



# Civil Resolution Tribunal

Date Issued: January 31, 2023

File: SC-2022-004550

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lee v. Javidfar*, 2023 BCCRT 85

BETWEEN:

CHAN LEE

**APPLICANT**

AND:

REZGAR JAVIDFAR

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about the purchase of a puppy.
2. The parties agree the applicant, Chan Lee, bought a puppy from the respondent, Rezgar Javidfar, in early July 2022 for \$2,300. Mr. Lee contacted Mr. Javidfar within

a day of purchasing the puppy to return it for a full refund, but Mr. Javidfar refused. Mr. Lee claims \$940 because he says Mr. Javidfar misrepresented the puppy as a purebred Yorkshire terrier. He says \$940 is the difference between the average amount he would have paid for a Yorkshire terrier cross and the amount he paid for his supposedly purebred puppy. He also claims \$523.22 for veterinary expenses he says he incurred to treat the puppy's allegedly pre-existing health issues. Mr. Lee's claims total \$1,463.22.

3. Mr. Javidfar denies any misrepresentation. He says he bought the puppy from a registered breeder and that it was purebred. Mr. Javidfar also says the parties agreed Mr. Lee could only return the puppy for a refund if it had "major health issues from birth" or because of something that happened while it was in Mr. Javidfar's possession. Mr. Javidfar claims the puppy's health issues arose from Mr. Lee feeding it homemade food. So, he says he is not responsible for expenses incurred to treat the puppy's health issues.
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.
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. 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.

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.
9. In his submissions, Mr. Lee seeks to increase the amount he claims for veterinary expenses with reference to an additional bill. Since Mr. Lee did not include this increased amount in the amended Dispute Notice which frames the claim, I find it is not properly before me and I decline to address it in my decision below.

## **ISSUES**

10. The issues in this dispute are:
  - a. Did Mr. Javidfar misrepresent the puppy as a purebred Yorkshire terrier, and if so, what is the appropriate remedy?
  - b. Did Mr. Javidfar breach the parties' agreement by not selling Mr. Lee a healthy puppy, and if so, is Mr. Lee entitled to the claimed veterinary expenses?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Mr. Lee must prove his claims on a balance of probabilities (meaning "more likely than not"). 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 Mr. Javidfar did not submit any documentary evidence, despite having the opportunity to do so.
12. Mr. Javidfar posted an advertisement on Kijiji for "Yorkie/Pure Breed Toy" puppies that were "cute, active and healthy." The parties exchanged text messages and

arranged for Mr. Lee to come and look at the puppies Mr. Javidfar had left on July 2, 2022. After the visit, Mr. Lee texted Mr. Javidfar and asked if the puppy he was interested in was “pure bred yorkie”. Mr. Javidfar confirmed that it was “100% pure breed.” Mr. Lee then purchased the puppy on July 3, 2022 for \$2,300. None of this is disputed. In the absence of a written contract and based on Mr. Javidfar’s advertisement and the text messages between the parties, I find Mr. Javidfar agreed to sell Mr. Lee a healthy, purebred Yorkshire terrier puppy for \$2,300.

***Did Mr. Javidfar misrepresent the puppy as a purebred Yorkshire terrier, and if so, what is the appropriate remedy?***

13. Misrepresentation is when a seller makes a false statement of fact during negotiations or in an advertisement that has the effect of inducing a reasonable person to enter the contract (see *O’Shaughnessy v. Sidhu*, 2016 BCPC 308). Mr. Lee makes three arguments in support of his allegation that Mr. Javidfar misrepresented the puppy as a purebred Yorkshire terrier.
14. First, he points to a July 5, 2022 veterinarian’s invoice he submitted as proof the puppy Mr. Javidfar sold him was not purebred. The invoice records the puppy’s breed as “Terrier, Yorkie X”. Mr. Lee also submitted a copy of the puppy’s June 8, 2022 health certificate signed by a different veterinarian, which records the puppy’s breed as “Terrier, Yorkshire”. I find this veterinarian’s failure indicate the puppy was a cross or a mix weighs in favour of concluding that they identified it simply as a Yorkshire terrier – that is, purebred. I find that if this veterinarian had thought the puppy was a cross or a mix, they could easily have recorded this on the health certificate. So, I am left with an evidentiary tie as to the two veterinarians’ differing opinions about whether the puppy was purebred.
15. Second, Mr. Lee relies on an email response from the Canadian Kennel Club (CKC) confirming it has no records of a member by Mr. Javidfar’s name. The CKC is an association authorized to determine whether a dog is purebred under the *Animal Pedigree Act* (R.S.C. 1985, c.8 (4<sup>th</sup> Supp.)). The CKC bylaws say purebred dogs must be registered or eligible to be registered with the CKC. However, as the CKC does

not limit registration of purebred dogs to members only, I am unpersuaded Mr. Javidfar's lack of membership is sufficient to prove the puppy was not a purebred Yorkshire terrier.

