



Civil Resolution Tribunal

Date Issued: August 24, 2021

File: SC-2020-009036

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lewall v. Sunderland*, 2021 BCCRT 932

BETWEEN:

DIANA LEWALL

APPLICANT

AND:

JOCELYN SUNDERLAND

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Diana Lewall, boarded a horse belonging to the respondent, Jocelyn Sunderland, from May 2019 to October 2020. Ms. Lewall says Ms. Sunderland owes her \$3,550 for unpaid boarding fees and related charges.

2. Ms. Sunderland says she withdrew her horse from Ms. Lewall's care because Ms. Lewall was not properly caring for the horse. Ms. Sunderland acknowledges most of the debt owed to Ms. Lewall but says she will not pay board for November 2020.
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. 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.

ISSUES

8. The issues in this dispute are:
 - a. Did Ms. Lewall breach the contract by failing to provide proper care for Ms. Sunderland's horse, and if so, what remedy is appropriate?
 - b. How much does Ms. Sunderland owe Ms. Lewall under the contract?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil dispute, Ms. Lewall must prove her claim on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. Ms. Sunderland did not provide any evidence despite having the opportunity to do so.
10. Ms. Lewall submitted a written boarding agreement and a balance sheet for Ms. Sunderland's account.
11. The May 2, 2019 boarding agreement is between Ms. Sunderland and Oaklands Equestrian, which I infer is the operating name of Ms. Lewall's sole proprietorship. It is signed by Ms. Sunderland and an illegible signature that I infer belongs to Ms. Lewall. It is undisputed that the agreement's terms are binding on the parties.
12. Under the agreement, Ms. Lewall agreed to feed Ms. Sunderland's horse specified types of food at Ms. Sunderland's option, and to provide "normal and reasonable care and handling to maintain the health and well-being of the horse." In return, Ms. Sunderland agreed to pay monthly board of \$860 plus GST, which could increase with 30 days' notice. The agreement said supplements are available at an extra cost. Termination of the agreement required 30 days' notice.
13. The balance sheet includes every invoiced total and every payment received since the contract began. It shows an outstanding balance of \$3,550. Ms. Lewall did not provide copies of any invoices. However, in a statement of facts Ms. Lewall agreed

that the charges included \$2,830 for board, \$260 for supplements, \$160 for lessons and \$300 for “late fees”.

14. Ms. Sunderland says she is “happy to pay all BUT November board” (emphasis hers). However, in the statement of facts, Ms. Sunderland specifically said she did not agree with the \$300 late fee, which formed part of the \$3,550 balance. I take this to mean Ms. Sunderland does not dispute liability for the invoiced amounts except November 2020 board and the \$300 late fee.
15. Ms. Sunderland says she removed her horse from Ms. Lewall’s care in October 2020. It is undisputed that she did not give 30 days’ notice as required under the contract. Ms. Sunderland says Ms. Lewall was not administering medication properly. She also says “staff” told her Ms. Lewall was not feeding her horse properly. Ms. Lewall denies these accusations and says Ms. Sunderland removed her horse because of a personal issue with 1 of the other boarders.
16. Ms. Sunderland says she kept documentation of her horse’s mistreatment on her computer. She does not say what the documentation is. As noted, Ms. Sunderland did not provide any evidence in this dispute. She says due to treatment for a serious health condition, she has not had the energy to collect her computer from the repair store.
17. Parties are advised in the CRT process of the importance of providing evidence to support their position. CRT staff granted Ms. Sunderland a 2-week extension to provide evidence and advised that she could ask a helper for assistance. Ms. Sunderland apparently did not engage a helper and she did not ask for another extension. She was also told she could submit late evidence during the written submissions stage, but she declined. On balance, I am satisfied that Ms. Sunderland had a sufficient opportunity to provide evidence and failed to do so.
18. The party alleging a contractual breach has the burden of proving it. I find Ms. Sunderland has not proved that Ms. Lewall failed to properly care for her horse. I find

she was obligated to pay November's boarding fees after cancelling the contract in October without notice.

19. As for the \$300 late fee, there is no mention of late fees in the agreement and no evidence Ms. Sunderland agreed to pay late fees. So, I do not allow the claim for \$300 in late fees. I allow the remainder of the claim, totaling \$3,250. I order Ms. Sunderland to pay that amount.
20. The *Court Order Interest Act* applies to the CRT. Ms. Lewall is entitled to pre-judgment interest on \$3,250 from October 20, 2020, the date of the last invoice, to the date of this decision. This equals \$12.42.
21. 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. Ms. Lewall was largely successful, so I find she is entitled to reimbursement of \$175 in CRT fees. She did not claim any dispute-related expenses.

ORDERS

22. Within 30 days of the date of this order, I order Ms. Sunderland to pay Ms. Lewall a total of \$3,437.42, broken down as follows:
 - a. \$3,250.00 in debt,
 - b. \$12.42 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175.00 in CRT fees.
23. Ms. Lewall is entitled to post-judgment interest, as applicable.
24. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

25. 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.

Micah Carmody, Tribunal Member