



Civil Resolution Tribunal

Date Issued: January 18, 2023

File: SC-2022-003661

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wong v. Brooks*, 2023 BCCRT 47

BETWEEN:

PRESTON WONG

APPLICANT

AND:

NICOLE BROOKS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. The applicant, Preston Wong, owns a Portuguese water dog named Ripley. The defendant, Nicole Brooks, owns a husky-mix dog named Leia.
2. Mr. Wong says Leia attacked Ripley at an off-leash dog park without provocation, causing Ripley injury that required veterinary care. He says although Ms. Brooks paid

for Ripley's initial treatment, she refused to pay for follow up treatment when Ripley's wound became infected. Mr. Wong inexplicably claims \$5,000 for Ripley's follow up treatment, though he only submitted veterinary bills totaling \$4,260.10.

3. Ms. Brooks admits Leia bit Ripley. However, she says neither party saw exactly what happened and Ripley may have provoked Leia. Ms. Brooks also says although she paid for Ripley's treatment on the day of the incident, she does not know what happened once Mr. Wong took Ripley home from the animal hospital. She says the veterinarian told her they believed Mr. Wong did not take proper care of Ripley after the initial treatment, such as by crating him and ensuring he wore a cone. So, Ms. Brooks says she is not liable for any further damages.
4. The parties are each self-represented.

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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

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 Ms. Brooks must reimburse Mr. Wong for his veterinary bills.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant, Mr. Wong, must prove his 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. I note Ms. Brooks did not submit any evidence, despite having the opportunity to do so.
11. The parties agree Mr. Wong and Ms. Brooks were at an off-leash dog park with their respective dogs when Ripley and Leia had an altercation. Both dogs were unleashed at the time of the incident.
12. Mr. Wong says that on March 6, 2022 he was walking along the park's walkway and Ripley was about 10 feet away from him in a grassy area with his head down sniffing around. He says he saw Leia "leave the main walkway and charge at Ripley". Ms. Brooks does not dispute that Leia approached Ripley. Mr. Wong describes hearing a loud impact, after which Ripley yelped and began limping towards him. Mr. Wong

says when Ripley got close to him, he could see he was bleeding a lot from a wound on his right side.

13. Ms. Brooks says both dogs were far away from their owners and Mr. Wong did not see the altercation. She suggests Ripley may have nipped Leia, causing Leia to retaliate. However, Ms. Brooks admits she did not see exactly what happened. I find her speculation about a possible nip insufficient to prove it occurred. So, I find her allegation of provocation unproven.
14. Whatever the cause, the parties agree Leia bit Ripley. They also agree Mr. Wong had to take Ripley to the veterinarian for treatment for his injuries, and Ms. Brooks paid the initial \$1,489.49 bill for Ripley's care. Mr. Wong alleges when Ms. Brooks attended the animal hospital to pay the bill, staff explained the nature of the treatment and that the expenses were not all-inclusive as follow-up treatment and medications might be necessary. More on Ms. Brooks' position below.
15. After several days, Mr. Wong says he noticed Ripley's drainage tube discharging fluid and the wound site smelling bad. He took Ripley back to the animal hospital where he says he was told Ripley had developed an infection. Mr. Wong says the veterinarian told him Ripley needed surgery or the infection would spread and Ripley would die. Mr. Wong authorized and paid for the surgery, as well as for follow up care and medications, after Ms. Brooks refused to pay. He says he attempted to follow up with Ms. Brooks for payment later, but he was unable to make further contact with her.

Must Ms. Brooks reimburse Mr. Wong for his veterinary bills?

16. There are 3 ways a dog owner may be liable for their dog's actions in British Columbia: a) occupier's liability under the *Occupier's Liability Act*, b) the legal concept known as "scienter", and c) negligence. The incident did not occur on property owned or controlled by Ms. Brooks, so I find occupier's liability does not apply here. Scienter is when a dog has previously shown a tendency to cause the type of harm that happened and the dog's owner knew of that tendency (see *Janota-Bzowska v. Lewis*,

1997 CanLII 3258 (BCCA)). There is no evidence Leia had previously attacked or shown aggression towards another dog, so I find scienter also does not apply. I make no finding about whether huskies are a dominant or aggressive breed as Mr. Wong alleges.

