



# Civil Resolution Tribunal

Date Issued: March 17, 2025

File: SC-2023-012186

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Clark v. Decap*, 2025 BCCRT 337

BETWEEN:

JESSICA CLARK

**APPLICANT**

AND:

SAMI DECAP

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Peter Nyhuus

## INTRODUCTION

1. The applicant, Jessica Clark, bought a puppy for \$2,000 from the respondent, Sami Decap. Soon after the purchase, the applicant realized that she and the puppy were not a good fit. She says the respondent agreed to take back the puppy for a partial refund of \$1,000 and a further \$500 once the respondent found the puppy a new home.

2. The applicant says the respondent decided to keep the puppy rather than rehome him. She claims the \$500 rehoming payment. Alternatively, she asks for an order that the respondent provide evidence that they made efforts to rehome the dog.
3. The respondent denies the applicant's claim. They say that they are not required to pay any further refund because they did not find a new home for the puppy.
4. The applicant and respondent are each self-represented. As the respondent did not specify their title or pronouns, I use neutral pronouns, intending no disrespect.
5. For the following reasons, I dismiss the applicant's 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). 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. In some respects, the parties in this dispute call into question each other's credibility. The credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Here, I find that I can 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 decided to hear this dispute through written submissions.

8. 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.
9. 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**

10. The issues in this dispute are:
  - a. Did the respondent breach the contract by not paying the applicant a further \$500?
  - b. Did the respondent breach the duty of good faith contractual performance by keeping the puppy?
  - c. Must the respondent provide proof to the applicant that they tried to rehome the dog?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant must prove her claim on a balance of probabilities. This means “more likely than not”. The respondent had the opportunity to provide documentary evidence and submissions but did not do so. So, I have relied on the respondent’s statements in their Dispute Response filed at the start of this proceeding.
12. I have read the Dispute Notice, Dispute Response, and the applicant’s submissions and evidence. However, I refer only to the evidence and argument that I find relevant to provide context for my decision.

***Did the respondent breach the contract by not paying a further \$500?***

13. The parties agree on the basic facts of this dispute:

- a. In August 2023, the respondent, a dog breeder, sold the applicant a Dachshund puppy for \$2,000.
- b. About one week later, the applicant returned the dog to the respondent for a \$1,000 refund.
- c. The respondent agreed to pay the applicant a \$500 “rehoming fee” if they found a new home for the dog.
- d. The respondent did not find a new home for the dog and decided to keep the dog.
- e. The respondent did not pay the applicant the \$500 rehoming fee.

14. The parties did not have a formal written agreement. They arranged both the sale and return of the puppy through a series of Facebook messages, which the applicant provided. I find that the Facebook messages contain the key elements of the parties’ agreement about the puppy’s return.

15. The respondent’s obligation to pay the \$500 rehoming fee is set out in an exchange of messages that I excerpt below. After informing the respondent that she wished to return the puppy, the applicant asked whether the respondent would provide a refund of the purchase price. The respondent replied as follows:

K so deposit is kept which is half. I’m hoping to be able to re-post/ get him adopted out again. So then I can give you another 500\$ back

So tomorrow I’ll transfer half back to you and then another 500\$ once I re-home him.

16. I note that the respondent did not guarantee that they would find a new home for the puppy, they merely said they were “hoping to be able to re-post/ get him adopted

again.” I find that the parties agreed that the respondent’s obligation to pay the \$500 rehoming fee would only arise if the respondent re-sold the puppy to another family or person. I infer that the parties found this arrangement to be reasonable, as both parties incurred a financial loss from the original sale and return. If the respondent was able to re-sell the puppy, the rehoming fee would ensure that both parties would benefit from the proceeds of the second sale.

17. Since the respondent was not able to re-sell the dog, I find the respondent was not obligated to pay the \$500. So, I find the respondent has not breached the parties’ agreement by refusing to pay the \$500 rehoming fee.

