



# Civil Resolution Tribunal

Date Issued: October 13, 2021

File: SC-2021-001815

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Olley v. Bell*, 2021 BCCRT 1084

BETWEEN:

ADRIENNE OLLEY

**APPLICANT**

AND:

MICHELA BELL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The respondent, Michela Bell, boarded a horse belonging to the applicant, Adrienne Olley. Ms. Olley says Miss Bell failed to provide adequate care for the horse, forcing

her to move the horse on short notice. She seeks \$1,050 as a refund of the 2 months' boarding fees she paid.

2. Ms. Olley also says she and her fiancé, JR, built 2 horse shelters for Miss Bell, for which she seeks \$950. As well, Ms. Olley says Miss Bell damaged JR's all-terrain vehicle (ATV), for which Ms. Olley seeks \$295. JR is not a party in this dispute.
3. Miss Bell denies Ms. Olley's claims. She says Ms. Olley and JR volunteered to build the horse shelters and within months she had to rebuild them anyway. She says the ATV was already damaged and she denies failing to take care of Ms. Olley's horse.
4. Both parties are self-represented. For the reasons that follow, I dismiss Ms. Olley's 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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that

includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Miss Bell breach the parties' horse boarding contract?
  - b. What was the parties' agreement about horse shelter construction?
  - c. Did Miss Bell damage the ATV?
  - d. What remedies, if any, are appropriate?

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil dispute, Ms. Olley 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.
11. On December 1, 2020, the parties signed a contract for month-to-month horse boarding, to start immediately. Ms. Olley undisputedly paid for 2 months of boarding, until January 31, 2021. The parties' text messages show that on January 1, 2021, Miss Bell gave Ms. Olley 30 days' notice as she felt the parties were not a "good fit". Ms. Olley says she removed her horse on January 17 due to poor quality care.

## ***Breach of contract***

12. The contract said for \$525 per month, Miss Bell would board and care for Ms. Olley's 8-year-old Westphalian horse. This included feeding hay 4 times and grain twice daily, and a stall and paddock cleaning once or twice daily.
13. Ms. Olley says Miss Bell did not clean the stall daily and did not feed the horse 4 times daily or "on time". She says conditions in the stall and general facility deteriorated due to rain to the point that they were a risk to the horse. She also says Miss Bell handled the horse poorly, causing lingering behavioural issues.
14. In contrast, Miss Bell says the stalls and paddocks were cleaned daily except for 2 days in December where the "outside paddocks" could not be properly cleaned due to heavy snowfall. She says she fed Ms. Olley's horse hay 4 times per day including a full hay net, and grain twice a day. Miss Bell says Ms. Olley never expressed any concerns about how she handled the horse.
15. The burden to prove a breach of contract for substandard services is on the party who alleges the breach, here Ms. Olley: see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287. In general, where the claim is that the work fell below the required professional standard, and the subject matter is outside ordinary knowledge, expert evidence is required. Other times, a breach of the standard may be so obvious that it does not require expert evidence: *Bergen v. Guliker*, 2015 BCCA 283. Ms. Olley has not provided expert evidence or demonstrated an obvious breach.
16. Ms. Olley provided numerous photos of the conditions of the stalls, paddocks and general facilities. The photos show a lot of mud, which Ms. Olley acknowledges was due to heavy rainfall. I am unable to distinguishable the mud from alleged manure in many photos, so it is not apparent to me that the stalls and paddocks were not cleaned daily. There is also no objective evidence before me about the effect of wet or muddy conditions on horses.
17. In some photos, Ms. Olley identifies things like hoses, buckets, and uneven ground as safety hazards. I find it is not obvious that these are safety hazards for a horse.

Without more, such as a statement from a horse welfare expert, I am not persuaded that these items posed a serious hazard to Ms. Olley's horse.

18. As for feeding, Ms. Olley did not provide any evidence in support of her assertion that Miss Bell did not adequately feed her horse. She did not provide detailed observations, such as dates and times of inadequate feeding, or contemporaneous reports to Miss Bell. Similarly, Ms. Olley did not provide any supporting evidence that Miss Bell mistreated her horse, and no evidence of the horse's alleged behavioural issues, such as a statement from a veterinarian or animal psychologist.
19. Miss Bell did not provide much evidence either. But as noted, Ms. Olley bears the burden of proof, and I find she has not established on a balance of probabilities that Miss Bell mistreated or failed to feed her horse as required by the contract. So, I find that Miss Bell did not breach the boarding contract and Ms. Olley is not entitled to damages or a refund.

