



Civil Resolution Tribunal

Date Issued: August 25, 2023

File: SC-2022-008359

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Maruschak v. Berry*, 2023 BCCRT 731

BETWEEN:

MIRANDA DAWN MARUSCHAK

APPLICANT

AND:

JONATHAN BERRY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a dog attack. The applicant, Miranda Dawn Maruschak, says her cat, Tazz, was attacked by 2 dogs, Rigsby and Gus, which resulted in Tazz being euthanized. She says the respondent, Jonathan Berry, owns Rigsby and was responsible for Gus at the time of the attack. Ms. Maruschak claims \$1,196.77 in damages as reimbursement for veterinary bills.

2. Mr. Berry says only Gus attacked Tazz, and he is not responsible to cover the veterinary bills because he is not Gus's owner.
3. The parties are each self-represented.

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.
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.

ISSUES

8. The issues in this dispute are:
 - a. Is Mr. Berry responsible for the attack?
 - b. If yes, is Ms. Maruschak entitled to the claimed \$1,196.77 in damages?

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, Ms. Maruschak, as the applicant, must prove her claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
10. It is undisputed that Tazz was attacked on August 7, 2022. Ms. Maruschak says Tazz was first attacked on a patio, and then attacked again a second time in the yard. Mr. Berry does not dispute this. It is undisputed that Gus attacked Tazz. However, the parties dispute whether Tazz was also attacked by Rigsby.
11. Mr. Berry is undisputedly Rigsby's owner. He says he is not responsible for Tazz's vet bills because he does not own "the dog that injured Tazz". I take from this submission that Mr. Berry argues that only Gus attacked Tazz. However, despite not being Gus's owner, I find Mr. Berry is responsible for Gus attacking Tazz. My reasons follow.
12. Ms. Maruschak also provided a statement from JO to support her claim that both dogs attacked Tazz. However, given that I find Mr. Berry is responsible for Gus attacking Tazz, I find it is unnecessary to address JO's statement or make a finding about whether Rigsby also attacked Tazz.

Is Mr. Berry responsible for the attack?

13. Ms. Maruschak says Gus is owned by LB, another tenant in the building she lives in. LB is not a party to this dispute. Ms. Maruschak says LB gave Mr. Berry possession

and responsibility for Gus while LB was away, and gave Mr. Berry access to LB's unit in the building to let Gus out. Ms. Maruschak says that before the attack, Mr. Berry came over to the property with Rigsby to let Gus out. Mr. Berry does not dispute any of the above.

14. It is undisputed that LB was away when the attack occurred. Ms. Maruschak provided text messages between Ms. Maruschak and LB where LB said they always kept Gus leashed, and never left Gus unattended off-leash in the yard. LB said they always kept Gus leashed "out of respect and as a precaution", and had told Mr. Berry to keep Gus on a leash. Mr. Berry did not dispute this evidence. So, I find LB had specifically advised Mr. Berry to keep Gus on a leash. Ms. Maruschak provided video evidence of part of the attack that I find clearly shows that neither Gus nor Rigsby were leashed when Tazz was attacked. I find the video also shows both dogs were unattended outside. Although Mr. Berry says the video evidence does not show the "actual truth of what happened", I find the video clearly shows that both Gus and Rigsby were left unattended, and off-leash outside, both on a patio and in what appears to be a shared yard, which was unfenced. I also find the video shows some interaction between one dog and a cat on a patio, with a second dog running over during the interaction. However, I find the video does not show that either dog actually attacked Tazz on the patio. The video then shows one dog running down into the yard, followed shortly by a second dog. The second attack in the yard was not captured on video. However, both parties say that Gus attacked Tazz in the yard, and I accept Gus did so. Notably, Mr. Berry does not explain what the "actual truth of what happened" is.
15. In BC there are currently 3 ways for a pet owner to be held legally responsible for the action of their pet: a) occupier's liability, b) the legal maxim known as 'scienter' (explained below), and c) negligence. In some cases, these may also apply to people looking after someone else's pet.
16. Occupier's liability is where damage happens on property controlled by the occupier. I find occupier's liability is not relevant here, because Mr. Berry was undisputedly visiting the premises when the attack occurred.

