



# Civil Resolution Tribunal

Date Issued: September 4, 2019

File: SC-2019-001184

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wonderville Child Centre Inc. v. Dadwal*, 2019 BCCRT 1050

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

WONDERVILLE CHILD CENTRE INC.

**APPLICANT**

**A N D :**

JESSICA DADWAL

**RESPONDENT**

**A N D :**

WONDERVILLE CHILD CENTRE INC.

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. This dispute is about whether the respondent, Jessica Dadwal, should pay the applicant and respondent by counterclaim, Wonderville Child Centre Inc. (Wonderville), for daycare services for the month of October 2018. Wonderville claims \$800, which is the October fee less a \$300 deposit. Ms. Dadwal disputes that she owes \$800 and counterclaims for the return of the \$300 deposit.
2. Wonderville is represented by Harold Wyman, who is a human resources manager. Ms. Dadwal is self-represented.

## **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* (CRTA). 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 this case I find that an oral hearing is not necessary as there are no significant issues of credibility or other reasons that might require an oral hearing.
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 make one or more of the following orders, where permitted under section 118 of the CRTA:

- 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**

7. There are two issues in this dispute.
  - a. Does Ms. Dadwal owe Wonderville \$800 for daycare services for the month of October 2018?
  - b. Should Wonderville should return Ms. Dadwal's \$300 deposit?

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. Ms. Dadwal bears this burden on her counterclaim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

### ***The October 2018 Daycare Services***

9. On January 1, 2016, the parties entered into a daycare services agreement that charged Ms. Dadwal on a monthly basis. The parties' agreement is written and spans several documents, including a registration package, parents' handbook, and July 23, 2018 addendum. I find that these documents are binding.
10. These documents state that that the monthly daycare fees were "subject to change and will be reviewed once a year". Further, Ms. Dadwal would be notified "a month in advance if changes occur". No other terms appear relevant and the parties did not draw my attention to any other contract provisions with respect to changing fees.

11. On July 1, 2018, Wonderville emailed a newsletter stating that fees for July and August 2018 would be \$770 per month, with another increase expected as of September 1, 2018. The newsletter stated that the exact amount would be determined and emailed to clients later in July 2018.
12. Later in July 2018, Wonderville emailed Ms. Dadwal that monthly daycare fees from September 2018 onwards would be \$870 per month.
13. On September 1, 2018, at approximately 10:00 p.m., Wonderville emailed Ms. Dadwal to advise that monthly fees would be raised from \$870 to \$1,100, starting on October 1, 2018. On September 4, 2018, Wonderville sent another email and explained that it was increasing its fees again because of increased labour and lease costs.
14. Ms. Dadwal was not immediately aware of the increase as the September 1, 2018 email was sent during the labour-day long weekend. From September 4, 2018 onwards, Ms. Dadwal sought alternate childcare options. On September 7, 2018, she advised Wonderville that she would be removing her child from Wonderville effective September 30, 2018. Wonderville replied that she did not provide enough notice of her withdrawal to avoid being charged for October 2018.
15. Ms. Dadwal offered to keep her child at the daycare for October 2018 at the previous rate of \$870 per month. Wonderville rejected this suggestion and on September 25, 2018, invoiced her for \$1,100 for October 2018, less an earlier-provided deposit of \$300, for a total of \$800 owing. Ultimately Ms. Dadwal's child did not attend Wonderville for October 2018.
16. The key issue is whether Wonderville could increase its daycare fees in September 2018 under the terms of the parties' agreement. Wonderville submits that it could freely increase its prices throughout the year so long as it provided notice of such changes a month in advance. For the reasons that follow, I disagree.
17. In interpreting the fee-change terms, I must determine the parties' objective intent when the contract was made. This involves reading the contract as a whole and

giving the words their normal and ordinary meaning, consistent with the surrounding circumstances known to the parties when they made the contract: *British Columbia (Minister of Technology Innovation and Citizens' Services) v. Columbus Real Estate Inc.*, 2016 BCCA 283 at paragraph 41.