### ***Horse shelter construction***

20. Ms. Olley says on October 28, 2020, Miss Bell agreed to provide future horse board services at a reduced rate in exchange for Ms. Olley's and JR's labour reconstructing 2 dismantled horse shelters. Ms. Olley says Miss Bell led her to believe the work would take 4-8 hours, but it took 10 hours of her time and 30 hours of JR's time. Ms. Olley says her \$950 claim is an estimate based on a "reduced" hourly rate, which she did not specify. I infer that she argues because Miss Bell ended the contract after 2 months, she was denied the opportunity to benefit from the reduced rate.
21. Miss Bell denies offering a discount on horse board services. She says Ms. Olley was aware that the horse shelters had to be reconstructed before Ms. Olley's horse arrived on December 1, 2020. This was because the main barn was full and another horse had to move to the shelter. Miss Bell was planning to hire a carpenter, but JR said he was a "contractor" and it would be "no problem" to put them up. Miss Bell says JR worked for 16 hours on the shelters and she worked alongside him.

22. As noted, JR is not a party to this dispute. Nothing in the Dispute Notice indicates that Ms. Olley filed her dispute on JR's behalf, and Ms. Olley does not suggest that JR was her employee. The legal concept of privity of contract provides that as a general rule, a contract cannot provide rights or impose obligations on any person except the parties to that contract. Based on the information before me, Miss Bell cannot claim for enforcement of JR's contractual rights.
23. The alleged boarding rate reduction agreement is unsupported by any objective evidence. Ms. Olley did not provide a statement from JR to confirm the arrangement and did not explain why she could not obtain such a statement. The only objective evidence is the December 1, 2020 contract, which does not indicate any reduction in the boarding rate despite the shelters having been reconstructed at the time. So, I find Ms. Olley has not proved she had any agreement about a reduced boarding rate.
24. As for Ms. Olley's work on the horse shelters, she does not explain what she did in the 10 hours she claims to have helped JR. Without more, I find this does not justify any compensation from Miss Bell to Ms. Olley. Miss Bell also provided a letter from a carpenter who said he had to tear down and rebuild the shelters in early 2021, so I accept that the work was of little value to Miss Bell.
25. Based on the above, I find Ms. Olley has not proven any entitlement to compensation for the horse shelter construction.

### ***ATV damage***

26. Ms. Olley says she used JR's ATV to "harrow" or smooth the riding area for her horse. She says Miss Bell verbally agreed to store and maintain the ATV because Miss Bell found it convenient to use the ATV to transport hay. Ms. Olley says Miss Bell damaged the ATV's brakes. In contrast, Miss Bell says the brakes were already non-functional when the ATV arrived.
27. There is an issue of whether, even if the damage was proved, Ms. Olley could have suffered any loss given the ATV belongs to JR. I do not need to address that issue, because I find Ms. Olley has not proved that Miss Bell damaged the ATV. Ms. Olley

relies on a November 19, 2020 text from Miss Bell when she was trying to get the ATV started. Miss Bell said her roommate was “kicking” but “no go”. Ms. Olley responded, “Lmao ;)” and “Have fun”. Miss Bell explains that the ATV was a kick-start machine. I accept this unchallenged explanation and find no evidence Miss Bell or her roommate damaged the ATV by kicking, or otherwise. I dismiss this claim.

28. In any event, even if Ms. Olley had proved that Miss Bell damaged the brakes, she provided no evidence to support the claimed \$195 for parts and \$100 for labour, so I would have dismissed the claim for failure to prove the alleged damages anyway.

### ***Conclusion***

29. I dismiss all of Ms. Olley’s claims. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Miss Bell was successful but did not pay any CRT fees or claim expenses. I dismiss Ms. Olley’s claim for reimbursement of CRT fees.

### **ORDER**

30. I dismiss Ms. Olley’s claims and this dispute.

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Micah Carmody, Tribunal Member