



Civil Resolution Tribunal

January 9, 2023

File: SC-2022-002871

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rush v. Klassen*, 2023 BCCRT 21

B E T W E E N :

DREW THOMAS RUSH and MARTHA THOMAS

APPLICANTS

A N D :

LYCRECIA KLASSEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about the purchase of a puppy named Honey. On July 26, 2022, the applicants, Drew Thomas Rush, and her mother, Martha Thomas, bought Honey from the respondent, Lycrecia Klassen. Honey quickly began to display signs she was unwell. Over the next few months, Honey attended a veterinarian on at least three occasions, before being euthanized on September 30, 2022. Ms. Rush and Mrs.

Thomas claim \$5,000 for veterinarian costs incurred diagnosing, treating, and euthanizing Honey.

2. Mrs. Klassen says she refunded Honey's purchase price, and also offered to take Honey back. She says that she should not have to pay any money for the applicants' expenses for veterinarian fees.
3. Ms. Rush and Mrs. Thomas are represented by a friend, who is not a lawyer. Mrs. Klassen is represented by her spouse.

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.
8. As noted above, the applicants have limited their claim to \$5,000, which is the CRT's monetary limit in small claims disputes. I find they have abandoned any portion of their claim that is over \$5,000.

ISSUE

9. The issue in this dispute is whether Ms. Klassen owes Ms. Rush and Mrs. Thomas any money for Honey's veterinarian bills.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. The parties agree that on July 26, 2020, Ms. Rush and Mrs. Thomas purchased Honey from Mrs. Klassen for \$1,800.
12. It is undisputed that Honey then began to show signs of illness, including vomiting, and had tenderness on her abdomen.
13. The parties agree that on July 29, 2020, Ms. Rush and Mrs. Thomas took Honey to the veterinarian, resulting in \$1,839.18 invoice.
14. Between July 26 and July 30, 2020, Mrs. Thomas and Mrs. Klassen exchanged text messages about Honey's health and the veterinarian's investigations and opinions to that point.
15. On July 31, 2020, Mrs. Thomas texted Mrs. Klassen that the "...cost so far was \$3000." Later in the same text message, Mrs. Thomas wrote

Once you and your vet have a discussion, I would like to know how our costs will be recovered (less anything the gofundme account covers). The puppy was \$1800 and if we get \$2000 from [the] go fundme that leaves \$1000 to be covered. happy to discuss.

(All quotes reproduced as written, except where otherwise noted)

16. While there is no evidence before me to support the specific amounts noted by Mrs. Thomas, I find that nothing turns on that issue. However, I find that this is when Mrs. Thomas began negotiation with Mrs. Klassen over any compensation the applicants would receive in respect for Honey and her expenses. In particular, the text clearly makes an issue of both Honey's purchase price and veterinary costs.
17. Mrs. Klassen responded that she "...intends to wait till after our vet from cobble Hill reads the report before deciding how to compensate you guys. I hope that's fair." Mrs. Thomas responded "Absolutely fair. Thank you!"
18. On August 4 and 5, Mrs. Thomas and Mrs. Klassen exchange texts about Honey's health, with an exchange of veterinarian reports.
19. Ms. Rush and Mrs. Thomas say they were told by the veterinarian that Honey had a genetic condition called renal dysplasia. An August 6, 2020 veterinarian report in evidence shows renal dysplasia was the veterinarian's likely diagnosis.
20. On August 7, Mrs. Klassen texted Mrs. Thomas, asking to speak with her by telephone. Mrs. Thomas agreed.
21. Shortly after that exchange, Mrs. Thomas texted Mrs. Klassen, in part, "I can not express my gratitude for how this being handled. Thank you." and included her email address. Mrs. Klassen responded "I just sent your etransfer. Really appreciate your graciousness. Let's give honey the best life ever." I find this exchange confirms the parties spoke by phone and agreed to a course of action to settle the matter. I address that settlement below.

22. The parties agree that on August 10, 2020, Mrs. Klassen e-transferred Mrs. Thomas a full refund for Honey's purchase price.
23. The applicants later attended further veterinarian appointments with Honey, incurring more expenses, and ultimately making the decision to have Honey euthanized. The applicants eventually filed this CRT claim, seeking reimbursement for Honey's veterinarian expenses, both before and after the August 7, 2020 refund.
24. The applicants argue they are entitled to reimbursement of Honey's veterinarian expenses under section 18(c) of the *Sale of Goods Act* (SGA) on the basis that Honey was not "durable". They cite *Ta v. Vernon*, 2019 BCCRT 657 and *Davy v. Kidwai*, 2020 BCCRT 442 in support of their position.
25. I find I do not need to consider whether or not Honey was sufficiently durable pursuant to the SGA, as I find that the parties entered into a binding settlement agreement on August 7, 2020 that resolved their dispute.
26. In particular, between July 31 and August 7, 2020, Mrs. Thomas and Mrs. Klassen negotiated over money owed for Honey and her expenses. Mrs. Thomas was aware of the veterinarian bills she had incurred to that point and had, by her own evidence, raised those bills with Mrs. Klassen. I find the parties discussed compensation, and Mrs. Thomas agreed to accept a refund of Honey's purchase price on behalf of the applicants – a total of \$1,800.
27. A settlement agreement is a contract where parties in a dispute agree to a resolution. For a binding settlement agreement to exist, there must be an offer and acceptance of that offer, without qualification. The agreement does not have to be signed, or even written, to be enforceable. Whether the parties had a consensus, or a "meeting of the minds", on the contract's essential terms is determined from the perspective of an objective reasonable bystander and not the parties' subjective intentions. See *Salminen v. Garvie*, 2011 BCSC 339, at paragraphs 24 to 27.
28. I find that a reasonable person looking at the totality of the evidence would have understood that, after having negotiated about what money Mrs. Klassen owed to

Mrs. Thomas, the parties agreed to \$1,800 as the final settlement of their dispute about compensation for Honey's alleged genetic condition. The parties had discussed veterinary bills and the purchase price in their previous text messages and ultimately settled on a refund of the purchase price. I do not accept that Mrs. Klassen would have provided a full refund if the parties had not resolved the matter, both with respect to past and future veterinary costs.

29. In conclusion, I find the parties entered into a binding settlement agreement, which I find included settlement of the applicants' claim for Honey's veterinary expenses. Given that Mrs. Klassen has already paid the agreed \$1,800, I find the applicants are not entitled to more. I dismiss the applicants' \$5,000 claim.

30. 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. As the applicants were not successful, I dismiss their claim for CRT fees and dispute-related expenses. Mrs. Klassen did not pay CRT fees or claim expenses.

ORDER

31. I dismiss the applicants' claims and this dispute.

Christopher C. Rivers, Tribunal Member