18. As noted above, the monthly daycare fees were subject to change and would be reviewed once a year. I find the most logical interpretation of the fee-change terms is that the monthly fees would be reviewed once a year and changed based on that annual review. Otherwise, the reference to fees being reviewed "once a year" would serve no purpose.
19. I accept that the price changes based on the yearly review did not necessarily have to all occur at once and could be staggered throughout the year. This was the case when Wonderville advised in July 2018 of planned monthly increases for July, August, and September 2018. However, the decision to increase prices for October 2018 occurred several months after the announced changes in July 2018. As demonstrated in its emails, it was clearly due to changing labour and lease costs, rather than the yearly review.
20. In reaching my conclusion I also considered whether the parties had historically accepted that Wonderville could increase prices more than once a year. This would assist in determining the parties' intent or possibly provide evidence of a mutually accepted change in the parties' agreement.
21. There is limited evidence on the matter, though a July 1, 2018 newsletter suggests that price increases normally occurred once a year. The newsletter noted that Wonderville provides raises to staff once a year and must increase fees an "average" of once a year. There is also no indication from Ms. Dadwal that Wonderville increased monthly rates outside of the yearly review process.
22. Finally, I note that when an ambiguity arises about what the parties are agreeing to in a contract, there is a legal rule the ambiguity must be resolved against the party

who drafted it: *Horne Coupar v. Velletta & Company*, 2010 BCSC 483. This legal rule does not assist Wonderville as it drafted the contract documents.

23. As stated in *Kuo v. Kuo*, 2017 BCCA 245, unless an agreement is terminated, parties must fulfill their obligations. Termination by repudiation occurs when a party shows an intention not to be bound by the agreement and the innocent party accepts this repudiation. Similarly, a breach of a primary obligation may also be a repudiation as it amounts to a refusal to perform.
24. I find that by increasing fees from \$870 to \$1,100 per month (an increase of over 25%), after a notice of previous planned increases in the calendar year, Wonderville breached the parties' agreement. Ms. Dadwal was the innocent party in this situation. She accepted Wonderville's repudiation of the agreement by refusing to pay for daycare services for October 2018 and withdrawing her child from their care. Wonderville is therefore not entitled to its claim of \$800 for daycare services for the month of October 2018.
25. Wonderville submits that Ms. Dadwal should also pay because the parties' agreement, including the July 2018 addendum, states that Ms. Dadwal had to provide one full month of written notice (and before the 1<sup>st</sup> of the month) or pay the following month's fees in lieu of such notice.
26. Ms. Dadwal did not provide the required notice, though I note in the circumstances it was impossible for her to do so. She was emailed notice of the price increase on September 1, 2018, late at night. By the terms of the agreement she had to provide written notice of withdrawal on August 31, 2018 (i.e. a day before she even knew of the increase), to avoid paying the increased price for October 2018. Instead, she provided written notice of her withdrawal on September 7, 2018. I find this to be reasonable, given that she had to find alternate childcare arrangements before she could provide written notice.

27. Ms. Dadwal's withdrawal was caused by Wonderville's fee increase for October 2018, and I have found this increase breached the parties' agreement. I find Ms. Dadwal acted reasonably after learning of the breach. I dismiss Wonderville's claim.

### ***Return of \$300 Deposit - Counterclaim***

28. According to the parties' registration package, which forms part of their agreement, Ms. Dadwal had to pay a \$300 deposit at the time of registration. At the time of withdrawal from Wonderville, the deposit could be applied to the last month's fees, refunded, or applied to any outstanding debt. The package also states that failure to provide one month of notice before withdrawal would lead to an additional monthly fee and/or the loss of the deposit.

29. I have found that Ms. Dadwal owes no outstanding debt to Wonderville. Ms. Dadwal provided notice late, but as noted above, this was caused by Wonderville's breach of the parties' agreement. I therefore find she is entitled to a refund of the \$300 deposit.

30. Ms. Dadwal is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from October 1, 2018. I find this date appropriate as that was when she stopped using Wonderville's services.

### ***Tribunal fees and expenses***

31. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.

32. Ms. Dadwal has been the successful party in this case. Accordingly, I award her tribunal fees of \$125 and decline to award any tribunal fees for Wonderville. The parties did not claim for dispute-related expenses.

## ORDERS

33. I order that within 30 days of this decision, Wonderville must pay Ms. Dadwal a total of \$430.06, broken down as follows:
- a. \$300.00 in debt,
  - b. \$5.06 in pre-judgment interest from October 1, 2018, under the COIA, and
  - c. \$125.00 in tribunal fees.
34. Ms. Dadwal is entitled to post-judgment interest under the COIA, as applicable.
35. I dismiss Wonderville's claims.
36. Under section 48 of the CRTA, 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.
37. Under section 58.1 of the CRTA, 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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David Jiang, Tribunal Member