



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *S.T. by her litigation guardian L.N. v. A.M.*, 2019 BCCRT 1409

B E T W E E N :

S.T. by her litigation guardian L.N. and L.N.

APPLICANTS

A N D :

A.M.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, S.T. by her litigation guardian L.N., has a daughter. The respondent, A.M., provided child care services for S.T.'s daughter from the fall of 2018 to the spring of 2019. The parties agree that at all relevant times S.T. was a minor. Aside

from acting as the litigation guardian for S.T., the applicant L.N.'s role in the dispute is unclear.

2. It is undisputed that S.T. applied to the BC Government for the Affordable Child Care Benefit (subsidy), and that the government paid her subsidy directly to the respondent.
3. The applicants say S.T. fully paid the respondent for her child care services, and that the respondent kept S.T.'s subsidy in addition to full payment for her services. The applicants want the respondent to reimburse S.T. the amount of her subsidy.
4. The respondent says S.T. did not pay her everything she was owed for her child care services. She says S.T. agreed that the respondent would keep the amount of the subsidy to cover S.T.'s unpaid child care fees.
5. S.T. is represented by her litigation guardian, L.N. L.N. and the respondent are both self-represented.
6. While the parties did not request it, in the published version of this decision I have anonymized the parties' names to protect the identity of S.T. and her daughter, who are both minors.

JURISDICTION AND PROCEDURE

7. 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.
8. 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 “she said, she said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the 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 assess and weigh the documentary evidence and submissions before me. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal’s process and that oral hearings are not necessarily required where credibility is in issue.

9. 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.
10. 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, and
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. What is the amount of the subsidy?
 - b. Is the respondent required to pay S.T. the subsidy amount?

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, the applicants must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicants' position is correct.
13. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
14. It is undisputed that the respondent started providing childcare services for S.T. in the fall of 2018. The parties agree that S.T. paid the respondent regularly every 2 weeks for her child care services, but they dispute the extent and cost of the child care, as well as the terms of their agreement.
15. It is undisputed that S.T. applied for the subsidy through the respondent. It is also undisputed that the respondent received the subsidy payment directly from the government sometime in the spring of 2019 after she had stopped providing child care services for S.T.

What is the amount of the subsidy?

16. The amount of the subsidy is unclear from the evidence. The applicants claim \$1,650, and this is the same amount the respondent refers to in her undated text messages to S.T. in evidence. However, in their submissions the applicants say S.T. confirmed with the government by telephone that the subsidy amounts were \$350.40 for December 2018, and \$323.20 per month for January, February, and March 2019, for a total of \$1,320. The applicants provided no documentary evidence of these amounts or any explanation for the discrepancy between the \$1,320 the respondent allegedly received and the \$1,650 amount of their claim. Therefore, I find the amount of the subsidy is \$1,320.

Is the respondent required to pay S.T. the subsidy amount?

17. S.T. and the respondent both signed a written contract for child care on November 1, 2018. Neither L.N. nor any other guardian signed the contract on behalf of S.T.

The contract says the respondent would provide child care Mondays through Fridays from 9:00 a.m. to 5:00 p.m. for \$45 per day including transportation.

18. It is undisputed that the parties did not follow the terms of the written contract, but they disagree about the terms of their arrangement.
19. The applicants say S.T.'s daughter was never in full-time care, and the number of days she received care differed each week. They say the cost of care was \$40 per day, and the amounts S.T. transferred to the respondent every 2 weeks differed to reflect the number of days her daughter received care in each 2-week period. They did not submit evidence of the dates S.T.'s daughter actually received child care. However, they did submit banking documents showing that between November 15, 2018 and March 29, 2019 S.T. made biweekly payments to the respondent of between \$80 and \$360. The respondent does not dispute receiving any of these payments.
20. The text messages in evidence indicate that March 29, 2019 was the last day the respondent provided child care services for S.T. The applicants say that as of that date S.T. had fully paid the respondent for her child care services, and the respondent agreed to pay S.T. the amount of the subsidy once she received it from the government.
21. S.T. submitted a March 11, 2019 text message she received from the respondent stating, "you are completely paid up from November 2018 until current (March 2019) ...All subsidy back pay goes to you once received in the coming weeks..." S.T. also submitted a March 29, 2019 text message she received from the respondent in which the respondent confirmed that she had submitted all the paperwork for S.T.'s subsidy, and that the subsidy payment, "should be in shortly! And it all gets handed over to you."
22. The respondent disagrees with the applicants' position. She says she provided full-time child care to S.T.'s daughter Mondays through Fridays, and the cost was \$45 per day, not \$40. However, she says that despite the \$45 per day fee in the written

