



# Civil Resolution Tribunal

Date Issued: June 28, 2024

File: SC-2023-004994

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *SB v. FH*, 2024 BCCRT 626

B E T W E E N :

SB

**APPLICANT**

A N D :

FH

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about a dog. The applicant, SB, says the respondent, FH, kept the dog without justification. She seeks an order for the return of the dog or payment of \$5,000 in the alternative.

2. FH denies liability. She says SB's claim is out of time. She also says SB is unfit to take care of the dog.
3. I have anonymized the parties' identities at SB's request. I explain why below.
4. For the reasons that follow, I find SB has proven her claim.

## **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 court.
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.

### ***SB's Anonymization Request***

9. SB requests that I anonymize this decision. She says she has non-party minor children. She says that the allegations in this dispute would negatively impact both her and her children.
10. FH disagrees with SB's request. She says SB should withdraw the claim. FH did not directly address SB's main arguments.
11. CRTA section 86(3) says the CRT may anonymize published decisions. The CRT's Access to Information and Privacy Policy says the CRT will anonymize a decision if a party establishes that the need for protection of personal information outweighs the goal of transparent CRT proceedings. In deciding whether to anonymize a decision, the CRT will consider: 1) the circumstances of the case and nature of the evidence provided, 2) the potential impact of disclosure on the person, and 3) how anonymization would impact the CRT's goals of transparent decision-making processes and protection of personal information.
12. There exists a presumption that tribunal proceedings should be open. However, this presumption may be rebutted by matters of important public interest. Privacy is an important public interest when it protects individuals from an "affront to a person's dignity". See the non-binding decision of *LaFreniere v. Dekock-Kruger*, 2022 BCCRT 414, citing *Sherman Estate v. Donovan*, 2021 SCC 25, at paragraph 33.
13. I find that SB's request is warranted here and agree to it. I find the allegations in this dispute are inflammatory for reasons that will become obvious below. The evidence and submissions also deal with SB's personal medical issues and disclosing them would have a potentially significant impact on SB. I also put significant weight on the fact that SB has minor children who could also be adversely impacted.

### **ISSUES**

14. The issues in this dispute are as follows:

- a. Is SB's claim out of time under the *Limitation Act*?
- b. If not, who owns the dog, and are any remedies appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

15. In a civil proceeding like this one, SB as the applicant must prove her claims on a balance of probabilities. 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.
16. A written contract shows that SB purchased the dog from a breeder in February 2018. It is undisputed that in August 2020, SB placed herself on a waitlist for inpatient drug rehabilitation. She contacted JLK, as JLK carries on business as a dog rescue. JLK is not a party to this dispute. JLK agreed to function as an intermediary to find SB a temporary foster home for the dog.
17. In September 2020, SB was hospitalized for 2 weeks. She provided the dog to her friend, NF. NF is also not a party to this dispute but provided a January 4, 2024 email statement. NF's evidence shows that he took the dog for 3 days, and with SB's permission, provided the dog to a person volunteering for JLK. It is undisputed that JLK provided the dog to FH on September 10, 2020.
18. FH alleges that SB left the dog uncared for, for 3 days, and was covered in urine and feces. I find this rebutted by NF's evidence as NF had direct contact with the dog and explained what happened for the 3 days.
19. SB also signed a September 10, 2020 "waiver of liability and declaration of intent" document with JLK. It said that JLK could assume ownership and place the pet for adoption if SB could not be reunited with the dog or could not contact JLK within a reasonable amount of time. FH was not a party to this contract.

20. JLK returned the dog after SB's hospital stay, though SB says JLK did so reluctantly. In October 2020, SB provided the dog to JLK again for safekeeping as a spot opened up at the rehabilitation facility.
21. SB returned from the facility on December 7, 2020. She began calling and texting JLK to return the dog. On December 17, 2020, JLK refused to return the dog as they said they feared for the dog's safety.
22. FH says JLK asked her to adopt the dog, and FH did so on March 9, 2021. I find this contradicted by the correspondence that I refer to directly below.
23. On October 15, 2021, SB started a claim in the BC Provincial Court against JLK. In November 2021 and December 2012 emails, JLK wrote that they had decided SB should have the dog. However, JLK said that FH had the dog and refused to return it. JLK also specifically denied that FH had adopted the dog or that FH had discussed adoption with JLK or anyone else at the rescue.

***Issue #1. Is SB's claim out of time under the Limitation Act?***

24. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is "discovered". Under section 8, a claim is discovered when the applicant knew or reasonably ought to have known that a) an injury, loss, or damage had occurred, b) that the injury, loss or damage was caused by or contributed to by an act or omission, c) that the act or omission was that of the person against whom the claim is or may be made, and d) that a court or tribunal proceeding was an appropriate means to seek a remedy. CRTA section 13.1 says the basic limitation period under the *Limitation Act* does not run after the applicant requests dispute resolution with the CRT.
25. The words "ought to have known" impose at least some obligation on SB to ascertain the identity of FH. See *Grosz v Royal Trust Corporation of Canada*, 2021 BCSC 1313 at paragraph 118.

26. FH says that SB's claim is out of time under the *Limitation Act*. She says SB discovered her claim on December 17, 2020.
27. SB says that the CRT already dealt with this issue. I inquired with CRT staff and found there was no preliminary decision on this issue. I would not be bound by such a decision in any event. SB also says she discovered her claim on November 21, 2021.
28. I find that SB discovered her claim on November 19, 2021. SB says that this was the first time she learned about FH, and that FH had the dog. I accept this was likely the case. I say this in part because when SB started her claim in the BC Provincial Court a month earlier in October 2021, she did not name FH as a defendant or show any knowledge that FH had the dog.
29. I also find that SB acted reasonably in the circumstances to discover her claim. JLK refused to return the dog on December 17, 2020. There is no indication that SB knew that FH was involved or that FH would resist a request to return the dog at that point. I find that starting the lawsuit in October 2021 was a reasonable way of obtaining FH's identity through the normal document discovery process in that court.
30. As I find SB discovered the claim on November 19, 2021, I find she had until November 19, 2023 to start a claim. She filed her application for dispute resolution on May 10, 2023, and the CRT issued a Dispute Notice on July 6, 2023. As these dates precede the deadline, I find SB's claims are in time. I consider them on the merits below.

