



Civil Resolution Tribunal

Date Issued: February 5, 2020

File: SC-2019-007380

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wu v. Dr. C. Lesley Williams Inc.*, 2020 BCCRT 137

B E T W E E N :

PHILIP WU

APPLICANT

A N D :

DR. C. LESLEY WILLIAMS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about orthodontic services the applicant, Philip Wu, obtained for his child in August 2019. Mr. Wu says the respondent orthodontic clinic, Dr. C. Lesley

Williams Inc., failed to give him a full refund of his \$1,770 payment after he cancelled the parties' August 28, 2019 contract on September 5, 2019.

2. The respondent says the contract includes a \$750 cancellation fee to cover the cost of services given. Contrary to the respondent's position, the applicant says no services were provided before he cancelled the contract on September 5, 2019. The applicant also says he did not notice the contract's fine print about the cancellation fee. The applicant claims the respondent must refund him the \$750.
3. The applicant is self-represented. The respondent is represented by an employee. For the reasons that follow, I dismiss the applicant's claim.

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* (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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may: 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.

ISSUES

8. The issues in this dispute are:
 - a. Did the respondent provide orthodontic services?
 - b. Does the \$750 cancellation fee apply, or, should the respondent refund the \$750?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. As noted above, the parties' contract was for orthodontic services for the applicant's child.
11. A 1-page August 23, 2019 quote has at the bottom, "Cancellation of start of treatment after impressions have been taken will result in a \$750 fee".
12. The parties' subsequent 1-page contract signed on August 28, 2019 shows a total \$7,600 quote with a \$1,770 "initial payment". At the bottom, the contract states, "**Cancellation of start of treatment once the contract is signed will incur a fee of \$2400.00 for Invisalign and \$750.00 for all other appliances**" (bold print in original). The evidence indicates that Invisalign was not the chosen appliance, so the \$750 fee applied.

13. On August 28, 2019, the parties agree the applicant paid the respondent \$1,770, as required for the “initial payment”. They agree at the same time he scheduled an appointment for his child to attend on September 12, 2019.
14. The parties agree the applicant cancelled the contract on September 5, 2019, and the respondent refunded all but the \$750 cancellation fee.
15. The applicant’s issue is that he says he could obtain alternative treatment elsewhere for less money. I find nothing turns on whether this is true, because the parties’ contract sets out the required fee and the applicant could have chosen not to hire the respondent if he did not like their fee structure. The applicant also says that the work done on August 28 was only a consultation and so there were no services provided that he should have to pay for. I disagree.
16. The evidence shows that on August 28, 2019 the applicant and his child attended at the respondent’s office and impressions were taken of her teeth. The evidence also shows that Dr. Williams completed the child’s treatment plan details and noted them on her chart. Nothing turns on whether a full and final treatment plan had been established or that the respondent was unable to give a quote from a surgeon for a particular treatment. I accept that that the respondent had incurred some expense in providing services on August 28, 2019.
17. However, nothing turns on whether the respondent actually incurred any expense. I find the contract is clear that the applicant agreed to pay a \$750 cancellation fee if he cancelled the treatment after the contract was signed. This statement was written in bold on a 1-page contract, and it mirrored what the earlier August 23rd quote said. There is nothing in the signed contract that says the cancellation fee is only payable if services were actually provided, though as noted above I find they were. While there were other pages of the contract that dealt with the financial instalment payments and the informed consent for the treatment, I find the statement about the cancellation fee was clearly set out on the first page. I do not accept that the applicant was reasonably unaware of that term.

18. Given my conclusions above, I find the applicant's claim must be dismissed. The applicant cancelled the treatment after he signed the contract, and so he is not entitled to a refund of the \$750 cancellation fee.

19. Under the CRTA and the tribunal's rules, as the applicant was unsuccessful, I dismiss his claim for reimbursement of tribunal fees. The respondent did not pay tribunal fees and no dispute-related expenses were claimed.

ORDER

20. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair