



Civil Resolution Tribunal

Date Issued: August 31, 2021

File: SC-2020-009089

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dinsley v. Gagnon Dery*, 2021 BCCRT 949

BETWEEN:

SARAH DINSLEY

APPLICANT

AND:

FRANÇOIS-XAVIER GAGNON DERY aka FRANCOIS-XAVIER
GAGNON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a dog attack. The applicant, Sarah Dinsley, claims against the respondent, François-Xavier Gagnon Dery aka Francois-Xavier Gagnon, for \$642.75 in veterinary fees and \$500 for emotional damages and undue stress after her dog (Leia) was attacked by Mr. Gagnon Dery's dog (Tiloup).

2. Mr. Gagnon Dery does not dispute that Tiloup attacked Leia while unattended, but disputes that it was an unprovoked and vicious attack. Mr. Gagnon Dery is willing to pay \$642.75 for Leia's veterinary fees, but disputes Ms. Dinsley's \$500 claim for emotional damages and undue stress.
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. Whether Mr. Gagnon Dery is responsible for the attack, and
 - b. Whether Ms. Dinsley or Leia suffered any injuries or damage as a result of the attack, and if so what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ms. Dinsley must prove her claims on a balance of probabilities. Mr. Gagnon-Dery did not provide evidence in this dispute, despite being provided the opportunity to do so. I have reviewed all the parties' submissions and Ms. Dinsley's evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. It is undisputed that Tiloup attacked Leia on December 10, 2018 on the sidewalk outside a hardware store in North Vancouver. The issues in this dispute are whether Mr. Gagnon-Dery is responsible for the attack, and whether Ms. Dinsley or Leia suffered any injuries or damage as a result of the attack.

Is Mr. Gagnon-Dery responsible for the attack?

11. I find Mr. Gagnon-Dery is responsible for the attack. My reasons follow.
12. In BC there are currently 3 ways for a pet owners In BC there are currently 3 ways for a pet owner to be held legally responsible for the action of their pet: a) occupier's liability, b) the legal maxim known as 'scienter' (explained below), and c) negligence.
13. Occupier's liability is where damage happens on property controlled by the occupier. I find occupier's liability is not relevant here, because the attack did not occur on property owned or controlled by Mr. Gagnon Dery.

14. Scierter is when a dog has previously shown a tendency to cause the type of harm that happened here and the dog's owner knew of that tendency (see *Janota-Bzowska v. Lewis*, 1997 CanLII 3258 (BCSC)).
15. In his submissions, Mr. Gagnon Dery says that Tiloup is a husky that has always been a friendly dog and he trusts Tiloup with kids and other dogs. However, Mr. Gagnon Dery also says that Tiloup has a tendency to chase wildlife when he takes Tiloup mountain biking. For that reason, Mr. Gagnon Dery purchased a muzzle to prevent Tiloup from doing any harm to wildlife. Ms. Dinsley says this shows that Mr. Gagnon Dery knew that Tiloup was an aggressive dog capable of causing harm towards smaller animals. However, Ms. Dinsley did not provide any evidence that Tiloup was aggressive or had previously attacked another dog. I find the fact that Mr. Gagnon Dery acknowledged that Tiloup would chase wildlife and purchased a muzzle in response is not sufficient to prove that Tiloup had tendency to engage in aggressive behaviour or attack other dogs, or that Mr. Gagnon Dery knew of that propensity. There is no indication that Tiloup had previously attacked or shown aggression toward another dog. Therefore, I find scierter does not apply here.
16. I now turn to negligence. To succeed, Ms. Dinsley must show that Mr. Gagnon Dery 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), 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. In that case, an unleashed dog knocked down a person on a sidewalk, causing injury. I find the same duty of care applies. I find Mr. Gagnon Dery owed Ms. Dinsley a duty of care to reasonably control his dog and prevent attacks on other dogs.
17. Ms. Dinsley says she was walking with Leia on the sidewalk when Tiloup lunged at them. She says Tiloup was tied to a mobile display rack outside a hardware store that began rolling downhill when Tiloup lunged at them. Ms. Dinsley says while she was

holding the display rack to stop it from rolling away, Tiloup grabbed Leia by the “scruff of her neck” twice, and violently shook her.

18. Mr. Gagnon Dery does not dispute that the attack occurred. He says on the day of the attack he tied Tiloup to a rack outside and left Tiloup unattended while he went into the store, thinking the rack would be solid. He admits he should not have left Tiloup outside unattended. While Mr. Gagnon Dery disputed that the attack was unprovoked and vicious in his Dispute Response, he did not provide submissions on this point. I find there is no evidence or submissions to indicate the attack was provoked. I also find that in determining liability for negligence, nothing turns on the viciousness of the attack.
19. It is undisputed that Mr. Gagnon Dery was not with Tiloup at the time of the attack. I find that Mr. Gagnon Dery failed to ensure he had sufficient control of Tiloup when he left Tiloup unattended and tied to a mobile display rack outside a store. I find that it was reasonably foreseeable that in doing so, Tiloup could move about partially unrestrained and attack other dogs or people, causing damage. So, I find Mr. Gagnon Dery breached the standard of care required of a dog owner and was negligent because he failed to keep Tiloup under control and that failure resulted in Tiloup attacking Leia. I will now turn to assess damages.

Did Ms. Dinsley or Leia suffer any injuries or damage as a result of the attack?

20. As noted, Ms. Dinsley claims for emotional damage and undue stress resulting from the attack, and for Leia’s veterinary bill on the day of the attack.
21. Ms. Dinsley submitted a December 10, 2018 veterinary bill in evidence, which totals \$642.75. Mr. Gagnon Dery does not dispute that Leia was injured in the attack and says he has always been willing to pay the \$642.75 veterinary bill. I find Mr. Gagnon Dery must pay Ms. Dinsley \$642.75 for the veterinary bill.
22. I now turn to Ms. Dinsley’s \$500 claim for emotional damage and undue stress. As discussed in the non-binding but persuasive decision *Eggberry v. Horn et al*, 2018

BCCRT 224, a claim for stress or emotional damage, must be supported by medical evidence to be successful.

23. While I find it reasonable that a dog owner could become emotionally distressed after witnessing their dog being attacked, Ms. Dinsley has not provided any medical evidence to support her claim for emotional damage and undue stress. So, I decline to award Ms. Dinsley any damages for her claimed emotional damage and undue stress.
24. The *Court Order Interest Act* applies to the CRT. Ms. Dinsley is entitled to pre-judgment interest on the veterinary bill from December 10, 2018, the date of the invoice, to the date of this decision. This equals \$22.72.
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. Here, Ms. Dinsley was only partially successful in her claims. So, I find Ms. Dinsley is entitled to reimbursement of \$62.50 for half of her CRT fees. Ms. Dinsley did not claim any dispute-related expenses, so I award none.

ORDERS

26. Within 30 days of the date of this order, I order Mr. Gagnon Dery to pay Ms. Dinsley a total of \$727.97, broken down as follows:
 - a. \$642.75 as reimbursement for the veterinary bill,
 - b. \$22.72 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
27. Ms. Dinsley is entitled to post-judgment interest, as applicable.
28. 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.

29. 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.

Leah Volkers, Tribunal Member