



Civil Resolution Tribunal

Date Issued: January 13, 2025

File: SC-2023-008691

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nzibonera v. Ogston*, 2025 BCCRT 40

BETWEEN:

GRACE NZIBONERA

APPLICANT

AND:

KELSEY OGSTON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about personal injuries in connection with a dog. The applicant, Grace Nzibonera, alleges the respondent and dog's owner, Kelsey Ogston, agreed to pay, or should pay, Ms. Nzibonera's rent for a month. She also seeks damages. Ms. Nzibonera says this is because the dog caused injuries that prevented her from working full time. Ms. Nzibonera claims \$5,000 as compensation.

2. Ms. Ogston denies liability. She says Ms. Nzibonera was responsible for her own rent. She also says that the claim amount of \$5,000 is disproportionate to Ms. Nzibonera's employment income. She also says that Ms. Nzibonera still owes her \$900 for the August 2023 rent and an unspecified amount for damage done to a garage door. Somewhat inconsistent with his, she says she was not Ms. Nzibonera's landlord and had no ability to forgive the rent. Ms. Ogston did not file a counterclaim, so I find she claims a setoff.
3. I note that Ms. Nzibonera originally named the respondent "KELSEY ANDREA ANDREA". She said this was a typo and consented to the respondent's name change in a November 13, 2023 email to CRT staff.
4. The parties represent themselves.
5. For the reasons that follow, I find Ms. Nzibonera has proven part of her claim.

JURISDICTION AND PROCEDURE

6. 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.
7. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format, 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.
8. Ms. Nzibonera requested a translator in her submissions. At the time of this decision, the CRT's website says the CRT offers free telephone interpretation

services in over 200 languages including many Indigenous languages. So, I find this service was available to her, but she did not use it. In any event, Ms. Nzibonera's submissions were detailed and understandable. So, I find nothing turns on the fact that she lacked a translator.

9. 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.
10. 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.

ISSUES

11. The issue in this dispute are as follows:
 - a. Did Ms. Ogston breach an agreement to pay Ms. Nzibonera's rent for August 2023?
 - b. Is Ms. Ogston otherwise liable for Ms. Nzibonera's dog bite injuries?

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Ms. Nzibonera 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.
13. I begin with the undisputed background. Ms. Ogston sublet part of a rental property to Ms. Nzibonera for \$900 per month. This is partially documented in a \$900 payment from Ms. Nzibonera to Ms. Ogston on July 1, 2023, and another \$450 payment for a damage deposit on June 24, 2023. There is no indication the parties used a formal tenancy agreement.

14. At the time Ms. Ogston had a dog. It is undisputed that before moving in, Ms. Nzibonera met the dog. She says it jumped on her but did not injure her. It is also undisputed that around this time Ms. Ogston assured Ms. Nzibonera the dog would not be an issue once it adapted to her presence.
15. On July 1, 2023, Ms. Nzibonera moved in. The next day, on July 2, 2023, the dog attacked Ms. Nzibonera. The incident is outlined in the parties' submissions and JK's undated witness statement.
16. JK was present at the time and neither party disputes any specifics in her account. JK says the following. The dog ran at herself and Ms. Nzibonera at full speed while they were sitting on the rental property's patio. Unprovoked, it bit Ms. Nzibonera's face. JK took Ms. Nzibonera to the hospital and the medical personnel stitched her eyelids and treated her chin for injuries.
17. Ms. Nzibonera describes the second incident as follows, and her account is largely undisputed. On July 5, 2023, Ms. Nzibonera was sitting outside the rental property. Ms. Ogston took the dog outside. Ms. Nzibonera decided to head in. The dog escaped Ms. Ogston's grasp and ran towards Ms. Nzibonera. Ms. Nzibonera ran away and fell, and Ms. Ogston took the dog inside. Ms. Ogston then took Ms. Nzibonera to a clinic. Ms. Nzibonera later went to the hospital.
18. A July 5, 2023 medical imaging report and July 25, 2023 orthopedic clinic report indicate that Ms. Nzibonera suffered a left distal radius, or wrist, fracture from the fall. The report shows she had to wear a cast for up to 6 weeks.
19. A July 6, 2023 police report indicates that animal control seized the dog on the night of July 5, 2023, and later euthanized it.
20. Ms. Nzibonera ultimately did not pay rent on August 1, 2023. On August 24, 2023, Ms. Ogston evicted Ms. Nzibonera and left her belongings outside. Ms. Ogston returned the damage deposit to Ms. Nzibonera on August 26, 2023. I note that Ms. Ogston says that Ms. Nzibonera's friend threatened her, but nothing turns on this.

She makes no claim about the threats and the text messages show Ms. Nzibonera told her friend to stop.

Issue #1. Did Ms. Ogston agree to cover Ms. Nzibonera's rent for August 2023?

21. As noted above, Ms. Nzibonera submits that Ms. Ogston agreed to pay for rent for the month of August 2023. Ms. Ogston denies this.
22. In a July 6, 2023 text message to Ms. Ogston, Ms. Nzibonera said she would have difficulty paying rent. She asked for compensation. Ms. Ogston replied immediately, "I'm not compensating you... You can find another place to live. I will refund you." I find that Ms. Ogston clearly rejected Ms. Nzibonera's offer and only agreed to refund the damage deposit, and she did so. Given this evidence, I dismiss this part of Ms. Nzibonera's claim.

Issue #2. Is Ms. Ogston otherwise liable for Ms. Nzibonera's dog bite injuries?