***Did the respondent breach the duty of good faith contractual performance by keeping the puppy?***

18. The applicant takes issue with the respondent’s level of effort in trying to secure a home for the dog and their decision to keep the dog instead of rehoming him.
19. I infer that the applicant argues that the respondent did not perform the contract in good faith. As noted in *Bhasin v. Hrynew*, 2014 SCC 71, good faith is an organizing principle in contract law. It provides that parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily. What constitutes honesty and reasonableness is “highly context-specific”.
20. I find that the principle of good faith applies to the parties’ agreement. To determine what honest and reasonable contractual performance means in this case, I now consider the contract’s context and purpose.
21. The applicant says she returned the puppy because she thought the puppy would have a better life if placed in a bigger family with children. When contacting the respondent about the puppy’s return, she said she wanted “what’s best for the little guy.” In a later message, the applicant said, “we both tried to make decisions that were best for [the puppy]”. It is clear from the messages that both parties cared about, and wished to prioritize, the puppy’s well-being. So, I find the primary purpose of the parties’ contract was to find an appropriate home for the puppy.

22. Given this purpose, I find that the respondent was entitled to prioritize the puppy's best interests when searching for a new home for the dog. Further, I find that the respondent did not have to make great efforts to rehome the puppy and that they were entitled to slow down or abandon the search for a new home once they reasonably believed the dog would be better off remaining with them.
23. On review of the correspondence, I find that the respondent's primary concern was for the puppy's well-being. When the respondent informed the applicant that they had decided to keep the puppy, they justified this decision by saying that the puppy is almost fully grown and has become too attached to the respondent. They said that they felt it would be cruel to adopt him out at this point and that he would suffer from abandonment. I find that these are justifiable reasons for deciding to keep the puppy, given the contract's context and purpose.
24. The applicant argues that I should infer that the respondent made no efforts to rehome the dog since the respondent refused to provide evidence of their efforts to rehome the dog in the form of screenshots of Facebook messages or forwarded emails. This is known as an "adverse inference". An adverse inference is when the CRT assumes the party did not provide the relevant evidence because it either does not exist or would have damaged the party's case.
25. I do not find it appropriate to make an adverse inference against the respondent, as I cannot find any indication of deception, dishonesty, or bad faith performance in the evidence before me. Based on the parties' correspondence, I find it likely that the respondent made inquiries about rehoming the dog. On September 15, the respondent proactively reached out to the applicant to say that the puppy's brother had been adopted out, but that they still had the puppy. They also said they had responded to a few Facebook posts inquiring about Dachshunds but that no one had responded. I find it unlikely that the respondent would have reached out to the applicant with this update if the applicant had taken no steps to rehome the puppy.
26. While the respondent did not provide evidence that it took efforts to rehome the puppy, it is ultimately the applicant, not the respondent, who bears the burden of

proving that the respondent did not perform the contract reasonably or honestly. Based on the correspondence in evidence, I do not find any indication that the respondent acted deceitfully or that their efforts were unreasonable in the circumstances.

27. I find that the respondent performed their duties honestly and reasonably, given the purpose of the parties' contract. So, the respondent did not breach the duty of good faith contractual performance.

***Must the respondent provide proof to the applicant that they tried to rehome the dog?***

28. I briefly address the applicant's alternative requested outcome of this dispute: an order that the respondent provide proof of their efforts to rehome the dog. For the following reasons, I decline to make this order.

29. First, I note that the respondent was not contractually obligated to provide evidence of their efforts to find a new home for the puppy. While the applicant repeatedly asked the respondent to provide screenshots of conversations with possible purchasers as proof of their efforts, on review of the correspondence, the respondent never agreed to provide them. So, I find that the respondent did not breach the parties' contract by refusing to provide such proof.

30. Second, I considered whether to make this order pursuant to CRTA section 34. This provision allows me to order the respondent to produce evidence or records that are relevant to an issue in the dispute and in the respondent's possession or control.

31. While the records the applicant seeks are relevant to the issues in this dispute, I find it likely that the records' production would assist the respondent's case rather than the applicant's. So, the applicant has not been disadvantaged by the respondent's failure to provide such evidence. Given that I am already satisfied that the respondent made good faith attempts to rehome the puppy, I find that nothing turns on the absence of this evidence, so I decline to make such an order.

32. In summary, I find that the respondent did not breach the contract or their duty to perform their contractual obligations in good faith. Further, I decline to order the evidence production sought by the applicant.

33. 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. The respondent was successful but did not pay CRT fees. I dismiss the applicant's claim for CRT fees. Neither party claims disputed-related expenses.

## **ORDER**

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

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Peter Nyhuus, Tribunal Member