Civil Resolution Tribunal

Date Issued: April 24, 2020

File: SC-2019-011070

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cottome v. Domaradz,* 2020 BCCRT 447

B E T W E E N :

TARA COTTOME

APPLICANT

A N D :

CRISTEN DOMARADZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the agreed nightly rate for pet sitting services. The applicant, Tara Cottome, says the respondent, Cristen Domaradz, has failed to pay for 6

nights' care of the respondent's dog Charlie, between December 22 and 28, 2019. The applicant claims $420, based on their "regular" rate of $70 per night.

2. The respondent says the applicant's advertisement on "Rover", a pet-sitting site, was $25 per night for in-home pet sitting services. The respondent says she should not have to pay more than a $25 nightly rate.

3. The parties are each self-represented.

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. Bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, and even though the parties have conflicting evidence, I find I can fairly hear this dispute through written submissions.

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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is the applicable nightly rate for the applicant's dog-sitting services.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove their claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

10. Most of the underlying facts are undisputed. The parties agree the respondent hired the applicant to provide in-home dog-sitting services for the respondent's dog Charlie, for 6 nights between December 22 and 28, 2018. It is also undisputed the pet-sitting was provided, without issue.

11. The applicant says that during the parties' "meet and greet", they cannot recall if their nightly rate "even came up in conversation" as the meeting was chaotic with kids and dogs being excited. The respondent denies ever being told the applicant's nightly rate was higher than $25. There is a text message in evidence where the applicant apologized to the respondent for failing to "clarify" their rates with the respondent. I find the applicant's rate was not discussed during that initial meeting, or at all until after the services were provided.

12. The applicant's claim rests on their argument that their rates "are all provided" on their Rover page. It is undisputed that on December 13, 2018 the respondent saw the applicant's pet-sitting services advertised on the Rover site. However, the parties' text messages do not discuss the rate.

13. The amount of the applicant's nightly rate is the heart of the parties' conflict. What was the applicant's advertised rate on Rover, as of December 13, 2018? The applicant says it was $70 and the respondent says it was $25. It matters because I find that the advertised rate on December 13, 2018 was the agreed rate. I place no

weight on the applicant's December 29, 2018 screenshot showing a $70 nightly rate, since that was after the job was done.

14. The applicant says they last changed their nightly rate in June 2018, from $60 to $70 nightly. The applicant says they have October 2018 messages with another client that show their rate at that time was $70. While the applicant submitted one such message, what matters is what the applicant advertised to the respondent. I say this particularly because I have found there was no other discussion about the applicable pet-sitting rate until after the job was done. I place no weight on the fact the applicant told another customer in October 2018 their nightly rate was $70.

15. Significantly, the applicant provided no evidence from Rover as to what the applicant's advertisement looked like as of December 13, 2018. Similarly, the applicant provided no statement from Rover that the applicant's nightly rate had last changed in June 2018. The applicant knew the respondent said at the outset of this proceeding that Rover had told her the applicant's rate had changed on December 17, 2018. The applicant does not explain why they did not obtain a statement from Rover.

16. In contrast, the respondent says she contacted Rover and that it told the respondent the applicant had amended their rates on December 17, 2018. It is not clear which rate, since the applicant apparently had different rates for different types of services. The evidence shows the applicant told the respondent on December 29, 2018 that the only recent rate changes they had made were their puppy rates and that they had created a holiday rate. The applicant surmised that it was these other rates that Rover had mentioned had changed, not the applicable nightly rate. However, like the applicant, the respondent provided no evidence from Rover, other than a screenshot of Rover's general policy about payment through Rover's site. Since the parties did not use Rover's payment system, nothing turns on this.

17. Ultimately, I find both parties failed to provide sufficient evidence about the applicable nightly rate. I am left with a "they said, she said" conflict. Significantly, this is not a situation where the parties did not have an agreement at all about price

before the services were provided. It is undisputed the respondent relied on the applicant's pricing as set out in the Rover ad. Again, the dispute here is what the Rover advertisement said about the applicant's pricing. As noted, the applicant says their nightly rate was advertised at $70 and the respondent says it was $25. Without having the Rover advertisement in evidence, I am left with an evidentiary tie. Because the applicant bears the burden of proof, I find they have not proved their advertised nightly rate was $70.

18. The question then is what nightly rate should I apply? It is undisputed the respondent received the requested dog-sitting services, without issue. Quite apart from the respondent's position the Rover advertisement said $25, the respondent submitted evidence that $25 a day is reasonable, including a February 11, 2020 statement from another dog-sitter the respondent had contacted in December 2018. On balance, given the applicant's failure to prove $70 was the advertised and agreed rate, I find $25 nightly for 6 nights is all the applicant has proved she is entitled to receive. This equals $150. I note that before this dispute began the respondents offered $160, to account for some butter the applicant apparently provided. The applicant rejected this offer, and claimed the $420. Since this dispute is not about butter, I award only $150.

19. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the applicant is entitled to pre-judgment interest on the $150, calculated from December 29, 2018. This equals $3.86.

20. Under section 49 of the CRTA and tribunal rules, as the applicant did not "do better" in this decision than the respondent's offer made before this proceeding started, I find the applicant is not entitled to be reimbursed for $125 in paid tribunal fees.

ORDERS

21. Within 21 days of this decision, I order the respondent to pay the applicant a total of $153.86, broken down as follows:

a. $150 in debt, and

b. $3.86 in pre-judgment interest under the COIA.

22. The applicant is entitled to post-judgment interest as applicable.

23. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

24. 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.

Shelley Lopez, Vice Chair