



# Civil Resolution Tribunal

Date Issued: February 25, 2019

File: SC-2018-002756

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sowale v. Little Ark Childcare Centre LTD.*, 2019 BCCRT 220

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

Aderonke Sowale

**APPLICANT**

**A N D :**

Little Ark Childcare Centre LTD.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Megan Volk

### **INTRODUCTION**

1. This is a dispute about childcare expenses. The applicant, Aderonke Sowale, asks for a finding that she does not owe the respondent, Little Ark Childcare Centre LTD., \$277, and wants “the cancellation of a collections action”. The applicant also wants a refund of \$307.20 for the remainder of December 2017 fees. The applicant represents herself and a principal represents the respondent.

## **JURISDICTION AND PROCEDURE**

2. 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 relationships between parties that may continue after the dispute resolution process has ended.
3. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. I find that I can fairly resolve this dispute by writing based on the documents and written positions before me because there are no significant issues of credibility or other reasons that might require an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether 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.
5. 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**

6. The issues in this dispute are:
  - a. whether the applicant owes the respondent \$277, and
  - b. whether the respondent owes the applicant \$307.20.

## **EVIDENCE AND ANALYSIS**

7. The applicant bears the burden of proof for the claim on a balance of probabilities. I have reviewed all submissions and evidence provided. I refer only to the relevant evidence necessary to give context to my decision.
8. The parties agree that the applicant's child attended the respondent daycare from September 1, 2017 to December 12, 2017.
9. It is undisputed that in August 2017 the parties entered a written contract for daycare services. The applicant agreed to pay a \$200 deposit and monthly fees for daycare services. And, that the applicant owed the entire monthly fees regardless of whether the child attended all or any days in a month.
10. The amount of the monthly fees was not set out in the contract. The applicant says that the monthly fee was \$1,009. The respondent did not dispute that. Further, handwriting on a document provided by the applicant references a monthly fee of \$1,009, and that amount is consistent with an invoice provided by the respondent for November 2017. Given the evidence, I find the agreed monthly fee was \$1,009.
11. On August 31, 2017 the British Columbia Child Care Subsidy program granted a child care subsidy (subsidy) related to the parties' contract. The subsidy letter said the approved amount was \$496.40 (authorized child care subsidy amount) for 20 full days per month from September 1, 2017 to December 31, 2017. The parties did not provide copies of any completed subsidy forms.
12. It is undisputed that the applicant is responsible for paying the difference between the subsidy and the amount charged by the daycare. It is also undisputed that the subsidy is generally only paid when the child attends the daycare. For these reasons, I find that the applicant was obligated to pay whether the childcare work was performed or not, and for any pay beyond the subsidy. And, I find that the subsidy was \$24.82 for each day the child attended.

13. The respondent says that the applicant owes \$893.60 for November 2017 because the respondent returned to the subsidy program all but \$115.40 of the subsidy due to absences. The parties disagree whether all of the absences were for vacation but the number of absences is not in dispute. Further, it is undisputed that the applicant took her child out of care for vacation for 3 weeks between November and December 2017. The attendance sheet for November 2017 shows that the child was in care for 7 days.
14. The parties each provided submissions that they spoke to representatives associated with the subsidy program. Each party claims they were told different things. The applicant says subsidy will cover 2 weeks of vacation. The respondent provided two positions. The respondent said that subsidy never covers any vacation and also that subsidy will cover up to 2 weeks of vacation but that if 1 day more is taken beyond 2 weeks then subsidy does not cover any of the vacation.
15. Both parties agree that the online subsidy information confirms that subsidy may cover up to 2 weeks of vacation. Neither party provided evidence from the subsidy program about the subsidy entitlement for November or December 2017. According to a document provided by the applicant the respondent was required to submit a form each month for which they are claiming subsidy payments. A second form is required for any adjustments to the previous month's subsidy claims.
16. Without the forms or other evidence from subsidy, I am unable to say whether the respondent should have kept the subsidy for the 2 weeks of vacation. I do not accept the respondent's arguments that the subsidy would never be provided or be unavailable if the applicant took 1 day over 2 weeks. However, the entitlement to subsidy during vacation is discretionary and has not been proved here. Given the burden on the applicant, I find the applicant was obligated to pay the respondent \$893.60 for November 2017, as claimed. The invoice provided by the respondent shows that the applicant paid \$512.60 for November, leaving a difference owing of \$381.

17. The respondent says the applicant owes \$403.60 for December 1 to 12, 2017. It is undisputed that the respondent returned the entire subsidy for December. The attendance sheet for December 2017 shows that the applicant's child was in care for 2 days between December 1 and 12, 2017. Given that the subsidy was \$24.82 for each day the child attended, I find the respondent should have kept \$49.64. As such, I find the applicant owed \$353.96 for December. On the evidence, I find the applicant paid \$512.60 leaving a credit of \$158.64.
18. The parties agree that the respondent ended the contract for daycare services on December 12, 2017. The applicant says the contract was terminated improperly and that she was left without care. The respondent says the contract was terminated for cause. The contract says only that either party must give 30 days' written notice by the 1<sup>st</sup> or 15<sup>th</sup> of the month. I find that the respondent did not give the required notice to the applicant. The contract was terminated verbally and effective immediately on December 12, 2017.
19. I do not agree with the applicant that the fact the respondent returned her \$200 shows she had no outstanding balance. The contract says the deposit is provided to hold the child's space and requires that it be refunded within 14 days of the last day the child attends for care.
20. The applicant says that she had to hire a nanny to care for her child due when the contract was terminated. The applicant was a student at the time and had final exams that she was required to take. While the applicant did not provide any evidence of the damages she suffered, I accept the applicant had to obtain urgent childcare when the contract with the respondent was terminated without notice. And on a judgement basis, I find that the applicant is entitled to the rate of \$31.75 per day for the 9 days before the Christmas break totaling \$285.75.
21. In summary, the applicant owes the respondent \$381 for November 2017 fees while the respondent owes the applicant \$158.64 for December 2017 fees, and \$285.75 for early termination of the contract. The resulting effect when these costs are set off against each other is the respondent owes the applicant \$63.39.

22. The applicant also requests cancellation of the private debt collection and \$20 for mail expenses to the credit bureau and other mail expenses. Given my findings above, I note that there is no longer a debt owing, as the debt is set off against the amounts owing to the applicant. As the applicant owed the respondent for fees in November 2017, I do not make an award for mail expenses to the credit bureau. There are no submissions regarding the other mail expenses and as such I make no award for those expenses.
23. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was partially successful in this dispute, I order that the respondent pay the applicant \$50 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.

## **ORDERS**

24. I order that, within 30 days of this decision, the respondent must pay the applicant a total of \$114.44, broken down as follows:
  - a. \$63.39 after set off,
  - b. \$1.05 in pre-judgment interest under the *Court Order Interest Act* from December 12, 2017, and
  - c. \$50 as reimbursement of tribunal fees.
25. The applicant is entitled to post-judgment interest under the COIA.
26. The applicant's remaining claim is dismissed.
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.

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Megan Volk, Tribunal Member