



Civil Resolution Tribunal

Date Issued: July 23, 2018

Files: SC-2017-006402 and
SC-2018-001213

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pan-Popham Corporation O/A Montessori Educare v. Hutchinson*,
2018 BCCRT 356

B E T W E E N :

Pan-Popham Corporation O/A Montessori Educare

APPLICANT

A N D :

Devin Hutchinson

RESPONDENT

A N D :

Pan-Popham Corporation O/A Montessori Educare

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about childcare services provided by the applicant, Pan-Popham Corporation O/A Montessori Educare (Pan-Popham), to the respondent, Devin Hutchinson.
2. In dispute SC-2017-006402, Pan-Popham claims payment of \$1,412.50 due to Mr. Hutchinson cancelling the parties' contract without sufficient notice.
3. In dispute SC-2018-001213, Mr. Hutchinson alleges that Pan-Popham failed to provide services under the childcare contract, and acted contrary to the Vancouver Island Health Authority Regulations with respect to the care of his child. Mr. Hutchinson claims \$500 for 12 days of childcare he prepaid for September 2017, for days his child did not attend. He also claims a refund of his \$437.50 deposit, bringing his total claim to \$937.50. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. 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.

ISSUE

8. The issues in these disputes are to what extent, if any, a) Mr. Hutchinson owes Pan-Popham for childcare services, and b) Pan-Popham owes Mr. Hutchinson a refund for his deposit and 12 days of prepaid childcare that his child did not use.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. This means that Pan-Popham must prove its claim that it is entitled to payment of the outstanding balance and Mr. Hutchinson must prove he is entitled to the claimed refunds. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. Mr. Hutchinson signed Pan-Popham's contract on May 11, 2017, which set out its financial policy and late policy. Among other things, the contract stated that 2 months written notice was required for the child's withdrawal. The contract says if notice is given part way through the month, the parent is responsible for finishing the current and following 2 months. The contract states that fees are due on the first business day of every month.
11. Mr. Hutchinson's daughter started attending Pan-Popham on Tuesday September 5, 2017. Her last day of attendance was September 13, 2017, without any prior notice of withdrawal from the program.
12. In his submissions, Mr. Hutchinson stated his child had an accident at home on September 9, 2017, receiving 8 stitches in her forehead. She returned to Pan-Popham on September 13, 2017, and he asked them to let him know if they had

concerns. It was on this day that the child reportedly vomited, but Mr. Hutchinson says he and the child's other parent were not notified.

13. On September 18, 2017, Mr. Hutchinson sent Pan-Popham a lengthy email setting out various concerns about Pan-Popham's care of his child. In that email, Mr. Hutchinson acknowledged that it is common for a child to experience separation anxiety, and that it can take upwards of a month to adjust. However, Mr. Hutchinson added he was concerned that his child was crying all day to the point of vomiting, or being so exhausted she passed out at the lunch table. He acknowledged that "it is difficult to force a child to eat", but that it appeared Pan-Popham did not try to get her to eat, with the example that her various food items were left unwrapped or unopened. Mr. Hutchinson complained that after the 3rd day he had to call and ask what was going on with his child at lunch, and that the only response he received was that "she's falling asleep at the table, we can't force her to eat'. Towards the end of his email, Mr. Hutchinson wrote "... **I am not questioning your institution and I knew our daughter's safety was important and in good hands but we just don't feel as parents that it was the right fit for our daughter**" (my bold emphasis added). Mr. Hutchinson also acknowledged the 2-month notice policy but asked for leniency due to financial constraints. He offered, as a compromise, to pay for the month of September but not October.
14. Later on September 18, 2017, Pan-Popham responded and confirmed that it cannot force children to eat, as provided in section 48(4)(b) of the *Child Care Licensing Regulation*. It wrote that Mr. Hutchinson's child took part in snacks and lunch time and had all her food out, but nonetheless fell asleep and they felt it was inappropriate to wake her up. Pan-Popham explained that crafts projects are offered but not forced, in answer to Mr. Hutchinson's concern about the lack of crafts coming home. Pan-Popham denied giving less care to his child, and said she was in fact given more attention due to her extra needs. Pan-Popham stated that under the contract Mr. Hutchinson was responsible for September, October, and November, 2017 fees. It explained that the spot had been allocated for his

child and it could not fill it, unless it found someone else to take the spot on October 1.

15. The parties continued to exchange pleasant emails between September 19 and 29, 2017, with Mr. Hutchinson apologizing for his September 2017 cheque bouncing and incurring a \$25 NSF fee. In particular, on September 23, 2017, he wrote that he would pay September “right away”. He said he appreciated Pan-Popham trying to do what it could to relieve them having to pay fees in October or November.
16. On October 1, 2017, Pan Popham sent its October invoice noting that it had been unsuccessful in finding someone to fill the spot, but that it would refund any difference if someone took the spot during the month.
17. Pan-Popham says the deposit is applied to the last month’s fees, which would be November in this case and “is reflected in the dispute balance”. I accept this evidence, which was not particularly disputed by Mr. Hutchinson.
18. Mr. Hutchinson acknowledges there is a signed contract, but submits he “had no choice” but to withdraw his child, because she had vomited during the day without notice to her parents. I do not accept this argument, since the earlier vomit episode was not a focus of Mr. Hutchinson’s September 18, 2017 email. Further, Mr. Hutchinson’s later request not to pay fees was because of financial constraints, and not because he felt Pan-Popham had neglected his child. Rather, he told Pan-Popham at the time he felt it was just not the right fit.
19. I agree with Pan-Popham that the regulatory concern of the Vancouver Island Health Authority was not that Pan-Popham failed to tell Mr. Hutchinson that his child had vomited during the day, but rather that Pan-Popham did not properly document the incident. If Pan-Popham had not told Mr. Hutchinson about the vomiting episode, I agree that it would have been cited for that contravention as well, but it was not cited. The fact that there was an investigation and no finding of

any evidence that Pan-Popham neglected its care of Mr. Hutchinson's child suggests that there was no such neglect.

20. Contrary to Mr. Hutchinson's submission, I find nothing to support his claim that Pan-Popham neglected his child. The tenor of Mr. Hutchinson's emails between September 18 and 29, 2017 supports that conclusion.
21. Given my conclusion above, I find Pan-Popham is entitled to the claimed \$1,412.50, which calculation was not disputed. While there is no evidence provided to support it, on a judgment basis I allowed the claimed \$10.50 for dispute-related expenses, which given the amount I infer relates to service of the tribunal proceeding documents. I also order Mr. Hutchinson to pay Pan-Popham \$125 in claimed tribunal fee reimbursement, in accordance with the Act and tribunal rules. Pan-Popham is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$1,412.50, from November 1, 2017.
22. Given my conclusions above, I dismiss Mr. Hutchinson's claims, and therefore his dispute SC-2018-001213.

ORDERS

23. Within 14 days of this decision, I order the respondent Mr. Hutchinson to pay the applicant Pan-Popham a total of \$1,559.13, broken down as follows:
 - a. \$1,412.50 as final payment for childcare services,
 - b. \$11.13 in pre-judgment interest under the COIA,
 - c. \$125 in tribunal fees, and
 - d. \$10.50 in dispute-related expenses.
24. The applicant Pan-Popham is also entitled to post-judgment interest, as applicable.

25. In dispute SC-2018-001213, the applicant Mr. Hutchinson's claims, and therefore his dispute, are dismissed.
26. 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.
27. 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.

Shelley Lopez, Vice Chair