

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Evans v. TH Real Estate*,  
2024 BCSC 632

Date: 20240110  
Docket: S234142  
Registry: Victoria

Between:

**M. Evans**

Petitioner

And:

**TH Real Estate,  
Consolidated Civil Enforcement [CONBC] /  
Consolidated Envoy Bailiffs [CEB],  
The Corporation of the City of Victoria,  
and The Ministry of the Attorney General of BC**

Respondents

Before: The Honourable Justice Morley

## **Oral Reasons for Judgment**

(In Chambers)

For the Petitioner:

No appearance

Counsel for the Respondent  
The Corporation of the City of Victoria  
appearing by videoconference:

T. M. Zworski

No other appearances

Place and Dates of Trial/Hearing:

Victoria, B.C.  
December 22, 2023  
and January 10, 2024

Place and Date of Judgment:

Victoria, B.C.  
January 10, 2024

[1] **THE COURT:** These are oral reasons. Anyone who wants to order a transcript of these reasons may do so. I reserve the right to edit the written version for errors, omissions, and to add citations and quotes. The results will not change, nor will the basis for the decision.

[2] The underlying petition here was a challenge by Michael Evans to the decisions of the Director of the Residential Tenancy Branch leading up to a writ of possession in favour of his landlord for premises he formerly tenanted at 534 Dunedin Street in Victoria.

[3] On November 20, 2023, Consolidated Civil Enforcement executed the writ of possession. Since it was known that Mr. Evans had a number of pets, animal control officers employed by the Corporation of the City of Victoria (the “City”) attended. I heard Mr. Evans's challenge on December 22, 2023. I dismissed that challenge.

[4] However, some issues remain. In particular, I became aware that three cats previously belonging to Mr. Evans were with the animal control contractor employed by the City, which is known as Victoria Animal Control Services Ltd. and the City had interpreted an order of Mr. Justice Saunders preventing disposal of Mr. Evans's chattels until January 30, 2024, as possibly, but not necessarily, applying to the cats.

[5] As a result, the cats remained in the possession of Victoria Animal Control Services. However, this was not the best situation for the cats, who would be better off if they were adopted. Moreover, this situation was causing a continued expense to the City.

[6] The City proposed at the hearing to exercise what it said were its proprietary rights over the cats by having them adopted. Mr. Evans opposed this. He was unable to say what he could do with the cats, because he had just found out that I was not going to put him back in possession of 534 Dunedin Street, and he was not sure if he could provide them a home.

[7] I decided not to address the issue of what would happen to the cats at the hearing and ordered that the petitioner had until 4:00 p.m. on December 29, 2023, to

submit a proposal to the City, with leave to the City to apply for further directions if the proposal was not acceptable to the City.

[8] When Mr. Evans made his proposal, if that is a fair term for it, to the City, he was not in a position to care for the cats himself. His proposal was that the City “temporarily foster” them at the City's expense until he was in a position to give them a home. The City did not accept this proposal. The issue is therefore before me for directions. The City asks for a declaration that it is free to adopt out the cats.

[9] In support of that declaration, the City filed a notice of application and supporting affidavits, which I have found very helpful, although they are not strictly necessary since this is a continuation of the petition hearing.

[10] Mr. Evans indicated to Mr. Zworski this morning by email that he was unable to log onto Microsoft Teams and proposed a hearing in person at 2:00 p.m. That time is not available to the court as the result of a prescheduled trial, and so the matter would have to be generally adjourned. I ruled as a preliminary matter that the interests of justice favoured proceeding this morning.

[11] Mr. Evans did provide Mr. Zworski with a statement that Mr. Zworski read out. Mr. Evans raised certain points that he said were legal errors of my analysis of the *Residential Tenancy Act*. Those points are ones that he will have to bring by way of an appeal, if that is what he decides to do.

