. Mills owed a duty of care, failed to meet the expected standard of care, and that the failure caused the claimed damages that must have been reasonably foreseeable. In *Martin v. Lowe*, 1980 CanLII 546 (BCSC) at paragraph 13, the court said a dog owner has a duty to ensure their dog is sufficiently under control so that it will not escape to injure someone or damage their property.
22. Ms. Rowe essentially alleges that Mr. Mills breached the standard of care by relying on CF to walk the Staffordshire mix. She submits Mr. Mills should have known that CF could not control the dog. I note that CR wrote in his statement that the Staffordshire mix was 80 pounds, CF was not much larger at 105 pounds, and CF was walking 2 dogs at the time.
23. On balance, I find these factors are insufficient to prove Mr. Mills was negligent. There is no indication that CF had any prior difficulty walking the dogs. As discussed above,

I have found the Staffordshire mix did not have a history of biting or attacking others. CF's statements indicate that at the time of the attack, they were holding onto both dog leashes. The Staffordshire mix did not escape or run at large, as was the case in *Martin*, nor did it have a history of attempting to do so.

24. The dog attack was also caused, in part, by CR approaching CF despite CF's warning. I find Mr. Mills could not have reasonably anticipated this. Given these circumstances, I also do not find it clear that a larger dog handler could have prevented the attack. For these reasons, I find Mr. Mills did not breach the standard of care of a reasonable person by relying on CF to walk his dogs.
25. 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 I have found Mr. Mills was not responsible for the dog attack, I dismiss Ms. Rowe's claim for CRT fees. Mr. Mills did not pay any CRT fees or claim any dispute-related expenses, so I order no reimbursement.

ORDER

26. I dismiss Ms. Rowe's claims and this dispute.

David Jiang, Tribunal Member