



# Civil Resolution Tribunal

Date Issued: June 8, 2018

File: SC-2017-006295

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Allbee v. Brophy*, 2018 BCCRT 242

**B E T W E E N :**

Corrine Allbee

**APPLICANT**

**A N D :**

Alicia Brophy

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

### **INTRODUCTION**

1. This dispute is about a contract for daycare services between the applicant Corrine Allbee and the respondent Alicia Brophy. The applicant alleges the respondent

failed to provide the required 1 month notice when she removed her daughter from the applicant's daycare on September 11, 2017. The parties are 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. Neither party requested 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 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
6. I note the respondent made general submissions about the applicant allegedly "withholding our contributions for 2017", and that the applicant is obliged to provide a receipt. It is not entirely clear to me what this refers to given the respondent's limited submission, but I do not need to address it further because the respondent did not file a counterclaim. I have also not addressed the parties' references to alleged defamation, which is a subject area outside the tribunal's jurisdiction.

## **ISSUE**

7. The issue in this dispute is whether the respondent must pay the applicant \$650 in lieu of the full 1 month notice the parties' contract required.
- 8.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. As noted above, the respondent removed her child from the applicant's daycare on September 11, 2017, which was just over a year after the parties' contract began.
11. It is undisputed that the parties' contract required 1 month notice and that the monthly daycare rate was \$650. It is also undisputed that the respondent failed to give that 1 month notice required under the contract.
12. In particular, in her Dispute Response the respondent stated she paid the applicant \$650 for the month of September and that her daughter was only there 2.5 days during that month. The respondent stated that she did not give notice on the 1st of the month as she "could not foresee the future". As discussed further below, I find that nothing happened after September 1, 2017 that would entitle the respondent to not give the required 1 month notice.
13. The parties' contract states that pre-payment of the monthly rate ensures the child's spot, and that if for any reason the child is removed from care the monthly payment will not be refunded. Given the contract, it is therefore irrelevant that the respondent's child attended the daycare for only 2.5 days in September 2017.
14. The contract also stated that the respondent agreed to give either 1 month notice on the 1st day of the last month the child would require care, or, 1 month payment

for withdrawal. I find the applicant had allocated a spot for the child for that month and the contract required 1 month notice.

15. In her submissions, the respondent says she should not have to pay the 1 month notice, despite the contract. Her focus is on an isolated incident that occurred in May 2017 when the respondent's daughter was unfortunately bitten by mosquitoes. I find that incident is not relevant to the respondent's obligation to give notice, given it occurred almost 4 months before the respondent decided to leave the daycare. If the mosquito incident had been significant to the parties' contract, I find the respondent would have removed her daughter earlier. It is also clear from the parties' texts, and in particular those from June 2017 onwards, that the respondent still was happy the applicant's care of her daughter.
16. The respondent also says the applicant took too many holidays and that it was unfair she had to pay the monthly rate anyway. I disagree. The parties' contract specifies that the applicant's monthly rate was "inclusive" of her holidays, which were 3 weeks a year plus between Christmas and New Year's. The respondent grew frustrated with this term due to its financial impact on her when she had to find alternative care during the applicant's holidays. I acknowledge that "inclusive" of holidays was perhaps not the most clear way to describe that the monthly rate was payable even when the applicant was on holidays. However, I find the respondent understood the term when she signed the contract. This conclusion is consistent with the parties' underlying texts in evidence.
17. Apart from the isolated mosquito bites incident, the respondent's general allegations that the applicant did not provide good care is unsupported in the evidence before me, and is entirely inconsistent with the parties' text message exchanges in evidence.
18. I find the respondent must pay the applicant \$650, in accordance with the parties' contract. The applicant is entitled to interest on the \$650 under the *Court Order Interest Act* (COIA), from September 1, 2017.

19. In accordance with the Act and the tribunal's rules, as the applicant was successful in this dispute she is entitled to reimbursement of \$125 in tribunal fees. The applicant also claims reimbursement of \$50.68 in dispute-related expenses. The applicant provided a "software receipt" for \$39.99 for "iExplorer 4". The applicant has not explained why this expense was reasonably necessary for this dispute. There is also no explanation before me as to the discrepancy between the \$50.68 claimed and the \$39.99 shown on the receipt. I dismiss the applicant's claim for this expense.

## **ORDERS**

20. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$779.92, broken down as follows:

- a. \$650 owing under the parties' contract,
- b. \$4.92 in pre-judgment interest under the COIA, and
- c. \$125 in tribunal fees.

21. I dismiss the applicant's claim for \$50.68 in dispute-related expenses.

22. The applicant is also entitled to post-judgment interest, as applicable.

23. 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.

24. 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.

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Shelley Lopez, Vice Chair