16. Third, Mr. Lee alleges Mr. Javidfar falsely advertised himself as a registered breeder to bolster his claim the puppy was purebred. The screenshot Mr. Lee submitted in support of this argument does not include Mr. Javidfar's name, screen name or any other information identifying Mr. Javidfar as the seller. The screenshot includes an identification number that does not appear in the advertisement in evidence. Mr. Javidfar denies he said he was a registered breeder, and there is no evidence in the text messages exchanged by the parties that Mr. Javidfar indicated he was a registered breeder. In short, I find there is no evidence Mr. Javidfar held himself out as a registered breeder at all.

17. In these circumstances, I find Mr. Lee has not proven it is more likely than not Mr. Javidfar made a false statement of fact when he said the puppy was purebred. So, I dismiss this aspect of Mr. Lee's claim.

***Did Mr. Javidfar breach the parties' agreement by not selling Mr. Lee a healthy puppy, and if so, is Mr. Lee entitled to the claimed veterinary expenses?***

18. As explained above, I find the parties' agreement includes a requirement that the puppy be healthy. Text messages between the parties show Mr. Lee began raising concerns with Mr. Javidfar about the puppy's health 3 days after purchasing it. He submitted invoices from his veterinarian beginning July 5, 2022. The July 5, 2022 invoice records the reason for the visit as "softer stool" and includes prescribed probiotics and special food. On July 6, 2022, the veterinarian recommended a comprehensive stool test and prescribed antibiotics. On July 9, 2022, the test results indicated the puppy had tested positive for giardia, canine circovirus and campylobacter, which are parasitic, viral and bacterial infections. The veterinarian prescribed additional medication to treat these infections.

19. Mr. Lee says this shows Mr. Javidfar did not sell him a healthy puppy. He asserts a healthy puppy would not test positive for such infections and require prescribed gastrointestinal food, probiotics, antibiotics and dewormer within 2 days of purchase. I agree. Although Mr. Lee did not submit a statement from the veterinarian as to their opinion about when the puppy may have contracted the infections, I find it more likely than not that at least 1 of the 3 infections was present before Mr. Lee bought the puppy. I note the puppy's June 8, 2022 health certificate indicates it was "normal" in all areas examined. However, that certificate pre-dates the purchase date by 3 ½ weeks, in which time I find the puppy could reasonably have contracted the infections. I find it is more likely that the puppy contracted 1 or more of the infections in the 3 ½ weeks between his June 8, 2022 examination and the purchase date, than in the 3 days between the purchase date and the date of the tested stool sample. So, I find Mr. Javidfar breached the parties' agreement by not selling Mr. Lee a healthy puppy.
20. Based on my conclusion that Mr. Javidfar breached the agreement, I find I do not have to decide Mr. Lee's additional allegation that Mr. Javidfar misrepresented the puppy as a healthy dog.
21. Mr. Lee claims \$523.22 for the veterinary bills he says he had to incur because Mr. Javidfar did not sell him a healthy puppy. Mr. Javidfar does not dispute the amount. However, based on the veterinarian's invoices, I find that one of the claimed consultations was to examine bumps on the puppy's neck on July 21, 2022. I find that examination was not obviously performed in connection with the health concerns Mr. Lee raised about the puppy within a few days of its purchase. So, I find it unproven that that examination related to health issues the puppy had before Mr. Lee bought it, and I deduct \$89.25 from the claimed amount for the July 21, 2022 consultation. That leaves \$433.97 for the remaining veterinary bills, which I find Mr. Lee incurred to treat his puppy for the infections named above. I find Mr. Lee is entitled to \$433.97 in damages for Mr. Javidfar's breach of the parties' agreement.
22. The *Court Order Interest Act* applies to the CRT. I find Mr. Lee is entitled to pre-judgment interest on the veterinary expenses from the invoice dates to the date of

this decision. This totals \$5.23 in pre-judgment interest, calculated from each veterinary invoice date to the date of this decision.

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. Since Mr. Lee was partially successful, I find he is entitled to reimbursement of half of the \$125 he paid in CRT fees, which is \$62.50. Mr. Lee did not claim dispute-related expenses.

## **ORDERS**

24. Within 30 days of the date of this order, I order Mr. Javidfar to pay Mr. Lee a total of \$501.70, broken down as follows:
- a. \$433.97 in damages as reimbursement for veterinary expenses,
  - b. \$5.23 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 for CRT fees.
25. Mr. Lee is entitled to post-judgment interest, as applicable.
26. I dismiss the rest of Mr. Lee's claims.
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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Megan Stewart, Tribunal Member