



Civil Resolution Tribunal

Date Issued: August 8, 2018

File: SC-2017-006134

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kube v. Screaming Chicken Theatrical Society*, 2018 BCCRT 428

B E T W E E N :

Adrienne Bernadette Kube

APPLICANT

A N D :

Screaming Chicken Theatrical Society

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about a refund for a dance class. The applicant, Adrienne Bernadette Kube, says she enrolled in the respondent's dance class, but withdrew before the class started. She seeks a refund of the \$635 class fee.
2. The respondent, Screaming Chicken Theatrical Society (Screaming Chicken), says the applicant attended the first class, and their policy of not issuing refunds after a program starts is clearly stated on their website.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the 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.

ISSUES

8. The issue in this dispute is whether the respondent must refund the applicant's \$635 dance class fee.

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. The emails provided by the applicant show that she contacted the respondent by email on May 14, 2017. The applicant said she was interested in taking a beginner's class in burlesque dancing, after visiting the respondent's website. The respondent's burlesque instructor replied that the classes would run from 7:30 to 10:00 each Tuesday evening. She said the classes would start on September 12, with a graduation recital on November 11.
11. On July 11, 2017, the applicant paid a \$50 deposit by e-transfer to reserve a place in the class. On September 4, 2017, the applicant emailed the instructor to confirm the class start date. The instructor replied that the "registration party" would be on Tuesday September 12 at 7:30.
12. The emails show that the applicant attended the September 12 "registration party". According to a witness statement from B, provided by the respondent, that event included discussion of burlesque history, performance ideas, student ideas for their numbers, clothing removal as part of burlesque, and anxieties about participation.
13. Based on B's evidence that the registration party involved detailed discussion about the history and form of burlesque dancing, I accept that it was the first class.

14. On September 19, the applicant emailed the instructor and said she was going to withdraw from the class. The instructor replied that as stated on their website, there were no refunds after the registration party as the funds had already been spent on instructors, studio space, and costume materials. The instructor said that if the applicant was concerned about the recital or the style of burlesque, they could cater to any style she wanted to create, and it was not mandatory to perform.
15. The applicant says the respondent should have provided a formal written contract. I disagree. The emails exchanged between the parties show that the applicant asked to take the class offered by the respondent, and paid money to do so. All of this evidence shows that the applicant entered into an agreement with the respondent to take the burlesque class in exchange for money.
16. The applicant says she never received a copy of the cancellation policy cited by the respondent. The respondent says it was on their website. The applicant's May 14 email confirms that she looked at the respondent's website. While she may not have looked at or read the cancellation policy, I accept the respondent's evidence that the policy was published there.
17. The respondent's evidence is that they allowed no refunds for cancellation after the first class. I accept that evidence, as it is consistent with the instructor's September 18 email to the applicant. Also, in a September 19 email, the instructor wrote that they take so much time at the registration party to make sure people are 100% committed to taking the class and understand everything involved, and they budget the class based on how many people pay tuition at the registration party.
18. As stated above, I find that the registration party was the first class. I find that by attending the first class, the applicant confirmed the contract and is therefore not entitled to any refund. I also note that the instructor informed her about the cancellation policy before the second class, and offered to tailor the class for the applicant if necessary. This evidence supports my conclusion that the applicant is not entitled to a refund, as she could have continued to take the classes with modifications offered by the instructor.

19. While the applicant says she was unsatisfied with the class and the instructor, the emails she sent at the time of the cancellation do not support that conclusion. Rather, she wrote in her September 18 emails that she had watched the instructor's show and the class "just isn't for me", she did not "have what it takes", and she thought it would be "more like the movie." The applicant wrote that the instructor was an amazing performer. This evidence indicates that it was the applicant's personal preferences that led her to withdraw from the class, rather than the competence of the instructor.
20. The applicant says the respondent was unprofessional, as it did not issue a receipt, did not ask for a waiver, used the class to host paid shows, and asked that her cheque be made out directly to the instructor. I find that none of these facts are determinative of this dispute, as they do not relate to the applicant's entitlement to a refund for cancellation, and were not raised at the time she cancelled.
21. For all of these reasons, I conclude that the applicant is not entitled to any refund.
22. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss her claim for reimbursement of tribunal fees and \$85 in expenses. The respondent did not pay any fees did not claim dispute-related expenses.

ORDERS

23. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member