



Civil Resolution Tribunal

Date Issued: July 14, 2023

File: SC-2022-006523

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lancaster v. Dreger*, 2023 BCCRT 591

BETWEEN:

KORI LANCASTER

APPLICANT

AND:

COLINDA DREGER and CRISTOPHER LINDSTROM

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about 2 cats named Vagrant and Nicholas Cage (Nicholas).

2. The applicant, Kori Lancaster¹, says the respondents, Colinda Dreger and Cristopher Lindstrom, removed Vagrant and Nicholas from the applicant's condo without consent around May 30, 2022. The applicant only seeks the cats' return and values their return at \$5,000.
3. The respondents say the applicant abandoned Vagrant and Nicholas when the respondents moved into the applicant's condo and the applicant moved to a different city in BC. The respondents say they looked after the cats for 5 years, including paying for their food, litter, and vet bills before the applicant sought the cats' return. The respondents say this means the cats no longer belong to the applicant. I infer the respondents claim ownership of the cats.
4. The parties are all self-represented.

JURISDICTION AND PROCEDURE

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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. Some of the evidence in this dispute amounts to a "they said, they 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

¹ The CRT has a policy to use inclusive language. As part of that commitment, the CRT asks parties to identify their pronouns and forms of address to ensure the CRT respectfully addresses them throughout the process, including in published decisions. The applicant Kori Lancaster has indicated the pronoun "oostóyi" and has not provided a title. However, it is unclear to me whether oostóyi can be used for all third person personal and possessive pronouns. So, without meaning any disrespect, I have referred to Kori Lancaster as the applicant, and on the occasions I have needed to use pronouns for Kori Lancaster, I have used "they/them/theirs". The respondent Colinda Dreger indicated their title is "Ms." and the respondent Cristopher Lindstrom indicated their title is "Mr.", so I have addressed them accordingly.

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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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 submissions, the applicant requests non-contractual interest on \$34,658.78 worth of "credits" applied to the respondents' rent over the course of their tenancy, if I do not order the cats' return to the applicant. The applicant did not claim this in the Dispute Notice. The purpose of the Dispute Notice is to define the issues and provide fair notice to the respondents of the claims against them. So, I find the applicant's assertion they applied credits to the respondents' rent and are owed non-contractual interest on the credited amount is not properly before me, and I decline to consider it in this decision.

ISSUE

10. The issue in this dispute is whether the respondents must return Vagrant and Nicholas to the applicant.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Kori Lancaster must prove their 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 I find necessary to explain my decision. Apart from the Dispute Response, Mr. Lindstrom did not submit any written arguments in this dispute, and Ms. Dredger did not submit any documentary evidence.
12. It is undisputed that the respondents moved into the applicant’s condo around March 2017. There is no written rental agreement in evidence.
13. The applicant says the parties had a shared living arrangement and were roommates, since the applicant continued to use the condo as a primary and mailing address and would stay in the condo multiple times a year after the respondents moved in. In contrast, the respondents say the applicant moved out of the condo leaving the cats, and only came to visit about 4 or 5 times a year.
14. Around April 7, 2022, the applicant undisputedly gave the respondents notice to terminate the rental agreement so the applicant could occupy the condo following a move back to the city. Given this, I find the parties did not have a shared living arrangement, but rather that the respondents rented the condo from the applicant, and the applicant visited from time to time. I find this is relevant to my decision about whether the applicant abandoned Vagrant and Nicholas, as discussed below.
15. Around June 1, 2022 the parties met at the condo, where the applicant discovered the respondents had removed Vagrant and Nicholas from the property and taken them to the respondents’ new residence. The respondents refused to return the cats, claiming they no longer belonged to the applicant.
16. At law, pets are considered personal property (see *Brown v. Larochelle*, 2017 BCPC 115 and *Henderson v. Henderson*, 2016 SKQB 282). Previous CRT decisions have dealt with pet ownership in the context of abandonment, where tribunal members considered whether the respondent’s refusal to return a pet was wrongful in

circumstances where the applicant had allegedly abandoned it (see, for example, *Andersen v. Andersen*, 2021 BCCRT 85. *Wilkinson v. Muller*, 2020 BCCRT 1270, and *Montgomery v. Speed*, 2019 BCCRT 458). In those cases, tribunal members found the applicant's claim to the pet was generally grounded in the tort of conversion or what is known in law as detinue. While previous CRT decisions are not binding on me, I find this analysis persuasive and apply it here.

17. The tort of conversion involves wrongfully holding on to another person's property and claiming title or ownership of that property. Detinue refers to continuous wrongful detention of personal property, with the general remedy being the return of the asset or market value damages (see *Li v. Li*, 2017 BCSC 1312). For the purposes of this decision, nothing turns on the difference.

18. The law is clear that the applicant must show:

- a. The respondents committed a wrongful act involving Vagrant and Nicholas, inconsistent with the applicant's rights to them,
- b. The act involved handling, disposing of, or destroying Vagrant and Nicholas, and
- c. The act had the effect or intention of interfering with or denying the applicant's right or title to Vagrant and Nicholas.

