



Civil Resolution Tribunal

Date Issued: January 11, 2018

File: ST-2017-002587

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Barrientos v. Rahman*, 2018 BCCRT 5

BETWEEN:

Melanie Barrientos

APPLICANT

AND:

Sajida Rahman doing business as Happy Family Child Care

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Maureen Abraham

INTRODUCTION

1. This is a dispute over money payable under a contract for daycare services. The applicant is self-represented. The respondent is also self-represented.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 121, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issues in this dispute are:
 - a. When did the applicant give proper notice that she was terminating the contract?

- b. Is the respondent entitled to keep the money paid by the respondent for June 2017 daycare?

EVIDENCE AND ANALYSIS

7. On April 4, 2017, the applicant and her partner signed a contract (“contract”) with the respondent. The contract was for their 13-month old daughter (“child”) to attend the respondent’s daycare at a cost of \$950.00 per month. The first day the child would attend was April 18, 2017, and the applicant paid a deposit of \$400.00 to the respondent.
8. The contract stated that the applicant could cancel the contract on two weeks notice during the first month of care (trial period). The contract does not say cancellation in the trial period must be in writing. The contract says that after the trial period, the applicant must provide one month’s written notice to cancel the contract. If cancelled, the deposit would be applied to the last month of daycare fees.
9. The contract also states that the child would attend the daycare five days per week from 8:00 a.m. to 4:30 p.m.
10. On May 11, 2017, the applicant’s husband told the respondent that he and the applicant were terminating the contract. The respondent says that the applicant’s partner told her that he didn’t know when the child’s last day would be, but it would be sometime in June. She says she told him that terminating in the first month on two weeks’ notice meant that the child could only stay until May 25, or May 31 at the latest. He indicated that they did not want to end their childcare that early. She says she told him that if they wanted care in June, the child had to remain registered for the following month. The applicant’s partner told her he would discuss it with the applicant, but the respondent says she heard nothing more from them until May 31, 2017. The applicant continued to send the child to the daycare. The applicant did not provide any evidence from her husband to contradict the respondent.

11. On May 31, 2017, the applicant gave the respondent written notice terminating the contract: a letter stating that the child's last day of daycare would be June 30, 2017.
12. The last day the child actually attended the daycare was June 8, 2017.
13. The applicant says that she had a doctor's appointment for the child on June 12, and told the respondent that the child would then be dropped off around 1:00 p.m. that day. The respondent said that the late drop-off was not okay, as it was in the middle of naptime for the other children and would disturb them. The respondent says that getting the child down for naptime is difficult as she cries and requires a lot of soothing. The applicant indicated on the contract that the child takes 1 – 2 hours to settle to sleep.
14. The applicant says that she agreed to keep the child home. She says when she phoned the respondent on June 12th to confirm that the child was asleep and staying home for the day, the respondent was rude to her. The respondent says she was not rude.
15. The applicant says that the respondent is not entitled to keep the daycare fees for June 12 – June 30, and the prorated fees paid for June should be refunded to her because she gave notice on May 11, while still within the first month's trial period. She says the respondent told her the deposit would be used for June. She says that she had a copy of the contract, but relied on the respondent to tell her its terms. She says that she was unhappy with the daycare services and because the respondent was rude to her, she cannot be expected to send the child to the daycare. She says that the respondent's rudeness means that she should not be trusted to provide good care for the child.
16. The respondent denies being rude and says that the applicant was very difficult to deal with. She says that one month's notice is necessary as she could have taken in another client for June 2017 if the applicant had terminated early. She says that

the applicant planned to keep the child in the daycare only until mid-June, and is trying to avoid the fees payable under the contract.

When did the applicant give proper notice that she was terminating the contract?

17. The applicant is responsible for making sure she read and understood the contract when she signed it. The contract requires written notice for termination after the trial period has passed, and one month's advance notice.
18. Verbal notice to terminate could only be made in the trial period. The applicant must prove that she or her partner actually terminated the contract on May 11 in order for verbal notice to count as termination.
19. The evidence is that the applicant's partner told the respondent he might not want the contract terminated once he realized that it meant the child could only stay in care until the end of May. In telling her he would get back to her and wanted care for the child in June, he took back the verbal notice of termination. This is consistent with the applicant giving written notice on May 31, 2017, that they were cancelling the contract.
20. The contract states that notice must be provided one month in advance once the trial period has passed, so the applicant was responsible for payment of a final month's daycare fees once notice was given. I find that the applicant did not give proper notice that she was terminating the contract until May 31, 2017.

Is the respondent entitled to keep the money paid by the respondent for June 2017 daycare?

21. The applicant told the respondent in the written notice that the child's last day would be June 30, 2017. The applicant paid the balance of the June 2017 monthly fees.

22. If the respondent breached the contract between her and the applicant, she would not be entitled to enforce it by keeping the daycare fees for the balance of the month after breaching the contract.
23. The fact that the daycare did not want the child dropped off at naptime was not considered unreasonable by the applicant at the time. Her submissions indicate that she agreed to keep the child home, and only got upset when the respondent was rude to her on the phone.
24. The contract says that the child will be at the daycare between set hours of the day. While some flexibility in drop-off times is to be expected (and is shown on the drop-off sheets provided by the respondent), it is reasonable to request that drop-off not take place when it would cause disruption to other children.
25. The applicant says the respondent was rude to her, and that this means good care would not be provided to the child. However, no evidence was provided to support that the applicant ever took issue with the daycare's services before June 12, 2017.
26. If the respondent was providing care that did not meet the standard a reasonable person would expect a child in daycare to receive, this could be a breach entitling the applicant to a refund. I find there is no evidence that the respondent failed to provide adequate care.
27. Although the applicant says she no longer trusts the respondent, she did not provide any evidence to demonstrate that the child was not being well cared for and looked after by the respondent. The evidence which was provided indicates that the child received good care from the respondent. A Fraser Health Inspection Report details that the child received good care at the respondent, and that the respondent was complying with its standards of practice.
28. I find that the refusal to allow drop-off during the daycare naptime was not a breach of the contract that would entitle the applicant to a refund.

29. I find that the respondent did not breach the contract with the applicant, and so the applicant is not entitled to any refund for the June 2017 daycare fees paid.
30. The applicant has not been successful, and is therefore not entitled to reimbursement for the tribunal fees she paid.

ORDERS

31. I order that the applicant's dispute is dismissed.
32. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
33. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Maureen Abraham, Tribunal Member