



Civil Resolution Tribunal

Date Issued: May 20, 2022

File: SC-2021-008851

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hughes v. Arscott*, 2022 BCCRT 598

BETWEEN:

ELAINE HUGHES and PHILIP ARNOLD

APPLICANTS

AND:

LORI ARSCOTT

RESPONDENT

AND:

ELAINE HUGHES and PHILIP ARNOLD

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about dog ownership. The applicants and respondents by counterclaim, Elaine Hughes and Philip Arnold, say they are the rightful owners of a rottweiler named Onyxia. Ms. Hughes and Mr. Arnold say the respondent and applicant by counterclaim, Lori Arscott, has Onyxia and refuses to return her. Ms. Hughes and Mr. Arnold seek \$800 for the return of a pet deposit paid to Ms. Arscott's landlord. They also seek Onyxia's return, which they value at \$4,200.
2. Ms. Arscott says she is Onyxia's rightful owner because she was gifted Onyxia by Mr. Arnold. Ms. Arscott seeks to keep the dog. In the alternative, if Onyxia is ordered to be returned to Ms. Hughes and Mr. Arnold, Ms. Arscott counterclaims for reimbursement of \$5,000 for various costs of Onyxia's care while in Ms. Arscott's possession.
3. The parties are each 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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.

6. Section 42 of the CRTA says that 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. Who is Onyxia's rightful owner?
 - b. Are Ms. Hughes and Mr. Arnold entitled to \$800 for a refund of a pet deposit?
 - c. What amount, if any, Ms. Arscott is entitled to for reimbursement of Onyxia's costs of care?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Ms. Hughes and Mr. Arnold must prove their claims on a balance of probabilities (meaning "more likely than not"). Ms. Arscott must prove her counterclaim to the same standard. While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.

Who owns Onyxia?

10. I accept that all parties are emotionally attached to Onyxia. However, the law treats pets as personal property, rather than family members (see: *Henderson v. Henderson*, 2016 SKQB 282 and *Brown v. Larochelle*, 2017 BCPC 115).

11. Ms. Hughes and Mr. Arnold are formerly romantic partners who purchased Onyxia together on January 1, 2017. In 2019, Mr. Arnold started a romantic relationship with Ms. Arscott. At the end of their relationship, Mr. Arnold and Ms. Hughes agreed that Onyxia would be shared by them both, mainly in Mr. Arnold's custody, with Ms. Hughes having regular visits. None of this is disputed, but Ms. Arscott says she was unaware of Ms. Hughes's shared ownership of Onyxia before Onyxia was allegedly gifted to Ms. Arscott from Mr. Arnold. More on this alleged gift later.
12. The evidence shows that all 3 parties contributed to the physical and financial caretaking of Onyxia from the spring of 2019 until the ultimate breakdown of Mr. Arnold's and Ms. Arscott's relationship in February 2021. Numerous receipts and photographs in evidence show each party spent time with Onyxia during this period, as well as purchased necessary medical treatment, services, and pet supplies. It is undisputed Ms. Arscott had possession of Onyxia most frequently.
13. Mr. Arnold and Ms. Arscott's relationship was on and off from spring 2019 until February 16, 2021. It is undisputed that Mr. Arnold moved in and out of Ms. Arscott's home multiple times during their relationship, sometimes leaving Onyxia with Ms. Arscott, sometimes taking Onyxia with him to his new home, or to Ms. Hughes' home. On February 16, 2021, Mr. Arnold asked for Onyxia, and Ms. Arscott declined to give Onyxia to him. Ms. Hughes and Mr. Arnold have been denied access to Onyxia since this date. Mr. Arnold and Ms. Hughes seek an order that Ms. Arscott return Onyxia to them, because they say they are the dog's rightful owners.
14. Ms. Arscott says she is Onyxia's rightful owner as she says she was "permanently" given Onyxia by Mr. Arnold in 2020. During a particularly significant, though not final, break up in April 2020, Ms. Arscott advised Mr. Arnold via text message that she was willing to take Onyxia "full time", but Mr. Arnold said no. It is undisputed Mr. Arnold took Onyxia into his possession on April 30, 2020.
15. What happened next is disputed. Ms. Arscott says 48 hours after Mr. Arnold took Onyxia on April 30, Mr. Arnold verbally asked Ms. Arscott to take Onyxia back. Ms. Arscott says she only agreed to do so if Onyxia would remain with her permanently,

which Ms. Arscott says Mr. Arnold agreed to. Therefore, Ms. Arscott says Onyxia was gifted to her at this time.

16. In contrast, Mr. Arnold says this conversation never took place. Mr. Arnold and Ms. Hughes say Onyxia went to live with Ms. Hughes, and ultimately moved into Mr. Arnold's home for May and June 2020 until Mr. Arnold moved again, and Onyxia moved back with Ms. Arscott. Mr. Arnold and Ms. Hughes deny Onyxia was ever gifted to Ms. Arscott.
17. Although Ms. Arscott submitted numerous witness statements from friends and family members, many of whom say Mr. Arnold gave Ms. Arscott Onyxia, I find none of these witnesses were present for the alleged conversation. So, I place no weight on those witness statements as they do not assist in the determination of whether Mr. Arnold gifted Onyxia to Ms. Arscott.
18. Ms. Arscott also submitted a witness statement from a registered counsellor, Alan Boden, who provided services to both Ms. Arscott and Mr. Arnold. I place no weight on Mr. Boden's statement. First, his opinion appears to be a breach of his ethics and patient confidentiality obligations, given Mr. Arnold was also Mr. Boden's patient and did not consent to the private information shared in the statement. Given this, I find Mr. Boden's statement is advocacy and is not neutral. I also find to share the information here would be inappropriate given Mr. Boden's apparent confidentiality and ethics breach. As noted, I give no weight to Mr. Boden's statement.
19. In summary, I find there is no evidence to support the alleged verbal agreement gifting Onyxia to Ms. Arscott. Given this finding, I do not need to consider in detail the fact Mr. Arnold could not have gifted more than he owned, which was half of Onyxia, as it is undisputed he and Ms. Hughes jointly owned the dog.
20. Additionally, I find the fact that Ms. Hughes and Mr. Arnold continued to contribute to Onyxia's care after April 2020, both physically and financially as they had done in the past, is inconsistent with Ms. Arscott's argument that she was solely gifted Onyxia.

