



Civil Resolution Tribunal

Date Issued: March 6, 2024

File: SC-2023-000632

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ellis v. Armich*, 2024 BCCRT XXX

BETWEEN:

SHELLEY ELLIS

APPLICANT

AND:

TERESA ARMICH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about the purchase of a puppy.
2. The applicant, Shelley Ellis, bought a puppy from the respondent, Teresa Armich. The applicant says their veterinarian diagnosed the puppy with allergies, which could be a chronic health issue, so she returned the puppy to the respondent. The applicant

requests reimbursement of \$4,725.27, which includes the puppy's purchase price and all costs incurred while the applicant had the puppy.

3. The respondent says the puppy is healthy, and has no chronic health problem. She says that under the terms of the signed purchase contract, the applicant is not entitled to any refund or reimbursement of expenses.
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 under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. As the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

ISSUE

8. Must the respondent reimburse the applicant for the puppy's purchase price and puppy-related expenses?

BACKGROUND

9. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
10. For the following reasons, I find the applicant is not entitled to any reimbursement.
11. The applicant bought the puppy from the respondent on August 26, 2022, for \$3,500. The parties signed a written contract on that date. I discuss the contract's details in my reasons below.
12. The applicant says that around August 30, 2022, they noticed that the puppy had begun to itch in both ears, and was scratching, and it appeared to be getting worse.
13. The applicant says they took the puppy to the respondent's veterinarian (Coastal City Animal Hospital) for a vaccination in late August or early September 2022. The applicant says the veterinarian did not have time to fully examine the puppy.
14. An examination record in evidence from Mill Bay Veterinary Hospital (MBVH) shows that a veterinarian examined the puppy on September 27, 2022. The record documents that the veterinarian examined the puppy's heart, abdomen, and other body parts. The veterinarian recorded that the puppy had "mild bilateral lichenification" with "mild-moderate brown discharge". Ear swabs showed the presence of yeast. The veterinarian diagnosed bilateral yeast otitis externa, and noted that the puppy was "otherwise healthy".
15. The applicant emailed the respondent on September 28, 2022 and reported the itching. The applicant wrote that the veterinarian said that if the itching reoccurred within four weeks, it might be an allergy that would be a chronic, life-long issue.
16. In an October 6, 2022 email to the respondent, the applicant wrote that the scratching and itching had "started again", along with a smell. The applicant wrote that they would see the veterinarian, and if the infection had not cleared up, she thought she would have to return the puppy to the respondent "as per our contract". The applicant

wrote that they were unable to keep him if it was going to be a lifelong health issue. The respondent replied, asking the applicant to bring the puppy back as soon as possible because the respondent wanted to make an appointment with her own veterinarian to “get to the bottom of the problem.”

17. Records show that a veterinarian from MBVH examined the puppy again on October 11, 2022. The examination record says that ear medication had “worked wonders” for the first seven days, but then the symptoms returned 1.5 days after stopping, and the medication did not work for the second course. The veterinarian did another ear swab test, and confirmed yeast in both ears. The veterinarian diagnosed persistent yeast otitis in the right ear. The veterinarian cleaned the ears, and prescribed medication. According to the veterinarian’s notes, they discussed ear treatment, and the veterinarian demonstrated how to apply the medication.
18. The applicant emailed the respondent again on October 12, 2022. The applicant said they would continue the prescribed treatment until their next veterinary appointment on October 21. Later on the same day, the applicant emailed the respondent again stating they had decided to return the puppy. Subsequent correspondence shows the respondent agreed to take the puppy back, and has had the puppy since about October 15, 2022.

REASONS AND ANALYSIS

19. As noted above, the parties signed a written contract when the applicant bought the puppy on August 26, 2022. The copy of the contract in evidence has three pages.
20. The applicant says she was not given an opportunity to read the contract before signing it. In general, when a person signs a contract, they are bound by its terms, even they may not have read or understood the contract. Also, I find the applicant has not provided any evidence that the respondent or anyone else dissuaded or impeded the applicant from reading the contract before signing it.

21. Since the applicant admits signing the contract, I find it is binding. The respondent relies on contract term 5, which states as follows:

Breeder will offer a one-year health guarantee against genetic defects such as heart, lung or epilepsy. Breeder reserves the right to have the said puppy checked for said defect and condition verified by her local vet. Upon confirmation of said defect, puppy may be returned and a replacement puppy offered at the next available litter. No money will be returned.

22. The respondent says the puppy is healthy, and has no genetic or other defect.

23. There is no veterinary record or other expert evidence before me showing that the puppy's ear condition is genetic, or allergy-related, as the applicant asserts. The MBVH records show a yeast infection of the ears, but it is described as "persistent" rather than chronic or permanent. There is no mention of an allergy or a genetic problem.

24. The respondent provided records from two different veterinarians who examined the puppy in November 2022, after the applicant returned it. Both veterinarians reported that the puppy was healthy, with no medical problems. The November 3, 2022 report from Island Animal Hospital specifically states that both ears were clear, with no signs of erythema (redness) or infection.

25. No party provided the qualifications of any of the veterinarians who wrote the records in evidence. So, I find these records do not meet the CRT's requirements for expert evidence. However, since there is no contrary evidence, I find the veterinary records accurately document the puppy's condition at the time of each examination.

26. Based on the veterinary records, including those provided by the applicant, I find the applicant has not proved the puppy has a genetic defect. This is the only health condition the contract guarantees against.

27. The applicant's emails and CRT submission confirm she does not want a different puppy, which is the only remedy available under the contract in any event. There is

nothing in the contract that entitles the applicant to a refund of puppy-related expenses, such as veterinary bills. The emails in evidence show that the respondent offered to repay the applicant for two exercise pens if the applicant provided receipts. The applicant did not do so, so I find the respondent is not obligated to refund any money for the pens.

28. Even if the contract was not binding, I find the applicant would not be entitled to any refund for the puppy or related expenses. Section 18 of the *Sale of Goods Act* applies to the transaction, and imposes an implied condition that purchased goods will be fit for their intended purpose, and durable for a reasonable period.
29. While a puppy is not normally thought of as a “good”, it is legally considered a chattel (possession). I find the applicant has provided no evidence that the puppy was so unhealthy that it would not be “durable”, or fit for a normal life as a domestic pet. It is unreasonable to expect that an animal will always have perfect health. Like humans, puppies may periodically get infections. The veterinary records in evidence do not suggest any permanent or life-altering health condition. Rather, the records from MBVH simply suggest home treatment.
30. Based on the evidence before me, I find the applicant has not proved that the puppy had any condition other than a temporary yeast infection of the ears. For these reasons, I conclude that she is not entitled to any refund. In making this finding, I note that in the email correspondence arranging for the puppy’s return, the respondent did not promise any refund.
31. The respondent now has both the purchase payment and the puppy. However, the applicant has not asked for the puppy’s return. Rather, the evidence shows that the applicant did not want to keep the puppy, and asked the respondent to take it back. So, I find it reasonable that the respondent keep the puppy and the purchase payment. This is particularly true since under the contract, the only available remedy is a replacement puppy, which the applicant did not want.
32. For all these reasons, I dismiss the applicant’s claims.

33. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The respondent is the successful party. She paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

ORDER

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

Kate Campbell, Tribunal Member