



# Civil Resolution Tribunal

Date Issued: April 19, 2022

File: SC-2021-007259

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McKenna v. Roy*, 2022 BCCRT 444

BETWEEN:

KELLY MCKENNA

**APPLICANT**

AND:

JAMIE NEIL ROY and CLAIRE KRISTA ROY

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about compensation for dog breeding services. The applicant, Kelly McKenna, undisputedly provided a “stud service” for a female dog owned by the respondents, Jamie Neil Roy and Claire Krista Roy. Ms. McKenna says the parties’

verbal agreement was a female puppy from the litter instead of a stud fee up front. Ms. McKenna says there were 3 puppies but she did not receive one nor any payment. Ms. McKenna claims \$3,500 for the stud fee “and/or” a puppy.

2. The Roys say the agreement was initially a \$500 stud fee but that when they discovered the dog was pregnant with 3 puppies, they agreed to pay the \$500 debt with a puppy. The Roys say the implied condition was that all 3 puppies would survive until they could be re-homed at 8 weeks. One female puppy died due to an accident, and the Roys say the other female puppy was already sold. The Roys kept the 3<sup>rd</sup>, a male. The Roys deny agreeing to a \$3,500 stud fee but have also not paid anything.
3. Ms. McKenna is self-represented. Mr. Roy represents the respondents.

## **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). CRTA section 2 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. CRTA section 39 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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. What were the terms of the parties' breeding agreement?
  - b. Is Ms. McKenna entitled to a puppy, \$3,500 or some other amount, for her male dog's stud service?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Ms. McKenna must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. The Roys' female dog mated with Ms. McKenna's male dog on May 22, 2021. The female dog had 3 puppies on July 13, 2021. There is some discrepancy in the submissions over whether there were 2 females and 1 male, or, 2 males and 1 female. On balance, I find it likely there was 1 male puppy and 2 female puppies, which the Roys assert and Ms. McKenna refers to in her reply submission.
11. In any event, the parties agree the Roys always intended to keep 1 male and that Ms. McKenna wanted a female puppy. The parties also agree and the evidence shows

that the Roys would care for all puppies until 8 weeks after birth (September 7, 2021), at which point they could be re-homed.

12. As noted above, the parties agree their stud services agreement was a verbal one. Their versions differ significantly. I note it is undisputed mutual friends of the parties were present when the stud services agreement was made. Neither party submitted a witness statement from those friends, with Ms. McKenna saying she chose not to pursue it as she valued their friendship. Given neither party provided a statement from their mutual friends, I have placed no weight on the fact those friends were present.
13. Ms. McKenna says that in lieu of a stud fee that she would otherwise always demand up front, the Roys agreed to letting her have one of the female puppies.
14. In contrast, the Roys say the initial agreement was that they would pay Ms. McKenna a \$500 stud fee but this later changed when they discovered their female dog was carrying 3 puppies. At that point, the Roys agree they offered Ms. McKenna a female puppy. However, significantly, the Roys assert that an implied condition was that all 3 puppies would survive 8 weeks before re-homing, and 1 of the puppies undisputedly died by accident.
15. I do not agree with the Roys. I find such a condition could not have been reasonably implied. To do so would leave Ms. McKenna at risk of no compensation for the stud service, which is apparently what the Roys assert should occur here since they have not given her a puppy and have not paid her anything. I find it defies common sense that Ms. McKenna, a breeder, would provide a stud service without ensuring she received some compensation.
16. I find the parties' verbal agreement was that the Roys would give Ms. McKenna a female puppy, 8 weeks after birth, in lieu of a stud fee. I find there was no implied condition that all 3 puppies had to survive to 8 weeks. I also find there was never any \$500 stud fee agreement.

