



# Civil Resolution Tribunal

Date Issued: September 19, 2018

File: SC-2017-006033

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Morrow et al v. 0891256 B.C. LTD. doing business as Leap Forward  
Childcare, 2018 BCCRT 536*

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

Gisele Morrow and Tony Morrow

**APPLICANTS**

**A N D :**

0891256 B.C. LTD. doing business as Leap Forward Childcare

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. This is a dispute about childcare services.

2. The applicants, Gisele Morrow and Tony Morrow, say the respondent, 0891256 B.C. LTD. doing business as Leap Forward Childcare (Leap Forward) terminated the provision of childcare services on August 1, 2017 without refunding prepaid fees.
3. The applicants seek \$1,975 as reimbursement of their August 2017 childcare fees, \$100 as reimbursement for cheque cancellation fees, and \$840 as compensation for alternate childcare costs in August 2017.
4. The respondent says the applicants' childcare services were terminated consistent with the respondent's policy, due to Tony Morrow's conduct. The respondent says it is not responsible to pay any of the amounts claimed by the applicants.
5. Giselle Morrow represents both applicants. The respondent is represented by its proprietor, Amber Lamanes.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.
8. 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.

9. Under tribunal rule 126, 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**

10. The issues in this dispute are:
  - a. Are the applicants entitled to reimbursement of \$1,975 for August 2017 childcare fees?
  - b. Are the applicants entitled to reimbursement of \$100 in cheque cancellation fees?
  - c. Are the applicants entitled to \$840 paid for alternate childcare in August 2017?

## **EVIDENCE AND ANALYSIS**

11. 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.
12. On July 27, 2017, the applicants gave written notice to the respondent that their 2 children would stop attending the daycare on August 31, 2017. The letter asked the respondent to provide receipts for the June, July, and August 2017 payments, and to return postdated cheques dated September 2017 or later.

13. It is undisputed that after receiving this letter, the respondent deposited the applicants' cheque for August 2017 daycare fees.
14. On August 2, 2017, Ms. Lamanes sent the applicants a letter terminating childcare services, effective immediately. The letter said continuing with care of the applicant's children was not in the best interests of her staff, her business, herself, and the applicants' children. Ms. Lamanes said Mr. Morrow was unwilling to follow daycare policies, was disrespectful, treated staff poorly, left his children alone in the parking lot and back yard, and wore outdoor shoes inside the daycare. Ms. Lamanes wrote that she could not push the staff and herself to "push through" the month of August. She said "yesterday was the final straw", but did not explain what happened on that day. Ms. Lamanes referred to a Termination of Care Policy, and said she would no longer communicate with the applicants. She did not mention payment for August 2017.

#### ***August 2017 Daycare Fees***

15. The applicants say they are entitled to reimbursement of \$1,975 paid for daycare in August 2017, as the respondent did not provide the paid-for service.
16. The respondent cites 2 versions of a "Termination of Care Policy", which she refers to as "Policy #1" and "Policy #2". She says Policy #2 was in place at the time of the events in question, but she did not indicate when this change occurred. The respondent says that both versions of the policy state that the daycare can terminate a child's care without notice and without reimbursement of fees for specified reasons.
17. I find that the respondent was not entitled to keep the \$1,975 daycare fee for August 2017. The applicants submit, and the respondent does not dispute, that the respondent cashed the August 2017 payment cheque on August 1, 2017. This was only one day before the respondent gave notice that she was terminating service. I find that this was illegitimate, as the respondent took payment for an entire month after already deciding not to provide service for that month. I find that this is

substantially different from a situation where termination notice is provided mid-month, and the parents have already paid for that month.

18. There is no written contract between the parties, so there is no contractual provision allowing the respondent to keep a month's payment without providing service for that month. The applicants say they were never provided with copies of either Policy #1 or Policy #2, and the respondent has not rebutted that assertion. The Parent Handbook the applicants were provided when their children began attending the daycare does not include any information on termination by the daycare. The respondent did not provide any evidence about when these termination policies were provided to the applicants, and so I conclude that they were not. The respondent is not entitled to rely on policies that were not made available to the applicants.
19. For these reasons, I find the respondent was not entitled to keep the August 2017 daycare payment. I order her to refund \$1,975 to the applicants.

### ***Cancelled Cheque Fees***

20. The respondents say they incurred \$100 in bank fees to cancel cheques retained by the applicant. In her Dispute Response form, the applicant says she did not have any cheques on file from the applicants.
21. The applicants' July 27, 2017 letter specifically asked for cheque return. The respondent did not reply to that letter, and said in her August 2, 2017 letter that she would no longer communicate with the applicants. A lawyer acting for the applicants also asked for any post-dated cheques to be returned by September 29, 2017. The respondent did not respond to these requests, and did not tell the applicants that she had no cheques on file.
22. The Parent Handbook provided in evidence says on page 17 that cheques provided at the time of registration will be shredded when notice of termination is provided.

23. I find that because the respondent refused to communicate with the applicants to confirm the status of the cheques, it was reasonable in the circumstances for the applicants to instruct their bank to cancel the cheques.
24. The applicants provided copies of banking records showing that the bank cancelled 6 cheques made out to the respondent, and that each cancellation cost \$12.50. This equals \$75. While the applicants claimed \$100 for cheque cancellation fees, they did not provide records to support that amount. Thus, I find the applicants are entitled to \$75 for cheque cancellation fees.

### ***Alternate Daycare Costs***

25. The applicants seek reimbursement of \$840 paid for alternate daycare services incurred due to the respondent's cancellation of service.
26. While I accept that finding last-minute daycare was very inconvenient, I find the applicants are not entitled to reimbursement for that daycare. The evidence before me shows that if the respondent had not cancelled their service, the applicants would have paid \$1,975 for daycare in August. Because I have ordered reimbursement of that \$1,975, the applicants will actually have paid less for August 2017 daycare than they otherwise would have. For that reason, the applicants are not entitled to reimbursement of the \$840 alternate daycare fee.

### ***Summary***

27. The applicants are entitled to reimbursement of the \$1,975 daycare fee, plus \$75 for cheque cancellation fees. The applicants are also entitled to pre-judgment interest on these amounts, pursuant to the *Court Order Interest Act* (COIA). This equals \$24.62.
28. In accordance with the Act and the tribunal's rules, as the applicants were substantially successful in this dispute, they are entitled to reimbursement of \$125 in tribunal fees.

## ORDERS

29. I order that within 30 days of the date of this decision, the respondent pay the applicant a total of \$2,199.62, broken down as follows:
- a. \$1,975 as reimbursement of August 2017 daycare fees,
  - b. \$75 as reimbursement of cheque cancellation fees,
  - c. \$24.62 in pre-judgment interest under the COIA, and
  - d. \$125 in tribunal fees.
30. The applicants are also entitled to post-judgment interest under the COIA.
31. 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.
32. 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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Kate Campbell, Tribunal Member