Civil Resolution Tribunal

Date Issued: May 3, 2019

File: SC-2018-007032

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wang v. Educare Systems Inc.*, 2019 BCCRT 527

BETWEEN:

Fei Wang

APPLICANT

AND:

Educare Systems Inc.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie

INTRODUCTION

1. This dispute is over money payable under a contract for daycare services.

2. The applicant, Fei Wang, says she is entitled to a refund of her $1,450 security deposit, compensation of $3,550 for mental distress, a formal apology, plus her fees and expenses related to this dispute.

3. The respondent, Educare Systems Inc., says the applicant is not entitled to her security deposit as she signed an agreement for a 12-month commitment and was not entitled to withdraw before the 12 months concluded.

4. The applicant is self-represented. The respondent is represented by its Chief Executive Officer, Nadia Hasan.

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*. 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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The 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. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an 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 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

9. The issues in this dispute are:

    a. Did the applicant give proper notice that she was withdrawing her child from the respondent daycare?

    b. Is the respondent entitled to keep the applicant's security deposit?

    c. Is the applicant entitled to damages for mental distress?

    d. Is the applicant entitled to a formal apology?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. The applicant submits that she is entitled to the return of her security deposit of $1,450 as she had properly withdrawn her son from the respondent daycare, and also that as her son was ultimately rejected service by the daycare, they should not

be entitled to keep her deposit. She also seeks damages for mental distress relating to her dealings with the respondent, and a formal apology.

12. On March 16, 2018, the applicant signed a contract with the respondent. The contract was for her son to attend the respondent daycare, for a 12-month term commencing July 1, 2018, specifically known as the “Plan B” plan.

13. The terms of service on the contract stated the applicant could withdraw her son from the program with two months written notice. The terms of service further stated that if a family properly withdraws from the program, their security deposit would be applied as tuition for the last month of enrollment.

14. Another term listed in the contract stated that “by choosing the Plan B payment plan I commit to 12 months from Plan B enrollment.” Each of the above-noted terms was initialed by the applicant.

15. On June 21, 2018, the applicant gave the respondent written withdrawal notice advising her child’s last date of service would be September 28, 2018, three months later. The withdrawal notice was signed and dated by the respondent on June 21, 2018, who also indicated on the notice that the last month of enrollment would be September 2018.

16. In an email on June 22, 2018, the applicant wrote to the respondent and asked if the respondent would consider allowing withdrawal from the contract as of the end of June 2018, but recognized her commitment to make a quarterly payment for July, August and September 2018.

17. On June 25, 2018, an employee of the respondent responded to the applicant and advised they had received her withdrawal notice, but that as she had signed up for Plan B, she was required to adhere to a 12-month commitment, and that her withdrawal was therefore rejected. The applicant was further advised the quarterly payment for July, August and September would be withdrawn from her account on July 1, 2018, and if she failed to make a payment her deposit would be forfeited.

18. In an email to the respondent dated June 27, 2018, the applicant pointed out the term of the contract that indicated she was able to withdraw her son from the respondent daycare with two months written notice. In response, the respondent advised that families under Plan B did not qualify for withdrawal until a full 12-month commitment had ended.

19. On June 28, 2018 the applicant requested the respondent stop payment for the upcoming quarter in order for her to seek third party assistance to resolve the dispute.

20. Into July 2018, the applicant's son continued to attend the respondent daycare.

21. On July 5, 2018, the applicant's quarterly payment bounced. On July 6, 2018 at 8:45 am, the respondent emailed the applicant and advised that due to the stopped payment, her son was withdrawn from the daycare until payment was made.

22. Although the applicant's son was not longer enrolled in the respondent daycare, the applicant dropped off her son off on July 6, 2018 at approximately 12:00 pm and left the premises. The applicant picked up her son later that day.

23. The applicant seeks the return of her security deposit as she states she properly withdrew her son from the daycare, while the respondent takes the position the applicant had signed up for a 12-month term that was not eligible for withdrawal pursuant to the contract's withdrawal term.