## ***Issue #2. Who owns the dog?***

31. SB says she purchased the dog and never surrendered ownership over it. She says she can adequately care for the dog. She says that FH made outlandish allegations against her in the Dispute Response and submissions that have no basis in fact.
32. FH says she should have the dog. She says the dog has spent a longer time in her care than in the care of SB, being 3.5 and 2.5 years respectively. She also says she incurred significant veterinary costs totaling \$4,369.92. She also says SB's claim is

out of time under the terms of the September 2020 waiver document, discussed above. FH also says SB is unable to care for the dog due to her mental issues and poor financial situation. FH also took issue with the fact that SB started a proceeding against JLK and requested financial compensation in that and the CRT proceeding.

33. The law about pet ownership is aptly summarized in the non-binding decision of *Peng v. Houston*, 2024 BCCRT 505 at paragraphs 16 to 18. As stated there, courts have recognized the unique place pets occupy in peoples' lives. That said, pets are legally considered personal property, and the principles of property law generally apply to pet ownership.
34. In *Alamaas v. Wheeler*, 2020 BCPC 51, the court reviewed the law governing competing pet ownership claims. The court found factors to consider in determining ownership include who bought and selected the pet, whether it was bought as a gift, who attended its veterinary appointments, who paid for the pet's needs, who licensed it, and how the parties viewed ownership. Other factors courts have considered include who bore the burden of the pet's care and comfort, agreements about ownership when the pet was acquired or after, and what happened to the pet after the parties' relationship changed. See *MacDonald v. Pearl*, 2017 NSSM 5. This list is not exhaustive, and no single factor is necessarily sufficient to establish ownership. Courts have also increasingly considered animal welfare and the animal's needs in considering ownership claims. See *Atwal, and Munce v. Livingston*, 2022 BCPC 108).
35. I find it clear that SB owns the dog. As noted above, SB provided documentation to prove that she purchased the dog from a breeder in February 2018. The September 2020 document confirms that SB provided the dog to JLK for safekeeping rather than as a gift.
36. Further, this was not a situation where SB and FH ever shared custody of the dog. So, I put significant weight on SB's role as the original purchaser of the dog. FH's submissions and text messages to JLK also show she knew about SB and that SB might have a competing ownership claim. I find this was not a situation where FH adopted or purchased the dog without knowledge of this.

37. FH says that under the September 2020 document, SB took too long to take back her dog. I find that FH is unable to rely on this contract term. This is because it said that JLK could assume ownership and place the pet for adoption. FH is not a party to the contract and cannot rely on its terms. Further, JLK's evidence is that JLK did not assume ownership and never placed the dog for adoption. In addition to the emails mentioned above, in a March 9, 2021 text message, JLK specifically told FH, "We are not doing an adoption" and there would be "no fee". JLK's messages show that she was interested in hiding the dog from SB for a time, but I do not find this enough to show JLK assumed ownership over the dog before adopting it out.
38. My decision is primarily based on the factors discussed above. However, I will briefly discuss the dog's best interests below as the parties' submissions focused on them.
39. FH points out that she spent \$4,369.92 on veterinary costs and had the dog for more than 3 years. I put less emphasis on these factors because both JLK and FH refused to help return the dog to SB. I find this naturally decreased the amount of time SB could spend with the dog, and any veterinary costs that would arise.
40. FH also says SB lacks funds to take care of the dog. SB denies being "broke" and says she recently purchased a home. There is little evidence about SB's finances. JLK alleged in a text message that SB was homeless in a June 2021 text message to FH. SB denies this, and I do not find the message to be particularly reliable evidence. I find it unproven that SB would be unable to care for the dog because of finances.
41. FH was also critical of the fact that SB made a claim against JLK. and requested \$5,000 as an alternative remedy in this proceeding. I find these factors are irrelevant to the issue of ownership.
42. Finally, FH also says SB is unable to care for the dog because she abused it and is psychologically unfit to do so. The allegations include bestiality and torturing the dog. They are outlined in JLK's reply in the BC Provincial Court proceeding. JLK said SB confessed to this during a phone call. Ultimately, I find these allegations are



inflammatory and unsupported by evidence. I also find them inconsistent with the fact that JLK now says SB should have the dog. In any event, SB provided an April 26, 2022 letter from her psychiatrist and an undated letter from a registered psychiatric nurse. Both letters say that SB would benefit by having the dog and that she would likely be a “kind and caring” caretaker. I find the medical evidence sufficiently rebuts these allegations.

43. Given the above, within 14 days I order FH to return the dog to SB at SB’s home, SB’s stated address in the Dispute Notice, or at a mutually agreed-upon place and time, with at least 3 days’ written notice, at FH’s expense. I find this appropriate instead of ordering payment as there is nothing to indicate that FH cannot comply with such an order.
44. 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. The CRT waived its fees, so I need not order reimbursement. The parties did not claim any dispute-related expenses.

## **ORDERS**

45. Within 14 days of the date of this order, I order FH to return the dog to SB at SB’s home, SB’s stated address in the Dispute Notice, or at a mutually agreed-upon place and time, with at least 3 days’ written notice, at FH’s expense.

46. This is a validated decision and order. 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.

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David Jiang, Tribunal Member