23. In BC there are 3 ways a dog owner can be liable for a dog attack: 1) occupier's liability, 2) negligence, and 3) the legal doctrine of 'scienter'.
24. I will consider the doctrine of scienter first. To prove liability, Ms. Nzibonera must show that at the time of the attack, Ms. Ogston owned the dog, the dog had shown an inclination or tendency to cause the type of harm that happened, and Ms. Ogston knew of that tendency. Put another way, "every dog is entitled to one bite". See *Xu v. Chen & Yates*, 2008 BCPC 234 at paragraph 57.
25. It is undisputed that Ms. Ogston owned the dog. I find the July 2, 2023 incident was the dog's "one bite". After this, I find the dog had shown an inclination or tendency to cause the type of harm that happened on July 5, 2023, incident, and Ms. Ogston knew of it. So, I find her liable under the doctrine of scienter.
26. I find Ms. Ogston is liable in negligence as well. To prove negligence in this dispute, Ms. Nzibonera must show Ms. Ogston knew, or ought to have known, that the dog

was likely to create a risk of injury to Nzibonera, and Ms. Ogston failed to take reasonable care to prevent such injury. See *Xu* at paragraph 58.

27. I find it unproven that the July 2, 2023 dog attack was reasonably foreseeable. Consistent with my conclusion, Ms. Nzibonera decided to move in after meeting the dog. I find the circumstances changed for the second July 5, 2023 incident. I find that after the first incident, Ms. Ogston knew or ought to have known the dog created an objectively unreasonable risk of harm unless secured. I find that for Ms. Ogston, taking reasonable care would include ensuring that the dog did not escape her grip. I find the potential gravity of the harm was high and the cost to prevent the harm was modest. I find that by failing to secure the dog, she breached her duty to take reasonable care to keep Ms. Nzibonera reasonably safe.
28. I also find that Ms. Nzibonera exercised reasonable care in the second incident. When Ms. Ogston came outside with the dog, she moved inside to avoid contact with the dog. I find that it was reasonable for Ms. Nzibonera to run once the dog escaped, as this created a sudden emergency. Given this, I find Ms. Nzibonera is not responsible for the injuries arising from her fall. She had to take quick action under difficult circumstances, much like a car's driver must swerve to avoid another negligent driver. I find that Ms. Ogston caused the injury by failing to restrain the dog.
29. Given my conclusion, I need not consider occupier's liability.
30. I acknowledge Ms. Nzibonera did not move out of the rental property immediately. However, I find this does not mean that Ms. Nzibonera accepted the risk of another dog attack or acted with reckless disregard for her own safety. Seeking other accommodation takes time.
31. For all those reasons, I find Ms. Ogston is liable for injuries arising from the July 5, 2023 incident, but not the July 2, 2023 incident. I next turn to damages. As noted above, Ms. Nzibonera claims \$5,000 for financial loss due to her injuries. She did

not provide a breakdown of this amount. In submissions she also said the dog bite caused both physical and mental pain.

32. I find Ms. Nzibonera's claim for lost wages is unsupported by any evidence or explanation. The only evidence of financial loss is a \$29 fee for a wrist brace shown in an August 18, 2023 invoice. So, I award this amount.
33. Ms. Ogston says that the government paid for the wrist brace, but I disagree. This is because the invoice specifically says that the BC Medical Services Plan does not cover the brace's cost.
34. I have also considered an award for non-pecuniary damages to compensate for pain, suffering, disability, and loss of enjoyment of life. In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal set out the factors to be considered for calculating a non-pecuniary award: the applicant's age, the nature of the injury, the severity and duration of pain, disability, emotional suffering, loss or impairment of life, impairment of family, marital and social relationships, impairment of physical and mental abilities, and the applicant's stoicism (a factor that should not penalize the applicant).
35. Given the medical evidence, I find that the severity, temporary disability, and nature of the injury support some award. In the non-binding decision of *Aiple v. Bains*, 2021 BCCRT 502, at paragraph 35, the CRT reviewed cases providing damages of \$2,000 to \$2,500 for dog bite injuries that did not cause lasting injury. In *Aiple* the CRT awarded \$2,000 for a significant puncture wound.
36. Given the above factors and the cases discussed in *Aiple*, I award \$2,500 as an appropriate amount for non-pecuniary damages.
37. Ms. Ogston says Ms. Nzibonera still owes her \$900 for the August 2023 rent. She also says the police damaged the garage door at Ms. Nzibonera's request to provide her access in late August 2023. She does not say what the damages are. I find these are counterclaims rather than setoffs. I do not find them so closely connected that it would be unjust to allow payment without taking them into account.

See *Jamieson v. Loureiro*, 2010 BCCA 52. Ms. Ogston did not file a counterclaim or pay the necessary fee to do so. So, I will not decide any counterclaims here. I note that if I had, Ms. Ogston would have limited success given that she evicted Ms. Nzibonera and provided no evidence to quantify any loss arising from the garage door damage.

38. The *Court Order Interest Act* applies to the CRT. Ms. Nzibonera is entitled to pre-judgment interest on \$29 from August 18, 2023, the date of the invoice, to the date of this decision. This equals \$2.05. Under section 2 of the *Court Order Interest Act*, I must award no interest on non-pecuniary damages resulting from personal injury.
39. 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. Ms. Nzibonera did not pay any CRT fees. The parties did not claim any specific dispute-related expenses. So, I decline to order any reimbursement.

ORDERS

40. Within 30 days of the date of this decision, I order Ms. Ogston to pay Ms. Nzibonera a total of \$2,531.04, broken down as follows:
 - a. \$2,529 as damages, and
 - b. \$2.04 in pre-judgment interest under the *Court Order Interest Act*,
41. Ms. Nzibonera is entitled to post-judgment interest, as applicable.

42. 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.

David Jiang, Tribunal Member