

BETWEEN

GN
APPLICANT

AND

SM
RESPONDENT

Date of Order:

7 May 2018

Referee:

Referee: Wilson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that SM is to pay GN \$779.10 by 4pm on 14 May 2018.

Facts

[1] On 14 January 2018, GN was walking her dogs along Burwood Road, in Christchurch. Near the Burwood Forest, Ms GN noticed a dog that was not on a lead. The dog ran straight up to her dogs and attacked the larger dog, injuring that dog. Ms GN was also bitten by the dog. A car drove past and SM got out, called the attacking dog off, and put it in the car. Mr SM came back to Ms GN to ask if she was ok. Mr SM then left. He confirmed to the Christchurch City Council, who followed the matter up on Ms GN's complaint, that it was not his dog, but belonged to a person he had met that day. Ms GN incurred \$779.10 in vet's bills for the treatment of her dog, and she filed a claim in the Disputes Tribunal against Mr SM for this expense.

[2] The issues to be determined were as follows:

- a. Is Mr SM a "dog owner" for the purposes of the Dog Control Act 1996?
- b. If so, has a dog for which he is deemed to be an owner caused damage?
- c. If so, what damages are payable?

Is Mr SM a "dog owner" for the purposes of the Dog Control Act 1996?

[3] Under the Dog Control Act 1996, an owner of a dog is relevantly defined as follows:

owner, in relation to any dog, means every person who—

- (a) owns the dog; or
- (b) has the dog in his or her possession, whether the dog is at large or in confinement, otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, damage, or distress, or for the sole purpose of restoring a lost dog to its owner; or...

[4] Mr SM indicated that he did not own the attacking dog, he was only looking after it that day. He indicated that the dog was in his car, and because it was a hot day he had left the windows down. He expressed surprise that somehow the dog had jumped out the window and attacked Ms GN's dog.

[5] The definition of "owner" in the Dog Control Act however includes any person who has a dog in his or her possession, regardless of actual ownership. The definition of the term includes some exceptions when the person in possession of the dog is not the owner, but

none of these are relevant in this case. I find that for the purposes of the Act, Mr SM was the “owner” of the dog at the time in question.

If so, has a dog for which he is deemed to be an owner caused damage?

[6] Section 63 of the Dog Control Act 1996 provides as follows

s 63 The owner of a dog shall be liable in damages for damage done by the dog, and it shall not be necessary for the person seeking damages to show a previous mischievous propensity in the dog, or the owner’s knowledge of any such mischievous propensity, or that the damage was attributable to neglect on the part of the owner of the dog.

[7] Mr SM is the owner of the attacking dog for the purposes of the Act. The dog injured Ms GN’s dog, which Ms GN was obliged to spend \$779.10 in vet’s bills to remedy.

[8] Mr SM claimed he did not know the dog would do this but as set out in section 63 of the Act this is not relevant. The liability of a dog owner, or person deemed to be a dog owner, is strict.

[9] As a result of section 63 of the Act, Mr SM is liable for the damage caused by the dog.

If so, what damages are payable?

[10] The damages payable are the loss or cost to the innocent party of the damage done by the dog.

[11] In this case, Ms GN was obliged to spend \$779.10 on a vet’s care for her dog, including anaesthetic. This is therefore the amount payable by Mr SM.