Civil Resolution Tribunal

Date Issued: January 8, 2019

File: SC-2018-005081

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Evatt v. Baergen,* 2019 BCCRT 33

B E T W E E N :

Martha Joy Evatt

APPLICANT

A N D :

Tara Baergen

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about unpaid daycare fees. The applicant, Martha Joy Evatt, says the respondent, Tara Baergen, owes $800 in daycare fees for 8 days in June and

July 2018. The applicant had given notice of termination, under the parties' contract. The claimed payment relates to that notice period, during which time the respondent was away on vacation without notice to the applicant, but was otherwise enrolled for daycare services.

2. The respondent says she owes nothing because there was no care provided for the days claimed, the applicant allegedly failed to provide a safe environment for the children in her care, and the applicant breached an alleged agreement that there would be no dogs in the home.

3. For the reasons that follow, I allow the applicant's claims. The parties are each 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 118 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. 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 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.

8. To the extent the applicant alleges the respondent has defamed her, I have not addressed that issue, because defamation expressly falls outside the tribunal's jurisdiction under the Act.

ISSUE

9. The issue in this dispute is whether the respondent owes the applicant $800 for outstanding daycare fees.

EVIDENCE AND ANALYSIS

10. 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 submissions below as necessary to explain my decision.

11. The applicant runs a "licensed not required" daycare. As such, she says there are no formal regulations, which is undisputed. The applicant claims a total of $800 in daycare fees owing on 8 days between June 27 and July 18, 2018, at a rate of $100 per day. Six of the days claimed relate to the period after the applicant gave notice of termination, and 2 days (June 27 and June 28) are for before the applicant's June 28, 2018 notice of termination.

12. The applicant's calculation is not disputed. Rather, the respondent says she should not have to pay anything because the applicant gave notice when she knew the respondent would be away on holidays and because no care was actually provided.

I note the respondent does not specifically address the claim for the 2 days where care was provided on June 27 and 28, 2018.

13. I turn to the relevant chronology.

14. On March 23, 2018, the parties' signed an "enrolment agreement", where the applicant would provide care to the respondent's child 3 days a week, between May 1, 2018 and May 1, 2019.

15. Significantly, the agreement provides that payment for daycare was by enrolment: "weekly fee is required to hold your child's spot whether child is in attendance or not. Payment will not vary due to statutory holidays, child's illness, or parent's holidays". The agreement provided the bi-weekly fee of $600 was to be paid in advance, no later than the first day of care in any given week.

16. Key to this dispute, the agreement had 2 notice provisions:

> "Caregiver will provide two weeks' notice to terminate this agreement."
>
> "Parents to provide two weeks' paid notice to terminate this agreement."

17. On June 27, 2018, the respondent texted the applicant that she had forgot to tell the applicant her family would be away and not back until the 2nd week in July. The respondent apologized for the short notice. The applicant's initial response was to acknowledge "these things happen, have a good trip!" and to send a reminder that payment was due while they were away.

18. On June 28, 2018, given she had received no response to her reminder that payment was due, the applicant emailed the respondent giving 2 weeks' notice of termination, on the basis the respondent had been late paying on 3 prior occasions. The applicant advised the remaining balance was $800, for the period of June 27 to July 12. I note the respondent's arguments that she was only late with payment once, which the applicant disputes. Nothing turns on this, because the parties' agreement does not require a reason to terminate.

19. On July 1, 2018, the applicant sent the final invoice to the respondent, which included payment for the notice period. The applicant says she was available to provide care on the 8 days in issue, noting she expressly told the respondent the child's last day of care would be July 12, 2018.

20. The fundamental point is that under the parties' agreement the respondent was required to pay for the enrolled daycare services, even when the respondent was on holidays. Contrary to the respondent's argument, it does not matter that care was not provided for 6 of the days at issue in this dispute. The provision that parents must provide 2 weeks "paid notice" supports my conclusion. Contrary to the respondent's argument, the absence of "paid" or payment in the agreement's provision about caregiver's notice does not mean the respondent does not have to pay for the 2 weeks in question. This is because the caregiver has nothing to pay. The parents' notice provision that requires "paid" notice, plus the provision that weekly fees are due regardless of family holidays, govern.

21. Initially, the respondent's refusal to pay was based on the fact that care was not actually provided during the notice period. Later, after the applicant started this tribunal proceeding, the respondent alleged the care was inadequate and that the applicant breached an agreement not to have dogs in the home. I reject the respondent's submissions in these respects. The parties' agreement does not address pets. The applicant's dog did not return to her home after a visit away until June 24, 2018. Further, the applicant advised the respondent on June 24, 2018 that the dog would be out of her house during care hours, until she could be sure the respondent's child would be a good fit with the dog. The respondent never responded. As noted above, the respondent advised on June 27 that her family would be away, and so the respondent's child was never in contact with the applicant's dog. In all of the circumstances, I find nothing turns on the applicant having a dog.

22. Based on the evidence before me, I also do not agree the applicant provided inadequate care to the respondent's child. The fact that the applicant had the child

ready for pick-up in a stroller does not prove inadequate care. I find the applicant's expression of concern about the incident where the respondent's toddler accidentally "head-butted" another child is not evidence of inadequate care. The fact that the respondent herself stated on July 1, 2018 that "we did not choose to terminate the daycare services" is support for my conclusion that the applicant never breached the parties' agreement by providing inadequate care. In other words, if the respondent had concerns inadequate care was being provided, one would expect her to raise them at the time and terminate the care.

23. Given my conclusions above, I find the respondent must pay the applicant $800 for outstanding daycare fees, under the parties' agreement. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the $800. The interest is calculated from the first of each of the 3 weeks the payments were due: June 27 ($300 was due, $2.36 in interest), July 4 ($300 was due, $2.29 in interest), and July 11 ($200 was due, $1.47 in interest).

24. The applicant was successful. In accordance with the Act and the tribunal rules, I find she is entitled to reimbursement of $125 in tribunal fees.

ORDERS

25. Within 14 days of this decision, I order the respondent to pay the applicant a total of $931.12, broken down as follows:

a. $800 in payment of outstanding day care fees,

b. $6.12 in pre-judgment interest under the COIA, and

c. $125 in tribunal fees.

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

27. 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.

28. 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