[12] Mr. Evans did say specifically that he considered that a hearing would be a waste of time, or so I conclude from the fact he said, “I conclude this is a waste of time,” although it is not absolutely clear what that is a reference to. I think that it is fair to say that it is appropriate for this to be decided today, especially in light of the fact that the cats are not in the best position for their welfare, and the cost to the City continues to escalate, and there is no particular suggestion of a time when this could be resolved any more fairly than today.

[13] I obviously must proceed on the basis that, as I found on December the 22nd, that the eviction was lawful. That means that as of the time that the writ of

possession was being executed, Mr. Evans was no longer the legal occupier of the premises, and therefore his animals were on those premises without the consent of the occupier, which at that point became the landlord.

[14] Under the *Community Charter*, s. 48 of the *Community Charter*, a council may, by bylaw, provide for seizure of animals that are unlawfully at large, and provide for the sale, other disposition or destruction of impounded animals if the animals are not claimed within the time and in the manner established by the bylaw, or the penalty or fees are not paid within a reasonable time.

[15] Pursuant to this authority, among others, the City of Victoria has enacted its Animal Responsibility Bylaw Number 11-044. That provides, specifically in relation to the seizing and impounding of animals under s. 40 of the bylaw, authority for an animal control officer to seize an animal that is on any private lands or premises without the consent of the occupier or owner of the lands or premises. The authority to enact this bylaw is unchallenged before me, so that provides the legal authority for the seizure of these cats on the date of the eviction or thereafter. I understand from the affidavits that the cats in question were found in the premises. Subsequent to the actual eviction, there were a number of animals -- in fact, in total, one dog and seven cats -- seized by animal control officers. The dog and the cat found at the time of the eviction were released, in the case of the dog, to the owner of the dog, and in the case of the cat, to a neighbour who was on instructions, written instructions from the petitioner.

[16] The remaining cats were seized subsequently because they were found on the premises after Mr. Evans was evicted. Section 45 of the bylaw provides:

An animal becomes the property of the City if it is not redeemed within 96 hours after ... its impoundment ...

[17] So the remaining six cats became property of the City within 96 hours after they were seized and impounded. There was no attempt by anyone to redeem them. Three of the cats were adopted out before anyone became aware of the order of

Mr. Justice Saunders, but three remain in the custody of the Victoria Animal Control Services.

[18] As a result of these provisions, there is really no doubt that those animals are now the property of the City and therefore it is really up to the City, possibly subject to requirements of reasonableness, which I do not have to decide here, but certainly as long as the City is acting reasonably, it is up to the City as to how to provide for those cats. Adoption to willing owners who the Victoria Animal Control Services believes will provide a good home for those cats is certainly a reasonable use of whatever discretion the City has and one that is consistent with the well-being of the cats.

[19] Mr. Evans's proposal is not a reasonable one. It would not be in the interests either of the cats, and would create continuing financial obligations on the City. And so the City was acting reasonably and fairly in deciding not to accept Mr. Evans's proposal.

[20] At this point, Mr. Evans has no date which he can say he would be able to look after the cats, and he has no one he is proposing would adopt the cats in the interim.

[21] So in light of that, I find that the cats are the property of the City, that the City is acting reasonably in its approach to how to deal with the disposition of the cats in their interests and in accordance with its reasonable exercise of its property rights, and therefore I will grant the order sought: a declaration that the City may reject the petitioner's proposal dated December 29, 2023, and is free to adopt out the cats impounded by Victoria Animal Control Services.

[22] I think the costs of the application should be granted to the City.

[23] Is there anything else arising, Mr. Zworski?

[24] CNSL T. ZWORSKI: No, not that I'm aware of.

[25] THE COURT: I will add another order that if -- when you draft up the order, you can dispense with Mr. Evans's signature on that order. You should provide a copy of it to him before you submit it for entry.

[26] CNSL T. ZWORSKI: Understood.

[27] THE COURT: Thank you.

[28] CNSL T. ZWORSKI: Thank you.

"J. G. Morley, J."  
The Honourable Justice Morley