17. I turn to negligence. To succeed, Mr. Wong must show Ms. Brooks owed a duty of care, failed to meet the expected standard of care, and the failure caused reasonably foreseeable damage. In *Martin v. Lowe*, 1980 CanLII 546 (BCSC), the court said a dog owner has a duty to ensure their dog is sufficiently under control so that it will not escape to injure someone or damage their property. In that case, an unleashed dog knocked down a person on a sidewalk, causing injury.
18. I find the same duty of care applies here, and that Ms. Brooks owed Mr. Wong a duty of care to reasonably control Leia and prevent attacks on other animals. Here, the dogs were allowed off leash in the park but had to remain under control further to the municipality's dog control bylaw. Ms. Brooks admits Leia was far enough away from her that she could not see exactly what happened with Ripley. I find that by allowing Leia to get far enough away from her that she could not see what Leia was doing, Ms. Brooks did not take steps to maintain reasonable control of her. I find Ms. Brooks should have called Leia back given that she says Leia was far away from her. There is no evidence she did so. So, I find Ms. Brooks failed to meet the expected standard of care by allowing Leia to get far enough away from her that she could not see what Leia was doing, not calling her back, and therefore, failing to keep her under control.
19. The photos in evidence of Ripley's injuries are consistent with Mr. Wong's description of what he saw when Ripley came back to him after having been bitten by Leia. The photos show that Ripley suffered a large gash on his right side that required suturing and fitting of a drainage tube. Ms. Brooks does not dispute Leia caused the injuries in the photos. So, I find Ms. Brooks was negligent because her breach of the expected standard of care led directly to Ripley's injuries.
20. It is undisputed Ms. Brooks paid the initial \$1,489.49 veterinary bill on the day of the incident. In her submissions, Ms. Brooks says she also paid a follow up bill but she

has not provided evidence of this, such as a credit card bill or debit card receipt. So, I find Ms. Brooks only paid the initial bill.

21. As noted above, Ms. Brooks says the veterinarian told her they did not believe Mr. Wong had properly cared for Ripley after his initial treatment. So, Ms. Brooks seeks to limit any liability to the first bill. But liability in negligence extends to damage that is reasonably foreseeable. I find Ms. Brooks cannot successfully limit her liability to payment for Ripley's initial treatment only for two reasons. First, she has not provided any evidence such as a statement from the veterinarian indicating their view that Ripley's infection was caused by improper care following the initial treatment. Second, when determining whether something is reasonably foreseeable, the person alleging harm must show that the risk of the type of damage that occurred was reasonably foreseeable to the class of people who suffered the damage (see *Rankin (Rankin's Garage & Sales) v. J.J.*, 2018 SCC 19 (CanLII)). I find an infection is exactly the type of damage a dog owner could reasonably foresee arising from their dog suffering a dog bite wound.
22. Having found Ms. Brooks liable for Ripley's injuries, I find she must reimburse Mr. Wong for his reasonable veterinary bills, other than the initial \$1,489.49 bill the parties agree she already paid.
23. Mr. Wong submitted a number of paid invoices he says are for the follow up surgery Ripley had to have when the bite wound became infected, and other related medications.
24. Invoice #437265 is for the surgery. I accept the itemized descriptions in the two pages of that invoice that were provided reflect treatment and medications for Ripley's follow up surgery. This is because they do not obviously relate to any other veterinary care such as an annual examination or routine vaccinations. However, the amounts for the itemized expenses add up to \$1,386.26, and not to the \$3,454.65 invoice total. So, I cannot tell if other treatments or veterinary care that are included in the \$3,454.65 total but that do not appear in the two pages relate to Ripley's follow up surgery. Parties are told to provide all relevant evidence as part of the CRT's process and for

reasons that are unexplained, Mr. Wong failed to provide complete evidence of the claimed amount for Ripley's surgery. In these circumstances, I find Mr. Wong has only proven \$1,386.26 of this invoice was for veterinary care related to Ripley's follow up surgery. I allow \$1,386.26 for this invoice.

25. Mr. Wong submitted 4 other invoices for \$128.32, \$145.87, \$353.80, and \$177.46, which total \$805.45. I find these invoices include itemized descriptions that reflect treatment and medications which do not obviously relate to veterinary care other than that provided in connection with Ripley's bite wound. I find the amounts for itemized expenses add up to the invoice totals. So, I allow \$805.45 for these 4 invoices.
26. In total, I find Ms. Brooks must reimburse Mr. Wong \$2,191.71 for his reasonable veterinary bills.
27. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Wong is entitled to pre-judgment interest on the veterinary expenses from the invoice dates to the date of this decision. This totals \$26.57 in pre-judgment interest, calculated from each veterinary invoice date to the date of this decision.
28. 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. Since Mr. Wong was partially successful, I find he is entitled to reimbursement of half of the \$175 he paid in CRT fees, which is \$87.50. Mr. Wong claimed no dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order Ms. Brooks to pay Mr. Wong a total of \$2,305.78, broken down as follows:
- a. \$2,191.71 in damages as reimbursement for veterinary expenses,
 - b. \$26.57 in pre-judgment interest under the COIA, and
 - c. \$87.50 for CRT fees.
30. Mr. Wong is entitled to post-judgment interest, as applicable.
31. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Megan Stewart, Tribunal Member