



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mark et al v. Baby Set Store Ltd.*, 2019 BCCRT 1127

B E T W E E N :

DEAN MARK and KATHERINE DUFF

APPLICANTS

A N D :

BABY SET STORE LTD.

RESPONDENT

A N D :

DEAN MARK and KATHERINE DUFF

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about fees for child care services.
2. The respondent, Baby Set Store Ltd. (Baby Set), provided child care services for the applicants, Dean Mark and Katherine Duff (the clients).
3. The clients say that Baby Set failed to refund a portion of their deposit after they withdrew their children from Baby Set's care. The clients claim \$500 for their deposit.
4. Baby Set denies that it owes the clients any refund. In its counterclaim, Baby Set claims \$2,500 in unpaid child care fees. Baby Set also claims \$850 in dispute-related expenses for legal fees and staff wages, which it says the clients owe under the contract.
5. The clients are represented by Mr. Mark. Baby Set is represented by its manager, Sarah Alghouti.

JURISDICTION AND PROCEDURE

6. 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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282,

the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided to hear this dispute through written submissions.

8. 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.
9. 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

10. The issues in this dispute are:
 - a. to what extent, if any, the clients are entitled to reimbursement of \$500 for the deposit,
 - b. to what extent, if any, Baby Set is entitled to \$2,500 for unpaid child care fees, and
 - c. to what extent, if any, Baby Set is entitled to \$850 for dispute-related expenses.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the clients bear the burden of proving their claim on a balance of probabilities. On the counterclaim, Baby Set carries the same burden. I

have only addressed the evidence and arguments to the extent necessary to explain my decision.

12. On May 16, 2018 the parties signed a child care contract. The contract states that the monthly tuition fee per child was \$1,630. The clients provided a non-refundable enrolment fee of \$250 and a deposit of \$3,260 to secure places for their two children. Baby Set provided child care services at two locations that I will refer to as the 13th street and the 26th street locations.
13. On July 2, 2018, the clients' children started care at Baby Set's 13th street location. Shortly after the children started in care, there was an issue at the 13th street location. I infer it temporarily closed. The parties agreed to move the children to the 26th street location. The clients' say that they had no real option. Otherwise, they would have had to find alternative care, on short notice, in a busy child care market.
14. As of August 2018, the children were at the 26th street location. The parties did not sign a new contract or amend the existing contract. Baby Set's position is that the contract applied to both locations. It points to the contract's checked boxes for both the 13th and the 26th street locations. The clients say they do not remember checking the 26th street box and suggest that Baby Set later altered the contract. The 26th location check mark does look somewhat lighter than the 13th. However, this does not mean it was unilaterally altered. I find on the whole of the evidence, the parties proceeded on the basis that the terms in the signed contract applied to both locations. I accept Baby Set's position that the signed contract applied to both.
15. On November 22, 2018, the clients asked Baby Set if it would let them out of the contract early so they could transfer their children to other care for January 1, 2019. The contract required a 2-month notice for withdrawals. The clients wrote that they were happy with Baby Set's level of care and would stay for a fee reduction. I infer the parties reached no agreement. The clients withdrew their children on January 31, 2019, which was 2 months later. Baby Set applied the clients' \$3,260 deposit to pay their January fees.

16. In its submissions, the clients argue that they did not receive the same level of care at the 26th street location. However, I find that based on the clients' own November 22, 2018 email, they were happy with the care at 26th street.
17. After withdrawing their children, the clients asked Baby Set for \$500 as a refund on their deposit. As I discuss further below, the clients thought Baby Set had a monthly government subsidy of \$250 per child at the 26th street location through the Child Care Fee Reduction Initiative (CCFRI). Therefore, they had been paying Baby Set only \$2,760 monthly in child care fees since the children started until they left care. They believed \$500 was remaining on their deposit (\$3,260-\$2,760). However, the government had only funded the 13th street location.
18. On January 11, 2019, Baby Care refused the refund. It explained, by email, that it had not received the government funding and the clients' deposit equaled the January fees. On January 18, 2019, Baby Set asked the clients to pay an outstanding balance of \$2,500 for the unpaid CCFRI portion of the tuition from August 2018 to December 2018. I find this is the first documented instance where Baby Set asked for the outstanding fees.
19. The government pays the CCFRI directly to the child care provider. Baby Set's summary of government payments shows that Baby Set received no CCFRI funding at the 26th street location since at least April 2018. Baby Set says it only learned about the lack of CCFRI funding in October or November 2018. I find the evidence inconclusive as to when or whether Baby Set had applied for CCFRI at the 26th street location.
20. The clients say they were unaware of the lack of funding until Baby Set denied the refund in January 2019. Baby Set says it had verbally notified the clients in October and November 2018. Baby Set says it also invoiced the clients "multiple" times for the outstanding CCFRI amount. The clients deny receiving any verbal notice or invoices. Without explanation, Baby Set did not submit any copies of the "multiple" invoices it says it sent the clients. Instead, Baby Set provided a copy of one undated invoice for \$2,500, showing unpaid fees from August-December 2018 (\$500 x 7

months). If the invoices existed, I would expect Baby Set to have submitted them. I find they are relevant to the clients' submission on lack of notice. Based on the lack of invoices, I find it more likely than not that Baby Set had not sent monthly invoices to the clients. Therefore, I accept the clients' submissions that they did not know about the lack of subsidy until they were told by email on January 11, 2019.

21. I find Baby Set's lack of notice was unfair to its clients. However, I find there is no provision in the parties' contract requiring Baby Set to give fair notice or even apply for the CCRFI. I also find the evidence is insufficient to infer such provisions into the contract. I find the parties' contract included a policy term relevant to the CCRFI. The clients initialed that they had read, understood and would abide by the term described in Baby Set's Government Subsidies policy as follows:

Parents are fully responsible for the fee each month regardless of any childcare subsidy programs through the Ministry of Children and Family development (MCFD) such as Affordable Child Care Benefit Program (ACCB) or Child Care Free Reduction Initiative Program (CCRFI). In the event that the MCFD does not provide funding for any reason, parents will be charged for the unpaid amount of the fee.

22. I find the clients agreed Baby Set would charge them any unfunded CCRFI amounts and that the clients would pay them. Since there was no CCRFI funding, I find the contract required the clients pay the full monthly tuition fee of \$1,630 per child.
23. Despite the contract's terms, the clients argue that they should only have to pay \$1,380 per child because Baby Set promised to keep the same fees at the 26th street location. I find Baby Set did keep the same fees. I find the tuition fees at both locations were the flat contractual rate of \$1,630 x 2 per month. The difference is that 26th street lacked the subsidy. However, the contract dealt with the subsidy separately from tuition fees.
24. Since I found the clients owed the full tuition fee of \$1,630 x 2 per month, I find that the clients' deposit equaled what it owed for January's fees. Therefore, nothing

remains on the deposit and Baby Set owed no refund. I dismiss the clients' deposit claim.

25. Since the clients only paid, \$1,380 x 2 per month from August to December 2018, and there was no subsidy for these months, I find the clients owe Baby Set \$2,500 in unpaid tuition. Therefore, I order the clients to pay Baby Set \$2,500 in unpaid tuition.
26. I note that Baby Set alleges that the clients engaged in improper behaviour towards its staff, which the clients deny. Baby Set does not claim any general damages. Bearing in mind I have found the clients owe Baby Set the full claimed amount, I make no finding about the alleged improper behaviour.
27. The *Court Order Interest Act* (COIA) applies to the tribunal. Baby Set is entitled to pre-judgment interest on the \$2,500 in unpaid tuition. I have calculated the pre-judgment interest from January 12, 2019, the day after Baby Set notified the clients there was no subsidy, to the date of this decision. This equals \$34.19
28. As for Baby Set's claim for dispute-related expenses, it claims \$850, as \$250 in legal fees and \$650 in wages to its employee to respond to the dispute. Baby Set says that the parties' contract provides for recovery of "fees" incurred for collecting on the unpaid tuition. 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. Dispute-related legal fees are usually only recoverable in extraordinary cases, and this is not an extraordinary case. In any event, Baby Set provided no evidence showing it incurred the claimed expenses, such as payroll records or its lawyer's invoice. I find Baby Set has not established the value of its claim for dispute-related expenses. Therefore, I dismiss Baby Set's \$850 expenses claim. However, I find Baby Set is entitled to reimbursement of \$125 in tribunal fees. As the unsuccessful parties, I find that the clients are not entitled to reimbursement of any fees or dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order the clients, Dean Mark and Katherine Duff, to pay Baby Set a total of \$2,659.19, broken down as follows:
 - a. \$2,500.00 as payment for child care fees,
 - b. \$34.19 in pre-judgment interest under the COIA, and
 - c. \$125.00 in tribunal fees.
30. The applicant is entitled to post-judgment interest under the COIA, as applicable.
31. Baby Set's remaining claims are dismissed.
32. The clients' claims are dismissed.
33. 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.

34. 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.

Trisha Apland, Tribunal Member