



# Civil Resolution Tribunal

Date Issued: June 28, 2024

File: SC-2023-005144

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jackova v. Litt*, 2024 BCCRT 617

BETWEEN:

BIBIANA JACKOVA and MILAN JACKO

**APPLICANTS**

AND:

BRADEN LITT and AMANDA LITT

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Amanda Binnie

## INTRODUCTION

1. This dispute is about a dog bite. The applicants, Babiana Jackova and Milan Jacko, say the respondents' dog Hector bit their dog, Maci, through their fence. They claim \$725.89 for vet bills and \$66.06 for a privacy fence.

2. The respondents, Braden Litt and Amanda Litt, say the applicants' 3 dogs "rushed the fence" and Hector reacted reasonably.
3. The parties are 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 court.
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.

## **ISSUE**

8. The issue in this dispute is whether respondents are responsible for their dog Hector's attack on the applicants' dog Maci.

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants 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 that I find relevant to provide context for my decision.
10. Both parties provided character evidence about the others as part of their submissions. I find this evidence is not relevant to this dispute, and I do not rely on it in coming to my decision.
11. Both parties refer to a letter from Langley Animal Control Services, which issued an aggressive dog warning to the respondents about Hector. He was not designated an aggressive dog. While I have reviewed the file provided, I am not bound by its decision.
12. I accept that both parties care for their pets, and Maci's injuries were unfortunate.
13. The parties are generally in agreement about the events leading up to the bite. I find the following facts are undisputed:
  - a. The parties live in neighbouring strata units and had for 5 years before this incident.
  - b. Their backyards share a fence, which is maintained by the strata. At some point, the strata installed a new fence with wide gaps in the slats. The parties agree they have no control over the type or size of fence.
  - c. The respondents' dog, Hector, is a rescue dog.
  - d. The applicants have 2 dogs, and at the time of the incident were also watching their son's dog.
  - e. Maci, the dog who was bitten, is a French bulldog.

- f. Hector's breed is not mentioned, though the respondents deny he is a "hunting dog" as the applicants say.
  - g. On May 9, 2023, Ms. Litt's mother, AH, was watching her grandson and the respondents' dog Hector while the respondents worked.
  - h. Roughly midday, AH and her grandson were outside with Hector.
  - i. Some time later, Mr. Jacko let the applicants' 3 dogs into the backyard.
  - j. The applicants' dogs rushed to the fence. Both Hector and the applicants' dogs were barking.
14. The respondents do not specifically admit that Hector bit Maci, but do not seriously dispute it. In their Dispute Response, they say that as Mr. Jacko approached the fence, Hector "let go" and retreated. So, I find that Hector did bite Maci. I accept Mr. Jacko's evidence that Hector's slimmer snout meant he was able to fit his snout through the fence to bite Maci.
15. The respondents do not dispute that Maci was injured from the bite, and Mr. Litt seems to acknowledge that in his texts to the applicants. However, they raise in their submissions that AH did not initially notice Maci was injured, and disagree that Mr. Jacko was aware that Maci was injured right after the incident. To the extent that the respondents are suggesting that Maci was injured in some other way, I find there is no evidence of this. I find as a result of the incident, Maci was taken promptly to the vet, where his wound was stitched and he was treated with antibiotics. The applicants claim reimbursement for this vet car, for a total of \$725.89.
16. The respondents provided a statement from the former owner of their unit, AP. I have disregarded the portions unrelated to this dispute. It is clear AP did not have a good relationship with the applicants. AP describes the applicants' dogs as "untrained and aggressive". AP says at one point in their statement the dogs had to be walked separately, but at another says that Ms. Jackova was walking the dogs together. In

any event, I find AP's evidence does not show the applicants dogs were aggressive. So, I do not place much weight on AP's evidence.

