



Civil Resolution Tribunal

Date Issued: October 29, 2018

File: SC-2017-006737

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *A daycare v. JW*, 2018 BCCRT 660

BETWEEN:

A daycare

APPLICANT

AND:

JW

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

- 1) The applicant, A daycare, says the respondent, JW, removed her children from the daycare without providing 30 days' notice. The applicant seeks \$1,800 as a contractual cancellation penalty.

- 2) The respondent says she is not liable because she prepaid for childcare, and because she removed her children due to unprofessional conduct.
- 3) The applicant is represented by its principal, AP. The respondent is self-represented.

JURISDICTION AND PROCEDURE

- 4) These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
- 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 make one or more of the following orders:
- 1) order a party to do or stop doing something;
 - 2) order a party to pay money;
 - 3) order any other terms or conditions the tribunal considers appropriate.

ISSUES

- 8) The issue in this dispute is whether the respondent is contractually required to pay the applicant \$1,800.

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 respondent's 2 children attended daycare at the applicant's facility 5 days per week, with a fee of \$600 bimonthly for both children (\$1,200 per month). The parties had a written contract setting out the terms of the childcare services, which the respondent signed on April 1, 2017.
- 11) The parties agree that the children attended the daycare until November 8, 2017, at which point the respondent removed the children.
- 12) The contract states, in part, as follows [all quotes reproduced as written]:

The Parent is required to pay the full child care fee regardless of the number of days or hours the child may be in care. This is to guarantee

your spot in care. Failure to pay fees will result in loss of retained space in the child care facility. The parent must agree upon registration to a deposit fee of \$100 which is NOT refundable in the event of cancellation of the space, but which will be deducted from the last months fee. 30 days notice is required.

- 13) Under the heading, "Term of Contract", the contract states as follows:

After the [one month] probation period, both child care provider and parents must give one months' written notice on the first of the month, when the child(ren) is/are to be removed from care, or the parent(s) must pay one month's fee in lieu of notice.

- 14) The evidence before me indicates that the respondent did not provide 30 days' notice before removing her children, or any notice in writing. The respondent says the childcare contract became void because AP referred to her children as "a**holes" in a text message. The respondent provided a screenshot of the following text message [reproduced as written]:

Looks like Hanna and dylan took the say off and gave me the a** holes

- 15) "Hanna and dylan" are the names provided on the contract as the children's parents. AP says the document showing the text is not reliable evidence because there is no date shown, no identification of who sent it, and it could have been altered. AP denies the sending the quoted text, and says she does not believe this was the wording she used. AP also says that one word in a text message does not nullify their contract, particularly since the respondent left her children with the applicant for many hours after the text was received.
- 16) I note that while AP denies sending the exact text message provided in evidence, she does not deny sending a text in which she called the respondent's children a**holes. Rather, in her submissions to the tribunal, AP wrote as follows,

specifically in response to the copy of the text message provided in evidence [emphasis added]:

After receiving this text, Hanna cried to me, unburdened herself to me regarding her personal life and work, hugged me and left her children at my home until 3pm (7 hours, I have two witnesses to this) I did not kick Hanna out, she chose to not come back the next day knowing abruptly withdrawing would incur charges as well as the remainder of her monthly payment along with the burden of looking for new care.

- 17) The burden of proof is on AP in this dispute, and she has not provided a copy of the text she says she actually sent, nor has she indicated why that text was unavailable. For that reason, I make an adverse inference against AP, and prefer the evidence provided by the respondent. Based on the evidence before me, particularly AP's acknowledgement that the respondent received the text, I find that AP did send a text message referring to the respondent's children in an inappropriate manner.
- 18) Based on my finding about the text message, I further find it was reasonable in the circumstances for the respondent to withdraw her children from AP's daycare without notice. I find it is an implicit term of any childcare agreement that the childcare provider provide safe and professional care to children, and referring to children as a**holes, even outside of their presence, does not meet that standard. I therefore find that AP breached the contract, so the respondent is not required to pay any cancellation fee.
- 19) I also note that the cancellation fee, even if ordered, would not equal the \$1,800 claimed by the applicant because the respondent only paid \$1,200 per month in fees.
- 20) AP made submissions about the respondent's history of late payments, and about a complaint by the respondent to the local health authority. I find that neither of

these matters are determinative of this dispute, and so I make no findings about them.

- 21) As the respondent has not filed a counterclaim, I find she is not entitled to reimbursement of any deposit paid.
- 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. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDERS

- 23) I dismiss the applicant's claim and this dispute.
- 24) I order that the public version of this decision anonymize the parties' names, to protect the privacy and the identity of third party children.

Kate Campbell, Tribunal Member