



Civil Resolution Tribunal

Date Issued: November 24, 2023

File: SC-2023-001460

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Strongwind v. Namura*, 2023 BCCRT 1019

BETWEEN:

KATHERINE STRONGWIND

APPLICANT

AND:

COREY NAMURA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about the sale or adoption of a dog. The applicant, Katherine Strongwind, purchased the dog from the respondent, Corey Namura. The applicant says that the respondent advertised the dog as “good with other dogs”. The applicant alleges that contrary to this, the dog attacked other dogs. She also says 2 trainers

found the dog to be both unfit for training and unfriendly to other dogs. The applicant says she returned the dog and now claims \$800 as a full refund of the adoption fee.

2. The respondent denies liability. They say that they did not experience the alleged aggression. They say the dog's behaviour may have been due to other factors, including improper training or conduct by the applicant.
3. The parties are self-represented.
4. For the reasons that follow, I find the applicant has proven her claims.

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.
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 the respondent breached a contract term, and if so, what remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities. This means 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.
11. An August 2022 animal clinic invoice shows that the respondent and another third party, D, previously owned the dog. In late 2022, the respondent advertised the dog for sale or adoption online. Screenshots show the respondent described the dog as a Staffordshire Bull Terrier that was good in a home with other dogs, and "good with other dogs with an introduction".
12. Photos and text messages between the parties show that the applicant adopted and received the dog in early December 2022. The parties proceeded informally without a written contract. It is undisputed that the applicant paid the requested fee of \$800.
13. I find that the applicant likely contracted with both the respondent and D. This is because 1) D undisputedly co-owned the dog, 2) the applicant frequently texted both the respondent and D after the purchase, and 3) both the respondent and D subsequently coordinated together to retrieve the dog, as discussed below.
14. The applicant reports that after purchase, the dog was hostile to other dogs. She says it attacked another dog at the dog park, and her family member's dog during a visit. The respondent also says that 2 dog trainers, E and M, both found the dog aggressive and difficult or impossible to train. The respondent disagrees that the dog's temperament was responsible for these attacks. For the reasons discussed below, I find I need not make any findings about the dog's temperament.

15. The applicant complained to D in text messages about the dog. Around February 2023, D texted “we want you to give us” the dog, “then we can give you your fee back”. D said the respondent could pick up the dog. In another text message, D said the respondent wanted to pick up the dog. D added, “If you can make arrangements, we are willing to refund your adoption fee”.
16. The applicant texted both D and the respondent to arrange for a pickup time. It is undisputed that the applicant returned the dog to the respondent in February 2023. The applicant mentioned to the respondent that she wanted a refund at the time. The respondent did not comment on this in the messages.
17. I find it clear from the above that the applicant entered into a new contract with the respondent and D. For a contract to exist, the parties must agree to all the essential terms of a contract. These can include price and scope of work, or tasks to be done. Contracts do not need to be written or signed to be enforceable. However, it can be more difficult to prove a verbal agreement’s terms. Whether there is an enforceable contract involves an objective test based on what a reasonable person in the parties’ situation would have believed and understood, rather than on the parties’ subjective beliefs. The contract’s essential terms must be sufficiently clear, and the party seeking to rely on the contract must show there was a matching offer and acceptance of those terms. See *Ratanshi v. Brar Natural Flour Milling (B.C.) Inc.*, 2021 BCSC 2216 at paragraphs 66 to 69.
18. I find the parties documented their contract in the text messages. I find the essential terms were clear. The applicant would return the dog and the respondent and D would return the adoption fee of \$800. I find that, from an objective viewpoint, the respondent knew and agreed to the terms. This is because the respondent clearly coordinated with D to retrieve the dog and did not object to the refund when the applicant brought the subject up in the text messages.
19. I find that under this new contract, the dog’s temperament was irrelevant. The applicant returned the dog, and it is undisputed that no one provided any refund. So,

I find the respondent and D breached the contract. As only the respondent is a party to this dispute, I order the respondent to pay the applicant \$800 in debt.

20. The respondent says a refund is not warranted because 1) the applicant returned the dog overweight, 2) the dog had to be retrained, and 3) they had to incur additional costs.
21. The only evidence about the dog's weight are 2 comparison photos. I find them insufficient to prove the dog gained an unhealthy or unreasonable amount of weight. There is no indication that the applicant agreed to pay any retraining or other costs, and in any event, there is no evidence about those costs, such as invoices or receipts. The respondent provided a veterinarian invoice, as noted earlier. To the extent that the respondent claims reimbursement for it as a setoff, I find the applicant is not responsible for it. The respondent and D incurred this cost in August 2022, well before the applicant adopted the dog.
22. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the debt of \$800 from March 1, 2023, the approximate date of the breach, to the date of this decision. This equals \$27.85.
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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in CRT fees.

ORDERS

24. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$952.85, broken down as follows:
 - a. \$800 in debt,
 - b. \$27.85 in pre-judgment interest under the Court Order Interest Act, and
 - c. \$125 in CRT fees.

25. The applicant is entitled to post-judgment interest, as applicable.

26. 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.

David Jiang, Tribunal Member