



Civil Resolution Tribunal

Date Issued: June 23, 2022

File: SC-2021-008687

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mason v. City of Coquitlam*, 2022 BCCRT 731

BETWEEN:

HAZEL MASON

APPLICANT

AND:

CITY OF COQUITLAM

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The respondent City of Coquitlam (Coquitlam) operates the Coquitlam animal shelter (shelter). A member of the public delivered a cat, Zuki, to the shelter. The applicant is Hazel Mason, Zuki's owner. She asked to be addressed in this decision as Hazel.

2. Coquitlam's shelter attendants brought Zuki to a veterinarian, incurring \$384.05 in veterinary expenses. Coquitlam required Hazel to pay the veterinary expenses before releasing Zuki. Hazel paid the \$384.05, and claims that amount in this dispute. She says she did not authorize the veterinary expenses.
3. Coquitlam says the claim should be dismissed. It says its shelter staff complied with their statutory duties in receiving and handling Zuki. It also says its bylaws required Hazel to pay the veterinary expenses.
4. Hazel represents herself. Coquitlam is represented by its director of legal and bylaw enforcement, who is a lawyer.

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.

ISSUE

9. The issue in this dispute is whether Coquitlam must refund Hazel for some or all of the \$384.05 veterinary expenses it required her to pay.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Hazel must prove her claims 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. The undisputed facts are as follows. Hazel owned Zuki, a now-deceased senior cat who was around 15 years old when she went missing. On September 13, 2021, a member of the public dropped off a cat now known to be Zuki at the shelter. Shelter attendants immediately brought Zuki to a private veterinarian for an examination. Hazel called the shelter looking for Zuki that evening. The next day, Hazel attended the shelter and confirmed the cat was Zuki. The shelter would not release Zuki until Hazel paid the veterinarian's \$384.05 invoice and confirmed she had made an appointment with her regular veterinarian. Hazel did both those things and reclaimed Zuki. Shortly thereafter, Hazel authorized her regular veterinarian to euthanize Zuki.
12. Coquitlam says its shelter staff complied with their duties under section 9.1 of the *Prevention of Cruelty to Animals Act* (PCAA). Section 9.1 says a person responsible

for an animal must care for the animal, and must not permit the animal to be, or to continue to be, in distress.

13. Coquitlam relies on an affidavit provided by AJ, its animal care supervisor, and the shelter's impound record for Zuki. Based on that evidence, I accept that the shelter attendants working on September 13, 2021, received Zuki around 6:00 p.m. I accept that Zuki was dehydrated, showing leg weakness, and overall frail. In the attendants' judgment, Zuki needed a veterinary examination. They arranged for that service from one of Coquitlam's contracted veterinarians immediately. Veterinary records show Zuki was given an exam, x-rays, a fluid bag and medication.
14. Hazel argues that Zuki was not in danger or distress and did not need urgent veterinary care, she was just elderly. However, she concedes that Zuki had one leg that was not "working the same as the other three." She also says Zuki had never strayed from home in the past, which I accept. Given the evidence that Zuki was picked up some distance from her home, had a bad leg, was elderly, and was euthanized shortly afterward, I find that Zuki likely appeared to be in distress. Shelter attendants are not veterinarians and cannot be faulted for referring Zuki to a veterinarian immediately in the circumstances. Indeed, failing to do so may have been a breach of the duty of care set out in section 9.1 of the PCAA.
15. The shelter records show that Hazel called the shelter around 7 p.m. Hazel says she actually called shortly after 6 p.m. and was told she could not pick up Zuki because Zuki was seeing a vet and would have to remain at the shelter overnight. She also says shelter staff would not let her speak to the vet. She suggests that if the shelter attendants had released Zuki to Hazel that night or permitted Hazel to speak to the vet, the vet expenses could have been reduced or eliminated.
16. Hazel did not provide objective evidence, such as phone records, to support her assertion that she called shortly after 6 p.m. I do not mean to imply that Hazel is not credible, but a witness's ability to recall details can be affected by stressful events (see *Diablo v. Canada (Attorney General)*, 2013 BCSC 1496, paragraph 36). I find losing Zuki was a stressful event for Hazel given her and her witnesses' evidence

about how much Hazel cared for Zuki. On balance, I find the shelter records are the best evidence of the call times and I accept them. I find Zuki was already at the vet clinic when Hazel called. This means I do not accept Hazel's argument that Coquitlam could or should have released Zuki to Hazel immediately. I also find it unproven that allowing Hazel to speak to the vet would have reduced the expenses. Hazel does not say which procedures were unnecessary.

17. Coquitlam says it complied with Animal Care and Control Bylaw No. 4240, 2011 (bylaw). It is undisputed that this bylaw falls within Coquitlam's legal authority under the *Community Charter*. Bylaw 13.1 says a bylaw enforcement officer may seize and impound any animal found to be "at large," or that appears to be suffering or in distress.
18. I have already found that Zuki appeared to be in distress. This means Coquitlam had the authority to impound Zuki. As a result, it is not necessary to consider Hazel's argument that Zuki was not at large. I note the fact that Zuki appeared to be in distress or was at large does not mean Hazel did not take adequate care of Zuki.
19. Bylaw 13.2 says every owner of an impounded animal may reclaim the animal by providing proof of ownership and paying in full "any and all... impounding charges; custodial charges for the care and maintenance of the animal; veterinary charges...". This means Hazel had to pay the \$384.05 veterinary charges to reclaim Zuki. It is undisputed that Coquitlam did not charge Hazel any impounding or custodial charges.
20. Coquitlam's evidence shows it paid the veterinarian \$384.05 on September 14, 2021. On September 22, Coquitlam was credited \$13.91 for a return of buprenorphine that was unnecessary because Zuki "was euthanized, doesn't need it". There are no notes on Coquitlam's impound report indicating any attempted to return this \$13.91 to Hazel. The impound report says the file was closed on September 14, 2021.

21. The parties made no submissions about this \$13.91 credit. However, I find bylaw 13.2 does not authorize Coquitlam to charge Hazel for veterinary charges that it did not have to pay. So, I order Coquitlam to reimburse Hazel \$13.91 for the credit it received.
22. The *Court Order Interest Act* applies to the CRT. Hazel is entitled to pre-judgment interest on the \$13.91 from September 22, 2021, the date Coquitlam received the credit, to the date of this decision. This equals \$0.05.
23. 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. Hazel was substantially unsuccessful, but did obtain a partial refund. In the circumstances, I find she is entitled to reimbursement of \$62.50, being half her \$125 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

24. Within 30 days of the date of this order, I order Coquitlam to pay Hazel a total of \$76.46, broken down as follows:
 - a. \$13.91 for the veterinarian expense overcharge,
 - b. \$0.05 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
25. Hazel is entitled to post-judgment interest, as applicable.
26. 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.

27. 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