



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 311

**APPLICANT**      **LG**

**RESPONDENT**    **KS and BS**

**The Tribunal orders:**

**BS and KS are jointly and severally liable to pay LG \$597.80 within 28 days.**

BS is added as a joint respondent with KS.

Reasons

[1] LG claims from BS and KS the cost of veterinary fees for treatment that was required when her dog was injured. LG says that her dog was attacked and bitten by a dog that was jointly owned by BS and KS.

[2] LG said that on 5 March 2023 she had been walking her two dogs on leads in a [Park]. She saw a labrador dog, apparently accompanied by a man on a bicycle, running loose. The labrador ran towards her and attacked one of her dogs, named Harry. She said that the attacking dog and Harry had fought; she had pulled Harry away; the man on the bicycle had called the labrador to him and departed. She then discovered that Harry was injured and bleeding, his ear having been severely bitten and torn.

[3] LG took Harry to a veterinary surgeon, who carried out some emergency treatment, which cost \$107.80. The following day, a surgical procedure was carried out to repair Harry's ear. That treatment cost \$490.00.

[4] LG provided photos of Harry's injury, as well as receipts from the veterinary surgeon who had treated him.

[5] LG considered BS and KS to be responsible for the vet's bills. That was because, she said, their dog had been running loose and uncontrolled, and had approached and attacked Harry, who had been on a lead. She said the injury that had torn Harry's ear was clearly a bite, and it could only have been done by the labrador owned by BS and KS.

[6] BS and KS defended the claim. BS said that he had often been in the [Park] with his dogs, which were friendly and sociable. On this occasion, he said, his labrador, named Sammie, was running loose. BS was riding a bicycle, being unable to walk at the time because of a knee problem. He said that Sammie had approached Harry, and Harry had become aggressive and attacked Sammie. He said that the dogs had fought, and Harry had pinned Sammie to the ground. BS said that he had called Sammie off, and Sammie had obeyed.

[7] BS said that, at the time he and Sammie had left the scene, he had seen only a small fleck of blood on Harry. He considered that Harry might have been injured by a branch, or something of that kind; he

had not seen Sammie biting Harry, and doubted whether he had done so. BS thought it likely that Sammie was defending himself from Harry.

[8] BS's opinion was that Harry had been the aggressor. He did not think that LG had proven that Harry's injury had been caused by Sammie.

### **The issue**

[9] The question for me to decide is whether LG has proved that BS and KS's dog Sammie caused Harry's injury. If that is established, I must consider whether they are liable to compensate LG for the resulting veterinary fees.

### **The law**

[10] Section 63 of the Dog Control Act 1996 provides, so far as is relevant here:

63 Owner liable for damage done by a dog

- (1) 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.
- (2) .....

Liability under s 63 is strict.

### **Did Sammie cause Harry's injury?**

[11] I consider that LG has established that Sammie caused Harry's injury. It is not disputed that, just before the encounter, Harry had been on a lead and under LG's control, and that Sammie, who had been running loose, ran to Harry. After the dogs had fought, Harry's ear was severely torn, as the photos, and the treatment required, show. In my view, the only reasonable conclusion is that Sammie caused the injury. Harry could not have bitten his own ear, and no other dog was involved in the fight.

### **What compensation is payable?**

[12] As LG has proved that Sammie caused Harry's injury, BS and KS, the owners of Sammie, are liable to pay compensation. In this case, the reasonable compensation is the cost of the veterinary treatment incurred in consequence of the injury caused by Sammie. The invoices provided establish that the two sessions of treatment that were necessary and provided cost LG a total of \$597.80. Thus, BS and KS must pay LG that sum.

**Referee: C Hawes**

**Date: 15 August 2023**



## Information for Parties

### Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

### Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

### Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

### Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.