contract, she agreed that S.T. could pay only \$40 per day for 4 days per week, or whatever amount she could afford, to assist her financially until she received the subsidy. The respondent says S.T. agreed that once the respondent received the subsidy it would go towards unpaid child care fees and expenses the respondent had covered for S.T.

23. The respondent submitted an undated text message she sent to S.T. which states, "The total for last two weeks is \$320. That's only charging you \$40 per day and only three days per week...I will just have to keep track come subsidy backpay and the rest of the amount owing will come from that." S.T. responded, "Thank you, I really appreciate the help."
24. The respondent submitted another undated text message in which she told S.T. that the amount of her subsidy would be \$1,650, but that the amount S.T. owed the respondent was \$1,785. The respondent said the subsidy amount, "doesn't exactly completely cover what is owed. But with subsidy back pay we will just call it paid for." The respondent said she planned to write out a letter for her and S.T. to sign stating that once the respondent received the \$1,650 subsidy S.T. would have fully paid the respondent for her services. S.T. responded, "...yes no problem that works for me."
25. Both parties submitted text messages which appear to support their positions, and neither of them disputes the authenticity of the text messages. Therefore, it appears the nature of the parties' arrangement changed over time. The problem is that the text messages the respondent relies on are undated, so it is unclear whether they were sent before or after the March 2019 text messages that S.T. relies on. However, I find the March 29, 2019 text message confirms that S.T. had paid the respondent for all child care services up to that date and that the respondent would pay S.T. the full amount of the subsidy when she received it. I also find there is no evidence the respondent provided any child care services for S.T. after March 29, 2019. Therefore, on the balance of the evidence, I find it is more likely than not that the undated text messages the respondent relies on were sent before March 2019.

Therefore, I find that on March 29, 2019, the respondent agreed to pay S.T. the full amount of her subsidy. Given my finding above about the subsidy amount, I find the respondent must reimburse S.T. the \$1,320 amount of her subsidy.

26. Even if I am wrong about the dates of the text messages, I find S.T. is still entitled to reimbursement of the subsidy. The age of majority in British Columbia is 19. Under section 19 (1) of the *Infants Act*, if a person is a minor when they make a contract, the contract is unenforceable against them except in certain circumstances which I find are not relevant to this case. Since S.T. is a minor, I find any agreement she may have had with the respondent for the respondent to keep her subsidy is unenforceable against her.

27. The *Court Order Interest Act* applies to the tribunal. S.T. is entitled to pre-judgment interest on the \$1,320 owing calculated from March 29, 2019, which is last date she received child care services from the respondent, to the date of this decision. This equals \$18.34.

28. 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. However, the applicants did not pay tribunal fees or claim any dispute-related expenses, so I decline to make an order about them.

ORDERS

29. Within 14 days of the date of this order, I order the respondent to pay S.T. a total of \$1,338.34, broken down as follows:

- a. \$1,320 as reimbursement for the child care subsidy amount, and
- b. \$18.34 in pre-judgment interest under the *Court Order Interest Act*.

30. S.T. is entitled to post-judgment interest, as applicable.

31. 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.

32. 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.

Sarah Orr, Tribunal Member