



Civil Resolution Tribunal

Date Issued: July 19, 2019

File: SC-2019-001322

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Molaei v. Champions Karate Academy Ltd.*, 2019 BCCRT 882

BETWEEN:

Faranak Molaei

APPLICANT

AND:

CHAMPIONS KARATE ACADEMY LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a partial refund for a karate academy membership.
2. The applicant, Faranak Molaei, says she enrolled her son, SH, in the respondent karate academy, Champions Karate Academy Ltd., and that the academy owes

them a refund for classes missed by SH. The applicant seeks compensation of \$1,500 for the missed classes. The respondent says the contract was not for a specific number of classes, but rather for a monthly membership and that the applicant is not entitled to any refund.

3. The applicant is represented by her husband, Mahmood Hajitaheri. The respondent is represented by Ingrid Katzberg, its principal.

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*. 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. 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.
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 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.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to a refund of \$1,500 for missed classes.

EVIDENCE AND ANALYSIS

9. 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.
10. The applicant entered into a contract with the respondent karate academy on July 8, 2018, for a period running from July 8, 2018 to July 7, 2019. The "tuition" totaled \$2,564.10 for the year, payable monthly at \$213.67 per month. The contract is signed by both the applicant and a representative of the respondent.
11. The terms of the contract state that the contract may be cancelled with a minimum 30 days' written notice and payment of 1 month's tuition cancellation fee, in the event of death, loss of employment or if the student moves more than 25 km away from the respondent academy. The terms state that lack of motivation or changes in personal schedule are not valid reasons to cancel the contract, and in that event, all remaining payments in the agreement must be paid.
12. The contract also states that acceptable absences from the membership include vacation, sickness, injury and traveling abroad. The contract states acceptable

absences will extend a student's membership, and that the absences must be a minimum of 4 weeks' missed time and that anything less than 4 weeks will not be credited. The contract requires travel documents and/or a doctor's note to confirm the student's absences. The contract further states that the student and co-signer "agree unconditionally to pay the above tuition without regard to the attendance made or classes missed".

13. The applicant submits that during the term of the contract, her son decided he did not want to attend the respondent academy and that she advised the respondent of this in August 2018. The respondent denies that the respondent ever requested termination of the contract, and that it only became aware in December 2018 when the applicant informed the respondent that SH was attending another facility. There is nothing in evidence to show that the applicant ever requested termination of the contract in August 2018, or otherwise, pursuant to the contract terms. In any event, I find nothing turns on the termination of the contract, as no remedy is requested by either party.
14. The applicant does, however, request a \$1,500 refund for classes she says her son did not attend. The applicant relies on the term of the contract that states the membership will be extended due to approved absences. As noted above, the respondent says the contract was for a yearly membership, not for a certain number of classes, and that the applicant is obligated to pay for the membership regardless of the number of classes attended. I agree. I find that the terms of the contract clearly state that the applicant agreed to pay the balance of the tuition regardless of how many times her son attended the respondent academy. In any event, nothing in the contract provides that the applicant would be entitled to a refund for absences, but rather the membership would have been extended for the time period covering approved absences of 4 weeks or more.
15. The applicant has not provided any evidence to show any absences by her son were for one of the "approved" reasons as stated in the contract. The burden is on

the applicant to prove her claims on a balance of probabilities, and I find she has not met that burden.

16. Based on all of the above, I find the applicant is not entitled to any refund under the contract. I dismiss the applicant's claims.
17. Under section 49 of the Act, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was not successful, I find that she is not entitled to reimbursement of his tribunal fees. No dispute-related expenses were claimed.

ORDER

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

Andrea Ritchie, Vice Chair