17. I turn now to the law on liability for dog bites. In British Columbia, there are currently 3 ways for a pet owner to be liable for the action of their pet: a) occupier's liability, b) the legal concept known as "scienter" and c) negligence.
18. Section 3 of the *Occupier's Liability Act* states that an occupier must take reasonable care to ensure others on their property are reasonably safe from injury that the occupier ought to have foreseen. It is undisputed that Maci did not enter the respondents' yard and so I find that occupier's liability does not apply here.
19. I turn now to scienter, which means knowledge of the animal's poor behaviour or propensity to be aggressive. However, a BC Supreme Court decision found that as scienter is a personal injury action, it does not apply to a dog harming another animals, as animals are property (see *Garside v. Dougan*, 2022 BCSC 799, at paragraphs 61 and 68). This decision is binding on me, and I find scienter is not applicable to the applicants' claim for Maci's injuries. Even if scienter were to apply, the applicant must prove that at the time of the attack:
  - a. The respondents were the dog's owners,
  - b. The dog had manifested a propensity or tendency to cause the type of harm that happened, and
  - c. The dog's owners knew of that propensity (see *Xu v. Chen & Yates*, 2008 BCPC 0234, citing *Janota-Bzowska v. Lewis* [1997] B.C.J. No. 2053 (BCCA)).
20. There is no dispute that the respondents were Hector's owners. The difficulty for the applicants is that they have not shown Hector had the tendency to cause this harm. The respondents accept that Hector was a rescue who could be reactive. However, on the evidence of both parties, Hector had not previously bitten any of the dogs in the time they lived next door to each other.

21. While disagreeing on how it came about, both parties refer to an “agreement” to check if the other had dogs outside before letting their own out. I infer from the applicants’ submissions they believe this was because the respondents knew Hector was aggressive. The respondents deny Hector was aggressive. I find it equally likely they wanted to avoid 3 dogs rushing the fence and making Hector anxious.
22. The applicants say that Hector was “aggressive before” but that Mr. Litt was always able to control him. They do not provide further details on how Hector was aggressive. In fact, the respondents make the same unsupported complaints about the applicants’ dogs. I am unable to find, based only on the respondents’ evidence that Hector was “reactive”, that he had the tendency to cause this type of harm. So, I find the applicants have not proven scienter.
23. I turn now to negligence. The respondents have a duty of care to reasonably ensure their dog does not attack other animals or people. The evidence is that the dogs do not get along, and I infer from the submissions could be very loud. All the dogs were off leash.
24. The applicants say that the respondents left Hector with someone he “didn’t respect” and was not able to control him.
25. The respondents say AH had been watching their grandson, and presumably Hector, twice a week for two years. The respondents say AH has experience with large dogs and had no issues controlling Hector in the past. The applicants do not dispute this.
26. AH says she checked the applicants’ yard and called out before going into the yard. She says they were out for about 5 minutes before the incident, and there is no evidence Hector was anything but calm in this time. I find the incident happened very quickly, even on the applicants’ evidence. The photos show the yards are not particularly large, and I accept that this likely made things seem louder and more chaotic. I find the applicants have not proven AH had any time to react faster than she did, and do not accept their submission that she was not properly supervising Hector.

27. I turn to whether the respondents were negligent in only instructing AH to see if the applicants' dogs were in the yard before letting Hector out. By that I mean, was there anything the respondents should have done to keep Hector from reaching through the fence?
28. There is no evidence about when the new fence was installed, but the applicants refer to placing rocks underneath it when their dog was a puppy. While they do not say how old their dog is, I infer the fence had likely been in place for some time. As mentioned above, neither party had control over the choice of fence. There is no evidence that in this time Hector had ever been able to get his snout through the fence, even during previous encounters of the applicants' dogs "rushing the fence".
29. I find at the time of the incident, the respondents were not aware Hector could fit his snout through the fence, and so before this incident would not have known to take extra care or block the fence in some way. As the applicants were willing to let their dogs out off-leash despite their tendency to run to the fence, I find the applicants were similarly not aware. So, I find the respondents were not negligent in their instructions to AH.
30. Based on the above, I find the evidence does not show the respondents were negligent in letting AH supervise Hector.
31. I find the applicants have not proven a claim against the respondents in negligence. I dismiss their claim for vet bills.
32. I turn to the claim for the privacy screen. The parties agree that they do not have control over the choice of fence, which is under strata's control. The applicants had originally paced cardboard over the gaps in the fence but were ordered by strata to remove it. Though the parties disagree on how strata became aware of this, I find nothing turns on it, as cardboard was undisputedly against the rules.
33. The respondents say they never agreed to pay for a privacy screen, though AH says the applicants mentioned it to her. The applicants do not dispute this, and do not say they had any other discussions with the respondents directly about how to handle this

issue going forward. I find the applicants have not proven entitlement to a reimbursement for the privacy screen and I dismiss this claim.

34. 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. As the applicants were unsuccessful, I dismiss their claim for CRT fees. The respondents did not pay any fees. Neither party made any claims for dispute-related expenses.

## **ORDER**

35. I dismiss the applicants' claim and this dispute.

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Amanda Binnie, Tribunal Member