



# Civil Resolution Tribunal

Date Issued: July 24, 2024

File: SC-2023-006292

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mackenzie v. Fobbs*, 2024 BCCRT 706

BETWEEN:

TAMMY LYNNE MACKENZIE

**APPLICANT**

AND:

TRACI FOBBS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Amanda Binnie

## INTRODUCTION

1. This dispute is about the purchase of a Chihuahua puppy. The applicant, Tammy Lynne Mackenzie, claims the respondent, Traci Fobbs, agreed to refund her purchase price of \$3,000 after the puppy passed a few days after the applicant brought it home. She also claims \$882.87 in vet bills. The respondent says they have a 2-year health guarantee, but the puppy did not die as a result of any genetic issues the guarantee would cover.

2. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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.

### ***Further evidence***

7. As I was concerned there was an entry missing from the veterinary records, I sought further evidence from the applicant about the puppy's final visit to the veterinarian's office leading up to its death. This was provided to me. I am satisfied the respondent received this evidence and was given a chance to respond but chose not to do so. So, I find I can rely on this additional evidence in coming to my decision without prejudice to the respondent.

## **ISSUES**

8. The issues in this dispute are:
  - a. Is the applicant entitled to a refund of \$3,000 for the puppy?
  - b. Is the applicant entitled to reimbursement for \$882.87 in vet bills?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities. The respondent did not provide any documentary evidence or submissions apart from the Dispute Response they filed at the outset of this dispute, despite the opportunity to do so. I have considered the Dispute Notice, Dispute Response, and the applicant's submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. While neither party provided a detailed account of their interactions, the parties communicated initially through the respondent's business Facebook page. The messages show the respondent agreed to sell the applicant a specific Chihuahua puppy for \$3,000.
11. Though the respondent specifically says there was no contract between the parties for the puppy, I infer they mean there was no written contract. The respondent also says that they have a "2 year spoken genetic health guarantee", but provided no further details. Based on the parties' communications and actions, I find the parties agreed the respondent would sell the applicant the puppy for \$3,000.
12. The applicant says she paid for the puppy through 3 e-transfers and provided copies of the confirmation. I accept the applicant paid the respondent the full amount for the puppy before the puppy left the respondent.
13. The applicant's son flew to pick up the puppy from the respondent on February 22, 2023. The respondent brought the puppy to the airport to give to the applicant's son. The puppy had been cleared to fly at this time.

14. The applicant provided the puppy's post-adoption veterinary records of Dr. Justin Sewell. Though the applicant does not provide Dr. Sewell's qualification, I accept that they are a veterinarian that provided care to the puppy. I rely on Dr. Sewell's records as evidence as accurately documenting the puppy's condition at the time of each examination and Dr. Sewell's diagnoses.
15. On February 24, the applicant took the puppy to the veterinarian as the puppy was lethargic. The veterinary records state the puppy had been having diarrhea the day before and was still lethargic at the veterinarian's office.
16. The puppy was seen by Dr. Sewell, who found this was due to hypoglycemia, which Dr. Sewell did not know the cause of. Dr. Sewell gave the puppy glucose syrup and gastro, which I infer from the records is a medication, and sent the applicant home with more gastro and instructed her to make sure the puppy ate.
17. The puppy was initially doing better, but returned to the veterinarian on March 1, as the puppy was vomiting and had diarrhea. The veterinarian records for the initial visit show the puppy was put on an IV and a specialist felt the puppy's issues might be chronic. The puppy was doing better through the day and was sent home with the applicant, with instructions to return if there was further vomiting.
18. Though the applicant does not say the exact time, during the night of March 1, the puppy was doing much worse, and the applicant returned to the veterinarian. Dr. Sewell recorded the puppy was very lethargic, very weak and not eating by itself. At that time, Dr. Sewell advised the applicant that the puppy's prognosis was poor and the applicant chose to euthanize the puppy. Given the puppy's serious health issues to this point, I accept this was a reasonable choice.
19. I turn now to the respondent's arguments in the Dispute Response that the puppy ingested marijuana or hit its head. The respondent specifically says these are things that "could have" happened, but says only the applicant smoked marijuana and told the respondent the puppy hit its head. I find the respondent has not proven these are more than speculation.

***Is the applicant entitled to a refund of \$3,000 for the puppy?***

20. The applicant provided text messages from the respondent showing the respondent was initially very apologetic and agreed to refund the applicant or provide her with a new puppy. In these messages, the respondent blamed the puppy's death on letting the puppy to fly so young. The respondent does not dispute they made the offer, and also does not say why they later refused to refund the applicant. I accept the respondent made the offer, but the *Apology Act* prevents me from considering an apology as evidence of fault or liability.
21. This does not end matters, because I find the parties' agreement was a private sale, which means it was subject to section 18 (c) of the *Sales of Good Act* (SGA). Section 18(c) requires that the goods sold be durable for a reasonable period, considering how the goods would be normally used and the sale's surrounding circumstances.
22. In *Ta v. Vernon*, 2019 BCCRT 675, the CRT considered the purchase of a puppy that suffered fatal seizures after only 10 months. The CRT found that the puppy should have lived or been "durable" for at least 6 months, even given the unpredictability of health issues. While this decision is not binding on me, I find the analysis of durability for a young apparently healthy animal applicable here.
23. I find that there was an implied warranty in the parties' contract that the puppy would be healthy for at least 6 months, given the durability warranty under section 18(c). Instead, the puppy became very ill just over a day after the applicant's purchase. I find that the respondent breached the implied warranty under section 18(c).
24. Based on the above, I find that the respondent must pay the applicant \$3,000, being the purchase price of the puppy, for the breach of the implied warranty.
25. The applicant also claims \$882.87 in veterinary expenses and provided the supporting invoices. Under SGA section 56(2), damages for a breach of warranty are the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty. Here, I find the veterinary expenses were directly related

to the puppy's health issues, so I find the respondent must pay the applicant \$882.87 in damages for breach of the implied warranty.

26. The *Court Order Interest Act* applies to the CRT. However, the applicant does not make a claim for interest, and so I make no order for it.
27. 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 \$175 in CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

28. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$4,057.87, broken down as follows:
  - a. \$3,882.87 in damages, and
  - b. \$175 in CRT fees.
29. The applicant is entitled to post-judgment interest, as applicable.
30. 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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Amanda Binnie, Tribunal Member