17. Scienter means knowledge of the animal's poor behaviour or propensity to be aggressive. For scienter to apply, Ms. Maruschak must prove that at the time of the attack:
- a. Mr. Berry was the dog's owner (or keeper),
 - b. The dog had manifested a propensity or tendency to cause the type of harm that happened, and
 - c. Mr. Berry knew of that propensity. See *Xu v. Chen & Yates*, 2008 BCPC 0234, citing *Janota-Bzowska v. Lewis* [1997] B.C.J. No. 2053 (BCCA).
18. As noted, Mr. Berry does not own Gus. However, at time of the attack on Tazz, I find Mr. Berry was Gus's "keeper", as referenced in the scienter case law. In other words, at the time of the attack Mr. Berry held the role of "owner", in place of LB. This is because I find the evidence shows Mr. Berry had taken responsibility for Gus in Gus's owner's absence. My conclusion that Mr. Berry was Gus's "keeper" at the material time, and akin to the dog's owner, is supported by the decision in *McLean v. Thompsons*, 2009 BCPC 415. However, Ms. Maruschak did not provide any evidence that Gus was aggressive or had previously attacked Tazz or any other cats, or that Mr. Berry knew or ought to have known that Gus would engage in aggressive behaviour or try to attack Tazz or other cats. So, I find Ms. Maruschak has failed to prove scienter against Mr. Berry.
19. I now turn to negligence. To succeed, Ms. Maruschak must show that Mr. Berry owed a duty of care, failed to meet the expected standard of care, and that the failure caused the claimed damages that must have been reasonably foreseeable. I find Mr. Berry, as the person responsible to control and care for Gus in LB's absence, owed Ms. Maruschak a duty of care at the time of the attack. I find the reasonable standard of care was to have sufficient control of Gus in the circumstances.
20. As noted, Mr. Berry was undisputedly told by Gus's owner, LB, to keep Gus leashed outside. Contrary to LB's instructions, I find Mr. Berry left Gus unattended and unleashed outside. I find Mr. Berry knew or ought to have known that LB instructed

him to keep Gus leashed in order to ensure sufficient control of Gus on the shared property. I find it was reasonably foreseeable that in failing to do so, Gus could move about unrestrained and attack other animals on the shared property, causing damage. So, I find Mr. Berry breached the standard of care required. I find Mr. Berry was negligent in failing to keep Gus leashed in the circumstances, and that failure resulted in Gus attacking Tazz, which ultimately resulted in Tazz being euthanized. I now turn to assess damages.

Is Ms. Maruschak entitled to the claimed \$1,196.77 in damages?

21. As noted, Ms. Maruschak claims reimbursement \$1,196.77 in damages for Tazz's veterinary bill. As I have found Mr. Berry is responsible for Tazz's injuries, I find he must reimburse Ms. Maruschak for reasonable veterinary bills.
22. It is undisputed that Tazz was euthanized On August 8, 2022 as a result of her injuries from the attack. This is supported by a veterinary record in evidence. An August 8, 2022 invoice from Fairfield Animal Hospital Ltd. charged Ms. Maruschak a total of \$1,196.77 for Tazz's emergency care on August 7 and 8, 2022, as well as the costs associated with euthanizing and cremating Tazz on August 8, 2022. I find all these charges were reasonably incurred as a result of the attack. So, I find Mr. Berry must pay Ms. Maruschak \$1,196.77 for Tazz's veterinary bill.

Interest, CRT fees and expenses

23. The *Court Order Interest Act* applies to the CRT. Ms. Maruschak is entitled to pre-judgment interest on the \$1,196.77 damages award from August 8, 2022, the day the vet bill was issued, to the date of this decision. This equals \$43.64.
24. 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 Ms. Maruschak was successful, I find she is entitled to reimbursement of \$125 in paid CRT fees. Neither party claimed dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order Mr. Berry to pay Ms. Maruschak a total of \$1,365.41, broken down as follows:
- a. \$1,196.77 in damages,
 - b. \$43.64 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
26. Ms. Maruschak is entitled to post-judgment interest, as applicable.
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.

Leah Volkers, Tribunal Member