17. Further, I find Ms. McKenna's and Mr. Roy's text exchange on September 6, 2021 made it clear Ms. McKenna expected a puppy at that time and Mr. Roy did not say that was not their agreement. By September 7, 2021, the Roys had apparently told Ms. McKenna they would not be giving her a puppy and she advised she would sue.
18. Next, the Roys submitted an unsigned typed January 14, 2022 statement from the buyers of the surviving female pup, DD and JD. The buyers wrote that they arranged to buy a puppy in August and the puppy joined their family in "late September 2021". They said they bought the puppy from the respondents for \$500. Mr. Roy separately submitted evidence showing a \$600 bank deposit from DD as payment for the puppy. The \$100 difference was apparently repayment for vaccines.
19. Ms. McKenna says the respondents told her 1 female puppy died and that the other had "already" been sold. Yet, she also says the new owners (DD and JD) took possession of the puppy on September 22, 2021, 16 days after Mr. Roy had told her he had given the puppy away. The Roys did not dispute this timeline, so I accept it, noting it is consistent with DD and JD's statement about "late September 2021".
20. I find what likely occurred is that the Roys expected all 3 puppies to survive. I find it likely they told DD and JD in August they could buy 1 female at the 8-week mark, planning to keep the male and give the other female to Ms. McKenna. As noted, one of the females later died while in the Roys' care, due to an accident. While unfortunate, I find that death did not negate the Roys' obligation under the parties' agreement to give Ms. McKenna a female puppy in lieu of a stud fee.
21. I turn then to Ms. McKenna's damages. Clearly, there is no female puppy left to give Ms. McKenna as payment for the stud services. So, I must consider the value of the puppy Ms. McKenna would have received had the Roys not sold it to DD and JD for \$500.
22. As noted, Ms. McKenna claims \$3,500. The Roys appear to argue the puppy's value was no more than \$500. In the circumstances, I find the amount the Roys sold the dog for to friends is not determinative. Contrary to the Roys' apparent submission, I

also place no weight on the Roys' care costs up to the 8-week mark, because it was always the agreement the Roys would care for the puppies to 8 weeks.

23. Ms. McKenna points out that the dog is a Shih Tzu poodle cross puppy that is highly sought after because of its unique properties. The Roys do not deny this. However, the Roys argue because the puppy is a mixed-breed unregistered dog, the value is far less than \$3,500.
24. Both parties submitted copies of online advertisements for similar puppies. Ms. McKenna submitted ads on Kijiji for the same Shih Tzu species: 2 male puppies for \$3,500, with 2 females at \$2,700 and \$3,000, and one for \$2,500 where the sex was not identified.
25. The Roys submitted ads for a Shih Tzu puppy being sold in Ontario for \$1,900 and one in Edmonton for \$1,650. They also included an ad for a male Shih Tzu in the lower mainland for \$2,500.
26. I acknowledge the Roys' argument that there are ads for purebred Shih Tzu puppies for \$3,500, and their puppy was not a purebred. However, on balance, I find the best evidence of the value of the female puppy Ms. McKenna should have received is what similar puppies are advertised for here in BC.
27. On balance and on a judgment basis, I find \$2,500 is an appropriate valuation for the puppy. I order the Roys to pay Ms. McKenna that amount.
28. The *Court Order Interest Act* (COIA) applies to the CRT. I find Ms. McKenna is entitled to pre-judgment interest under the COIA on the \$2,500. Calculated from September 7, 2021 (the date Ms. McKenna should have received the dog) to the date of this decision, this interest equals \$6.92.
29. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Ms. McKenna was successful and so I find she is entitled to reimbursement of \$175 in paid CRT fees. Ms. McKenna also claims \$65 in dispute-

related expenses: \$15 for registered mail to serve the respondents and \$50 for a title search to obtain the Roys' physical address. I find these expenses reasonable and so I order the respondents to reimburse them.

## **ORDERS**

30. Within 21 days of this decision, I order the Roys to pay Ms. McKenna a total of \$2,746.92, broken down as follows:
  - a. \$2,500 in damages,
  - b. \$6.92 in pre-judgment interest under the COIA, and
  - c. \$240, for \$175 in CRT fees and \$65 in dispute-related expenses.
31. Ms. McKenna is entitled to post-judgment interest, as applicable.
32. 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.
33. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

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Shelley Lopez, Vice Chair