19. Here, I find the focus is on whether the respondents' refusal to return Vagrant and Nicholas, on the basis the applicant abandoned them, was wrongful. I find that if the applicant abandoned the cats, the respondents are not liable for the tort of conversion (see *Bangle v. Lafreniere*, 2012 BCSC 256). As set out in *Bangle*, if the applicant abandoned the cats, the respondents' continued possession of them is not conversion because in so doing, the respondents were not interfering with the applicant's right of possession. In other words, if the applicant abandoned the cats, the respondents do not have to return them to the applicant.

20. In using the word “abandonment”, I do not need to find the applicant was heartless or negligent in handling the cats. I accept the parties all care about Vagrant and Nicholas. Rather, abandonment is a legal term that may apply to the applicant’s decision to leave the cats in the respondents’ care for a prolonged period.
21. The applicant undisputedly rescued the cats as kittens and cared and provided for them prior to any involvement by the respondents. So, I find the applicant owned the cats until at least March 2017 when the respondents moved into the condo.
22. However, Ms. Dreger says the applicant could not take the cats upon moving out of the condo and asked her and Mr. Lindstrom to keep them. I refer to this as the parties’ verbal arrangement below. She says she and Mr. Lindstrom covered the cats’ expenses for 5 years after the applicant left them, which the applicant does not deny. So, Ms. Dreger says the cats no longer belong to the applicant. Ms. Dreger also says the applicant asked that 1 of the cats be returned about a year after the respondents moved into the condo but accepted it when Ms. Dreger said “no”. Ms. Dreger says the fact that the applicant asked for the cat’s return and accepted it when Ms. Dreger declined the request proves the cat no longer belonged to the applicant.
23. Mr. Lindstrom agrees that the applicant abandoned the cats, and says the respondents covered annual expenses of between \$2,200 and \$2,500 which the applicant does not dispute. Mr. Lindstrom also says the applicant never offered the respondents compensation for these expenses. Mr. Lindstrom says the applicant had “ample opportunity” to take the cats when visiting the condo but “never even asked.”
24. I turn to the applicant’s position. The applicant says that though the respondents cared for the cats while they lived in the condo, the respondents were never given the cats under the verbal arrangement. Even if that is the case, I find nothing turns on it based on the abandonment analysis.
25. While the applicant does not explicitly say so, I infer they also deny abandoning the cats. Yet, the applicant does not say the verbal arrangement was time-limited or contingent on an event happening, which I find suggests it was indefinite. In answer

to the respondents' allegation the applicant never reimbursed them for expenses they incurred while the cats were in their care, the applicant says the respondents never asked to be paid back. Even if that is the case, I find a reasonable and responsible pet owner would consider the expense of pet care and maintenance, and at least raise it with any person with whom they left their pet, rather than wait for that person to request compensation for these costs, particularly where the pet owner's absence may be a long one. There is no evidence the applicant did this at any point over the 5 years the cats were with the respondents in the condo.

26. The applicant does not dispute that they accepted Ms. Dreger's "no" when they requested the return of 1 of the cats, or that they never even asked for the cats back, as Mr. Lindstrom says. Instead, the applicant says there was a power imbalance given the respondents' unrestricted physical access to the cats, which restricted the applicant's ability to assert a claim to Vagrant and Nicholas. I find the fact that the applicant was present in the condo they owned several times a year lessened any such imbalance. Overall, I find the applicant made no genuine effort to seek the cats' return until moving back to the condo in May or June 2022.
27. The applicant also relies on licences they say they purchased for the cats and on the fact that Vagrant and Nicholas are registered at a veterinary clinic with the applicant as the registered owner. However, the paid licences are for 2023 and the veterinarian's patient records date from July 11, 2022. These dates are after the dispute between the parties arose. The applicant provided no evidence of cat licences, patient records, or other documentation that predates the dispute and establishes the applicant had control over the cats, bore the burden of their care and comfort, and paid for their upkeep while the respondents lived in the condo.
28. Finally, the applicant raises the cultural and spiritual significance of animals within Indigenous communities, and notes the profound impact that separation from Vagrant and Nicholas has had on their emotional well-being and sense of connection to their heritage. I acknowledge and respect the applicant's views, feelings, and lived

experience. However, I find these considerations do not directly affect the applicant's ownership claim to Vagrant and Nicholas.

29. I have found the applicant was the cats' owner until March 2017. After that, the applicant left Vagrant and Nicholas with the respondents for over 5 years, moved to a different city and only saw the cats a few times a year, and did not contribute to the cats' care and maintenance expenses. On balance, I find that the applicant abandoned the cats. I dismiss the applicant's claim for the cats' return.
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. The applicant was unsuccessful, so I dismiss their claim for CRT fees. The respondents were successful, but did not pay fees, and neither party claimed dispute-related expenses.

ORDER

31. I dismiss the applicant's claims and this dispute.

Megan Stewart, Tribunal Member