Did the applicant give proper notice that she was withdrawing her child from the respondent daycare?

24. The applicant is responsible for making sure she read and understood the contract when she signed it. The contract required two months written notice for withdrawing her child. The contract also called for a 12-month commitment pursuant to the Plan B option.

25. Although the respondent advised the Plan B program required a minimum 12-month commitment before withdrawal notice could be given, I find that is not clear from the

terms of the contract. Nothing in the contract indicates to me that the withdrawal notice term would not apply to Plan B families. I find the contract is ambiguous as to whether the applicant was entitled to rely on the withdrawal provision.

26. When an ambiguity arises about what the parties were agreeing to in a contract, there is a legal rule known as *contra proferentem* that deals with how to interpret that contract (see: *Horne Coupar v. Velletta & Company*, 2010 BCSC 483). Under the rule of contract interpretation, the ambiguity must be resolved against the party who drafted it, in this case the respondent. Here, this means it must be resolved in favour of the applicant.

27. As such, I find that the applicant was entitled to rely on the withdrawal notice term, and did give proper notice to the respondent daycare on June 21, 2018 to withdraw her child by September 28, 2018.

Is the respondent entitled to keep the applicant's security deposit?

28. As noted above, the contract indicated that if a child was properly withdrawn from the respondent's daycare, the remaining security deposit would be applied to the last month of enrollment.

29. Given my conclusion above that the applicant properly provided notice about withdrawing her son, I find that she was entitled to withdraw her son from the respondent daycare by the end of August 2018, two months after the written notice was given. Therefore, she was required to pay the monthly fees for July 2018 and to have her security deposit applied to the fees for August 2018.

30. The applicant's son continued to attend at the daycare until July 6, 2018, when he was withdrawn by the respondent due to the applicant stopping payment on the July fees.

31. Although I have found that the applicant gave proper withdrawal notice, I find that by failing to complete payment for July 2018 while still having her son attend the respondent's daycare, left her in breach of the terms of the contract. Under the

terms of the contract, the respondent was then entitled to apply the applicant's security deposit towards any outstanding dues or fees.

32. The parties did not provide any evidence on the monthly fee amount the applicant had contracted to pay. However, I find from the signed contract, and a "Frequently Asked Questions" sheet provided by the respondent, that the security deposit of $1,450 was equal to one month's fees. Given the terms of the contract, the applicant was required to continue to pay daycare fees for July and August pursuant to the withdrawal notice period, and she failed to do so, leaving her in default for two months' fees. The respondent, therefore, was entitled to apply her security deposit to those unpaid fees. Therefore, I find the applicant is not entitled to a refund of her security deposit. I make no order about the applicant paying the respondent for the second month of fees, as there is no counterclaim before me.

Is the applicant entitled to damages for mental distress?

33. As noted above, the applicant bears the burden of establishing her claims for mental distress. Although not binding upon me, I note the decision of *Eggberry v. Horn et al*, 2018 BCCRT 224, which states that where there is no evidence of mental distress, the claim must be dismissed.

34. The applicant submits that she was treated poorly and verbally abused by the respondent daycare, and that she and her son have been left with "emotional scars." I note the respondent submits it was the applicant who was verbally abusive to its staff. No evidence was provided in support of the applicant's claim for mental distress. Although the applicant submits she found the experience stressful, I am not satisfied that the evidence establishes that the applicant sustained a mental injury or any mental consequences as a result of her interactions with the respondent. As such, I do not find that she is entitled to an award for mental distress.

Is the applicant entitled to a formal apology?

35. The applicant requests the respondent issue a formal apology to her family. The tribunal generally does not order apologies because forced apologies are not productive or helpful, and I agree. I decline to order the respondent to apologize to the applicant.

36. Under the tribunal rules, the successful party is generally entitled to the recovery of their fees. As the applicant was not successful, I find that she is not entitled to reimbursement of her tribunal fees or dispute-related expenses. The respondent did not pay tribunal fees or claim expenses.

ORDER

37. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair