



# Civil Resolution Tribunal

Date Issued: December 2, 2019

File: SC-2019-003482

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *K.A. v. Little Dolphins Daycare Ltd.*, 2019 BCCRT 1351

BETWEEN:

K.A. and D.M.

**APPLICANTS**

AND:

LITTLE DOLPHINS DAYCARE LTD. and GLORIA GOLSHANI

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about daycare services. The applicants, K.A. and his spouse D.M., say the respondent Little Dolphins Daycare Ltd. (Dolphins) unreasonably terminated their daycare contract immediately after they gave one month's notice. The

applicants claim \$1,960 as a refund for 2019 “April Tuition” and “March Subsidy”. They also claim \$3,000 in damages for “offensive behaviour” and breach of contract.

2. The respondent Gloria Golshani is Dolphins’ part owner. The respondents deny any improper conduct and say that it was K.A. who behaved improperly towards Dolphins staff. The respondents say K.A.’s conduct was a breach of the applicants’ contract with Dolphins, and under the contract Dolphins was entitled to terminate services without notice.
3. The applicants are represented by K.A. Ms. Golshani is self-represented and Dolphins is represented by an employee or principal.
4. I have anonymized the applicants’ names in the published version of this decision to protect the identity of the applicants’ minor child.

## **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* (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.
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. 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 “they said, they said” scenario as to what

occurred. Credibility of interested witnesses, particularly where there is a conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to hear this dispute based on the documentary evidence and written submissions before me.

8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: 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.

## **ISSUE**

9. The issue in this dispute is whether either respondent breached the parties' daycare services contract by terminating services without notice, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the burden of proof is on the applicants to prove their claims on a balance of probabilities. Although I have reviewed all the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.
11. On December 18, 2018, D.M. entered into a contract with Dolphins, effective January 7, 2019. The daycare payment was \$980 per month. The evidence shows the applicants were entitled to a full \$980 subsidy, which Dolphins received directly from the government and then would refund it the next month to the applicants.
12. It is undisputed that on April 1, 2019, when K.A. attended to pick up his child, he gave Dolphins a "one month notice" to terminate his child's enrollment in the daycare. Most of the other relevant facts are in dispute.

***The \$1,960 refund for April tuition and March subsidy (\$980 each)***

13. While the respondents initially denied liability, in their arguments they admit they owe this \$1,960 and agree to pay it. While the applicants did not in fact give one month's notice (since notice was given on April 1 not March 31), I order Dolphins to refund the applicants \$1,960. I say this given the respondents' agreement about the debt and because the March subsidy is owing in any event. While the contract was signed by D.M., the evidence shows K.A. made the payments. So, I find the applicants are jointly entitled to this refund from Dolphins. The \$1,960 claim against Ms. Golshani personally is dismissed.
14. The respondents say no interest should be payable because the contract does not provide for it. I disagree, as the *Court Order Interest Act* (COIA) applies to the tribunal. While there is some evidence the parties disagreed about how or when the applicants should obtain their refund, there is no evidence that Dolphins could not have refunded it by e-transfer as they had done for other reimbursements. I find the respondent must pay pre-judgment COIA interest on the \$1,960, from April 9, 2019, which equals \$24.92. I say April 9, 2019 as based on the texts in evidence I find that is a likely date by which Dolphins would have received the government subsidy for the March 1 to 31, 2019 period.

***The \$3,000 claim for breach of contract and "its consequences"***

15. K.A. alleges that on April 1, 2019, Ms. Golshani and Dolphins acted aggressively towards him and his child. Initially, K.A. said that after he gave his "1 month" notice, Ms. Golshani was screaming and rushed towards his child, and "grab her arm" (quote reproduced as written). Later, he submits that Ms. Golshani was "going to" grab his child's arm. More on this discrepancy below. In contrast, the respondents allege K.A. was aggressive on April 1, and continued to be so when they refused further care when he arrived to drop his child off in the morning on April 2, 2019.
16. Despite Ms. Golshani's alleged April 1, 2019 behaviour, K.A. attempted to drop his child off in the morning of April 2 at Dolphins. The evidence shows he had a job

interview that day. However, as noted above it is undisputed that Dolphins refused him, said the daycare contract was terminated, and locked the door.

17. The parties presented evidence and witness statements saying that the other side was the aggressive one, for both April 1 and 2. The respondents say K.A.'s aggression permitted them to terminate the contract without notice. Based on the evidence before me, I find the evidence supporting each side's version of events is roughly equal.
18. I find I do not need to detail the events or decide which party was aggressive and which breached the daycare contract. I say this because the applicants have not proved they are entitled to the \$3,000 damages claimed. My reasons follow.
19. K.A. says Dolphins' immediate termination was a breach of the parties' contract, which he says required Dolphins to give him one month's notice. K.A. alleges the breach "made a lot of problems" for them, that his wife D.M. had to leave work to care for their children, and it "impacted [his child] mentally".
20. I note the applicants do not allege they personally suffered any compensable mental injury as a result of the respondents' alleged behaviour. In any event, there is no evidence before me to support such a claim.
21. First, K.A. did not in fact give 1 months' notice, because he gave the notice on April 1, not March 31. The respondents could have required payment for at least all of April (which was their submission at one point), and there is no evidence before me that the applicants incurred any net loss.
22. Second, K.A. says his wife had to leave work to care for their child and ask others to care for the child, but there is no statement from D.M. and no evidence about her work or alleged wage loss. There are also no statements from others who allegedly cared for the child. The applicants refer to having found a new daycare, but they do not say when they did so. As noted above, the applicants were in receipt of a full government daycare subsidy, at least for the \$980 that they paid Dolphins each

month. Overall, there is no evidence the applicants sustained any financial loss for the cost of daycare services.

23. Third, K.A. alleges he lost a job because he missed the job interview on April 2, 2019. However, he provided no evidence other than an email from the interviewer which said, “if you’re stuck in traffic, we can reschedule”. That is not evidence of a lost job opportunity. Further, I find income loss is not proved as there is simply no evidence about the applicants’ alleged wage loss, to the extent this is part of the applicants’ claim.
24. Next, the applicants allege their child suffered mental distress, but the child is not a party to this dispute. There is also no evidence before me to support such a claim. Finally, K.A. refers to being unable to retrieve his child’s belongings and that he had to replace them. The respondents say they tried to return them but the applicants were not cooperative. In any event, no details about the belongings were provided and there is no specific claim before me for their value.
25. For all these reasons, I dismiss the \$3,000 claim because the applicants failed to prove they suffered the damages claimed.

## **TRIBUNAL FEES AND EXPENSES**

26. As provided under the CRTA and the tribunal’s rules, the successful party is usually entitled to reimbursement of tribunal fees and reasonable dispute-related expenses. However, the applicants did not pay any tribunal fees and did not claim expenses, so I make no order.

## **ORDERS**

27. Within 14 days of this decision, I order Dolphins to pay the applicants a total of \$1,984.92, broken down as follows:
  - a. \$1,960 in debt, and

b. \$24.92 in pre-judgment interest under the COIA.

28. The applicants' remaining claims are dismissed, including all claims against the respondent Ms. Golshani.
29. 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.
30. 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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Shelley Lopez, Vice Chair