Civil Resolution Tribunal

Date Issued: July 8, 2019

File: SC-2018-008663

Type: Small Claims

Civil Resolution Tribunal

Indexed as*: Brown et al v. deRoy,* 2019 BCCRT 821

B E T W E E N :

Richard Brown and Rebecca Blouin

APPLICANTS

A N D :

Ildiko deRoy

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about reimbursement of a deposit and childcare fees the applicants, Richard Brown and Rebecca Blouin, prepaid to the respondent, Ildiko deRoy, who operates a daycare called “Step By Step”. The applicants say in mid-July 2018 they

cancelled the contract in writing and so they are entitled to reimbursement for the unused September 2018 fees. The applicants claim $1,050 for September 2018 fees plus $250 as a refund of their initial deposit paid in January 2018.

2. The parties are each self-represented. For the reasons that follow, I dismiss the applicants' claims.

JURISDICTION AND PROCEDURE

3. 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.

4. 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.

5. 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.

6. 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.

7. I note the respondent argues that because Island Health did an investigation and closed their file, the tribunal should not hear this dispute. I disagree. This dispute is a civil claim in debt and is distinct from any licensing investigation by Island Health. I am not bound by Island Health's findings in coming to my conclusions in this decision.

ISSUE

8. The issue in this dispute is to what extent, if any, the respondent owes the applicant a $1,300 refund, for a deposit and fees for unused childcare services.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant to prove their claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

10. On January 15, 2018, Ms. Blouin signed an agreement enrolling the applicants' child A in the respondent's daycare. The agreement included the following relevant terms:

    a. A $250 deposit was required to reserve a space, which would be applied to the "last month's fees after notice". All deposits are non-refundable.

    b. The applicants agree to pay the respondent $1,100 on the last Friday of every month that A attends the respondent's daycare. The care description was "full-time". There is no end-date set out in the agreement.

c. If the applicants wish to "permanently remove" their child, 1 month's written notice must be "**hand delivered**" on or before **the last day of the month** (my bold emphasis added). Failure to comply with the hand delivery requirement results in "being charged for the following month that appropriate notice was not given".

d. If the applicants want to withdraw A from care during the summer and want to hold their spot for September, they must prepay September tuition by June 30 "to insure your child spot for the fall Semester" (reproduced as written). As discussed below, the applicants chose this option.

e. "**Under no circumstances will there be any refunds issued**" (written in bold capitals in the original).

11. I note that the parties' agreement complies with section 19 of the *Community Care and Assisted Living Act*, which says that if services are prepaid the agreement must set out the terms on which any refund would be made. In the parties' agreement, the terms are that there is no refund.

12. The applicants provided a copy of an April 2018 contract, which for the deposit and advance September fees at issue appear to contain the same terms. Nothing turns on the differences about nutrition or fee amounts. In any event, this April 2018 contract in evidence is not signed, and so I find the January 2018 signed contract governs.

13. In June 2018, the applicants pre-paid for $1,050 for childcare services that were to start on September 1, 2018. I have no explanation for why this was less than the $1,100 set out in the contract, but nothing turns on it. Contrary to the applicants' submission, I find they did not terminate their child's enrollment in June. Instead, they took the "summer off" option, which effectively continued the child's enrollment but with a summer break.

14. The applicants say the contract required only a month's notice to cancel. The applicants say they cancelled the contract on July 21, 2018, by text, email, and a

letter sent regular mail through Canada Post. However, the applicants did not provide copies of any texts or emails.

15. I find nothing turns on the method of delivery, though I do not agree with the applicants that delivery by regular mail through Canada Post amounts to "hand delivery" under the contract. I find the contract does not provide for any refund of the September 2018 fees or for the deposit. The contract is clear that there are no refunds under any circumstances, and the section addressing the September 2018 fees makes no mention of termination or notice at all. The termination provisions all address how much notice is required and how payments will be applied. The deposit section of the contract expressly says no refunds.

16. I acknowledge that on the one hand, the respondent arguably has received the "last month's fees" by getting to keep the September fees, and so one reading of the contract could be that they should have had the $250 applied to those fees. However, again, the contract is very clear there are no refunds under any circumstances. I find the "no refunds under any circumstances" policy governs as that term most clearly expresses the parties' intentions at the time the agreement was signed. Given these conclusions, I find the applicants' claims must be dismissed. Even if I had found the respondent liable, I would not have ordered an apology, as requested by the applicants. A forced apology is not useful or productive.

17. In accordance with the Act and the tribunal's rules, as the applicants were unsuccessful I find they are not entitled to reimbursement of tribunal fees. There were no dispute-related expenses claimed.

ORDER

18. I dismiss the applicants' claims and this dispute.

Shelley Lopez, Vice Chair