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IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Delbert Roy Margetts

COMPLAINANT

A N D:

BC S.P.C.A.

RESPONDENT

REASONS FOR DECISION
APPLICATION TO DISMISS: Section 27(1)(c)

Tribunal Member:

Enid Marion

On his own behalf:

Delbert Roy Margetts

Counsel for the Respondent:

Marcie Moriarity

Complaint

[1] Mr. Margetts filed a complaint against the BC S.P.C.A. (the “Respondent”) alleging discrimination in the provision of a service customarily available to the public, on the basis of physical and mental disability, contrary to s. 8 of the *Human Rights Code*.

[2] The Respondent denies any discriminatory conduct and applies to dismiss the complaint pursuant to s. 27(1)(c) of the *Code* on the basis that it has no reasonable prospect of success, and s. 27(1)(d)(ii) on the basis that proceeding with the complaint would not benefit Mr. Margetts.

[3] In order to put the decision in context, I will briefly review the background to the complaint. In doing so, I make no findings of fact.

Background to the Complaint

[4] Mr. Margetts says the following in his complaint:

- a) On December 5, 2009, a tenant notified him that her dog was fatally poisoned on his property.
- b) On December 11, 2009, the Respondent issued an order to search his property on suspicion of poisoning.
- c) On December 15, 2009, the RCMP received a complaint from the Respondent and requested an unofficial search of his residence.
- d) On December 22, 2009, the Respondent and the RCMP responded to a verbal complaint regarding the animal’s poisoning and seized four of Mr. Margetts’ dogs. Mr. Margetts was also ordered to clean his home and told he had fourteen days to do so.
- e) On December 28, 2009, Mr. Margetts phoned the Respondent for re-evaluation as he had completed the cleaning, and was told the office was closed for the rest of the year.
- f) On January 4, 2010, he spoke to a mediator and was given another ten days to file an appeal.
- g) On January 14, 2010, he contacted the Respondent and was informed that the appeal was supposed to happen during the fourteen-day clean-up period.
- h) On January 15, 2010, the RCMP came in to observe his home for living conditions, in regard to a different dog that Mr. Margetts was dogsitting.

- i) On January 16, 2010, Mr. Margetts says he “very nearly” had a nervous breakdown. He says he has had several “sinkable episodes”, a minor stroke, chest pains and is developing an ulcer over the situation. He says his animals are his therapy, give him direction, purpose and a reason to keep going, to come home and to keep out of trouble. He says he was on the verge of coming out of a depression when the animals were taken away.
- j) On January 18, 2010, he was issued further documentation, which he says he received on January 20, 2010, giving him ten days to comply or lose the dog he was sitting. The January 18 letter he provided, however, was in regard to the seizure of his animals on December 22, 2009 and advised him why the animals were now the property of the Respondent.

[5] On May 31, 2010, Mr. Margetts filed his human rights complaint. He filed amendments to the complaint on September 24, 2010. It appears that the dog Mr. Margetts was sitting was not removed from his home, at least up to the date of the filing of his complaint.

[6] The Respondent says that it conducted an investigation into allegations of animals being neglected in Mr. Margetts’ home. It says that Mr. Margetts was provided multiple opportunities to relieve the animals of distress and improve the environment in which the animals were living. He did not do so, and ultimately the Respondent seized animals and recommended charges against Mr. Margetts.

[7] The Respondents says that the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the “Act”), provides for a 14-day period after the seizure of a person’s animals for that person to dispute the seizure and seek return of the animals. The Respondent says that the importance of the timeline and what was required was explained to Mr. Margetts. He did not file a dispute within the requisite time period.

[8] Mr. Margetts was subsequently convicted of animal cruelty and prohibited from owning any animals for a period of five years. The Respondent says the animals seized from him were in distress contrary to the *Act*, and that it acted reasonably and in a non-discriminatory manner when it seized the animals and did not return them to him.

Decision

[9] I will address the application to dismiss pursuant to s. 27(1)(c) of the *Code*. When assessing such an application, the role of the Tribunal is to determine, after considering all of the material before it, whether there is a reasonable prospect that the complaint will succeed: *Bell v. Dr. Sherk and others*, 2003 BCHRT 63, para. 28; *Wickham and Wickham v. Mesa Contemporary Folk Art and others*, 2004 BCHRT 134, paras. 11-12. This approach has been affirmed by the British Columbia Court of Appeal in both *Berezoutskaia v. British Columbia (Human Rights Tribunal)*, 2006 BCCA 95, paras. 9 and 27, and *Gichuru v. British Columbia (Workers Compensation Appeal Tribunal)*, 2010 BCCA 191, para. 31.

[10] I have considered all of the information submitted by the parties, including the Respondent's case file and Mr. Margetts exhaustive response to the information contained in that file. It is abundantly clear that Mr. Margetts takes issue with much of the information on the case file, and that he is upset with the seizure of his animals and subsequent order prohibiting him from owning any animals for five years. What is not clear is how his disagreement with the Respondent's investigation and charge process constitutes a breach of the *Code* on the basis of physical or mental disability.

[11] Mr. Margetts says that the seizure of his animals resulted in him "very nearly" having a nervous breakdown, that he needed his animals for therapy, and that he suffered numerous physical and mental symptoms after their removal. However, there is no medical information provided to support this assertion.

[12] Further, even if I were to assume that he does have a disability, there is no factual foundation upon which to infer that a physical or mental disability was a factor in the Respondent's investigation or seizure of his animals, or that Mr. Margetts advised any of the officers involved in the seizure that he required the animals for a medical reason and that some form of accommodation needed to be explored to determine whether it was possible to ensure the animals' safety and well-being while addressing his medical need.

[13] The Respondent has provided a reasonable, non-discriminatory explanation for its conduct which is supported by contemporaneous documentation. They received a complaint of animals in distress, investigated and concluded that, in fact, the animals

were in need of protection. The animals were seized, and Mr. Margetts, perhaps due to a misunderstanding, did not appeal their seizure within the appropriate timeframe. In the face of this information, and in the absence of any supporting medical documentation, there is no reasonable prospect that Mr. Margetts will be able to succeed in establishing his complaint of discrimination.

[14] The application to dismiss pursuant to s. 27(1)(c) is granted and the complaint is dismissed. In light of this decision, it is not necessary to consider the application to dismiss pursuant to s. 27(1)(d)(ii).

Enid Marion, Tribunal Member