21. On balance, although all parties contributed to Onyxia's care over the years, I find Ms. Hughes and Mr. Arnold have a stronger ownership claim over her, as they have remained intimately involved in her care and expenses despite when Onyxia lived with Ms. Arscott. I order Ms. Arscott to return the dog to Ms. Hughes and Mr. Arnold on the terms set out in my order below.

Are Ms. Hughes and Mr. Arnold entitled to \$800 for a refund of a pet deposit?

22. Ms. Hughes and Mr. Arnold say Mr. Arnold paid an \$800 pet deposit to Ms. Arscott to pay Ms. Arscott's landlord when Mr. Arnold and Onyxia first moved into Ms. Arscott's home in October 2019. Ms. Arscott acknowledges Mr. Arnold paid the deposit for her. There is no indication the money has been paid back, and Ms. Arscott does not argue she is entitled to keep the money. Although there is some suggestion the pet deposit was actually \$900, only \$800 is claimed and so I order Ms. Arscott to pay Mr. Arnold \$800 as reimbursement for the pet deposit.

What amount, if any, Ms. Arscott is entitled to for reimbursement of Onyxia's costs of care?

23. In her counterclaim, Ms. Arscott says if Onyxia is ordered to be returned to Ms. Hughes and Mr. Arnold, that she should be reimbursed for Onyxia's expenses "over the last 2+ years". Ms. Hughes and Mr. Arnold say Ms. Arscott kept Onyxia against their wishes, and therefore any expenses Ms. Arscott incurred were due to her own improper actions.

24. Ms. Arscott provided a "Summary of Expenses" where she lists various amounts from Bosley's, PetSmart, a doggy daycare and dog walker, as well as veterinary care. For any expenses between when Mr. Arnold and Onyxia moved into Ms. Arscott's home (October 2019) and the date their relationship finally ended (February 2021), I find the evidence shows all 3 parties contributed to Onyxia's care expenses, as noted above. Therefore, I find no expenses are reasonably payable during this time as all 3 parties voluntarily shared Onyxia's care and companionship.

25. Expenses incurred after February 2021 when Ms. Arscott refused to return Onyxia to Mr. Arnold and Ms. Hughes include: \$738.90 for various Bosley's and PetSmart expenses, \$380.00 for dog walking, and most significantly, \$2,086.01 for veterinary bills.
26. First, I decline to award reimbursement for veterinary bills. The evidence is that Ms. Arscott unilaterally changed Onyxia's vet as the existing vet would contact Ms. Hughes and Mr. Arnold for consent before providing treatment to Onyxia. When contacted, the practice was that Ms. Hughes would pay the bill. To avoid having Ms. Hughes and Mr. Arnold involved in Onyxia's care, Ms. Arscott changed veterinary clinics. This left Ms. Hughes and Mr. Arnold with no say in Onyxia's visits or treatment, which were left solely to Ms. Arscott. As a result, I find Ms. Hughes and Mr. Arnold should not be held responsible for these expenses.
27. For the dog walking expenses, Ms. Arscott says that due to a disability, she is unable to properly exercise Onyxia, so hired assistance to do so. Ms. Hughes says that if Onyxia was in her care, she would have been able to provide the exercise services herself. I find Ms. Arscott is not entitled to reimbursement for these expenses while she declined to return the dog to Ms. Hughes and Mr. Arnold who I have found rightfully owned her.
28. For the Bosley's and PetSmart expenses, Ms. Arscott only produced line items from her banking statements with amounts varying from \$6.70 to \$92.95. It is unclear what these expenses were for. But again, given Ms. Arscott refused to return Onyxia to Ms. Hughes and Mr. Arnold, I find by denying them access to the dog, Ms. Arscott is not entitled to reimbursement for expenses incurred during this time.
29. I dismiss Ms. Arscott's counterclaim.

FEES, EXPENSES AND INTEREST

30. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Arnold is entitled to pre-judgment interest on the \$800 pet deposit from December 31, 2019, the approximate time he moved out of Ms. Arscott's home. This amounts to \$14.60.
31. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Ms. Hughes and Mr. Arnold were successful, I find that they are entitled to reimbursement of the \$175 they paid in tribunal fees. As Ms. Arscott was unsuccessful in her counterclaim, I dismiss her claim for tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

32. Within 30 days of the date of this decision, I order the respondent, Lori Arscott, to pay the applicants, Elaine Hughes and Philip Arnold, a total of \$175 in CRT fees.
33. Within 30 days of the date of this decision I order Ms. Arscott to pay Mr. Arnold a total of \$814.60, broken down as follows:
 - a. \$800 in debt, and
 - b. \$14.60 in pre-judgment interest under the *Court Order Interest Act*.
34. Within 30 days of the date of this decision, I order Ms. Arscott to return Onyxia the dog to Ms. Hughes and Mr. Arnold, at Ms. Hughes' home or at a mutually agreed upon place and time, with at least 5 days' written notice, at Ms. Arscott's expense.
35. Ms. Hughes and Mr. Arnold are also entitled to post-judgment interest, as applicable.
36. Ms. Arscott's counterclaim is dismissed.
37. 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.

38. 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.

Andrea Ritchie, Vice Chair