



Civil Resolution Tribunal

Date Issued: April 29, 2019

File: SC-2018-007808

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Magoo's Child Care Center LTD v. Hehn*, 2019 BCCRT 511

B E T W E E N :

Magoo's Child Care Center LTD

APPLICANT

A N D :

Stacy Hehn

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for childcare services.
2. The respondent, Stacy Hehn, sent her child to a daycare facility operated by the applicant, Magoo's Child Care Center LTD. The applicant seeks \$1,525 for unpaid

childcare fees, NSF fees, and late fees. In particular, the applicant says the respondent failed to give sufficient notice of cancellation before removing her child from the daycare.

3. The respondent denies the applicant's claims. She says the applicant had already given 60 days' notice that it would no longer take her child, so it was reasonable for her to find alternate care and the contractual requirement for her to provide 30 days' notice should not apply. The respondent also says the applicant had already admitted it could not meet her child's needs, so she was not bound by the contractual notice period.
4. The applicant is self-represented. The respondent is represented by JB, who I infer is its principal. For the reasons that follow, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

7. 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.
8. Under tribunal rule 9.3(2), 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.

ISSUE

9. The issue in this dispute is whether the respondent must pay the applicant \$1,525 for daycare fees, NSF fees, and late payment 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 arguments to the extent necessary to explain my decision.
11. Both parties provided submissions and evidence about the respondent's child, E. As discussed below, I find that in deciding this dispute nothing turns on E specifically.
12. The respondent signed a contract with the daycare on November 16, 2015. Page 1 of the contract contains the following term:

I understand that I must give one full month notice as stated in the Parent Handbook. This notice must be given by the last day of the month prior to the child's last day. i.e. If your last day is October 31st, you must give notice before September 30th.

13. The respondent signed below this term to acknowledge her agreement with it. The term is repeated in the Parent Handbook, which also states that failure to give full notice will result in a full month's payment being owed.

14. The Parent Handbook also says the applicant reserved the right to terminate its contract with families if the co-licensees felt the family dynamics were not working, and that this could include immediate termination, two weeks, or 30 days' notice depending on the circumstances.
15. The parties provided evidence and submissions about the circumstances in which E left the daycare. On June 29, 2018, the applicant emailed the respondent and said they were giving notice to end E's care effective August 30, 2018. The email gave several reasons for that decision.
16. On July 25, 2018, the respondent emailed the applicant and said she had found another daycare for E, starting August 1, 2018. The respondent's email set out her reasons for ending care with the applicant on this date.
17. The applicant replied on the same day, reminding the respondent she would be charged for the full month of August 2018 since she had not given 30 days' notice. The respondent replied that she did not think the notice period should apply, since E was asked to leave.
18. I find it is not necessary for the purposes of this decision to make findings about why the applicant decided to end E's care on August 30, why the respondent removed E effective August 1, and whether the applicant was required to give 30 days' notice in those circumstances. This is because I find the applicant has not provided evidence to establish its claim for \$1,525 in daycare fees, late fees, and NSF fees. In particular, I find there is no evidence before me to prove the debt, or to explain how the applicant arrived at this amount. Neither the contract nor the Parent Handbook sets out the monthly rate for childcare. The applicant did not provide any account statements or invoices to prove how much the respondent usually paid for daycare, or what she had agreed to pay. While the applicant apparently sent a demand letter to the respondent, it did not provide a copy in evidence. Thus, there is no way to know, based on the evidence before me, the amount of the claimed daycare fees for August 2018 (or any other month). Given that the applicant bears the burden of proving its claims, I am not prepared to speculate about this amount. I

note that during the tribunal facilitation process, parties are instructed to provide all relevant evidence. Also, the applicant is familiar with tribunal procedure, having participated as an applicant in a prior dispute: *Magoo's Child Care Center LTD v. Ward*, 2018 BCCRT 188.

19. As part of its \$1,525 claim, the applicant seeks payment of NSF fees. The applicant's policy allowing for NSF fees is set out in the Parent Handbook. However, there is no evidence before me indicating that the respondent made a payment that failed due to "non-sufficient funds". Thus, no NSF fee is warranted. The Parent Handbook also allows for late fees, but the applicant has not explained how much of its \$1,525 claim is for late fees.
20. For these reasons, I find the applicant has not met the burden of proving its claims. I therefore dismiss the applicant's claims, and this dispute.
21. 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 its claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDER

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

Kate Campbell, Tribunal Member