Civil Resolution Tribunal

Date Issued: April 27, 2021

File: SC-2020-008502

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *KidiKare Early Learning Centre Ltd. v. Zamani*, 2021 BCCRT 438

B E T W E E N :

KIDIKARE EARLY LEARNING CENTRE LTD.

APPLICANT

A N D :

NEDA ZAMANI and GHOLAMHOSSEIN SHARIFI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Lynn Scrivener

INTRODUCTION

1. This dispute is about an outstanding invoice. The applicant, KidiKare Early Learning Centre Ltd. (KidiKare), provided childcare services to the respondents, Neda Zamani and Gholamhossein Sharifi. KidiKare says that the respondents did not pay all of the

fees and charges required by their agreement, and asks for an order that the respondents pay it the outstanding $1,590. The respondents admit that they received services from KidiKare, but say they withdrew as KidiKare was not providing their child with a safe environment. The respondents say there was no written contract and they did not agree to some of the fees KidiKare claims. They deny that they owe KidiKare any money.

2. KidiKare is represented by its director. The respondents are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

5. Section 42 of the CRTA says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

7. The issues in this dispute are:

    a. Whether KidiKare's policies were included in the scope of the parties' agreement,

    b. Whether KidiKare breached the parties' agreement, and

    c. Whether the respondents owe KidiKare $1,590 as claimed.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, KidiKare as the applicant must prove its claims on a balance of probabilities. The parties provided evidence and detailed submissions in support of their positions. Some of the documents provided by the parties contain text in a language other than English. Although the accuracy of the associated translation is not disputed, it is not clear whether the documents have been translated in their entirety as required by CRT rule 1.7(5). So, I will consider only the portions of evidence that are in English. While I have read all the information provided by the parties, I will refer to only the evidence and argument that I find relevant and necessary to provide context for my decision.

9. The parties started discussing the possibility of the respondents' child attending KidiKare's facility in April of 2020. KidiKare emailed the respondents registration forms and a Parent Information Package (Handbook) that contained information about its rates and policies. The policies address attendance, health care, and the fact that parents must provide one month's written notice or pay one month's fees in lieu of notice when withdrawing a child from care. The respondents signed the registration forms and returned them to KidiKare.

10. The respondents' child started attending KidiKare on a part-time basis in late May of 2020 and switched to full-time at some point in June. There is no dispute that the respondents paid all the monthly fees charged through September of 2020. Text messages in evidence show that the respondents also agreed to their child participating in a lunch program for a week in September.

11. There was some sort of disagreement between the respondents and KidiKare staff on September 24, 2020. The respondents then decided to withdraw their child from KidiKare. The respondents say that KidiKare staff asked them to leave the property and refused to allow them to retrieve their child's tricycle from the premises. KidiKare did not address these comments, but there is no suggestion that it did not accept the respondents' withdrawal.

12. In addition to verbal notice on September 24, Ms. Zamani sent an email to KidiKare on September 27, 2020 advising that the respondents were withdrawing the child from the program because of "undue stress and unsafe environment of your childcare". The email stated that the respondents would not pay any future fees to KidiKare.

13. KidiKare says, but the respondents deny, that their agreement requires one month's written notice, or payment of one month's fees, to withdraw a child from the program. KidiKare says that the respondents did not pay the fees for the withdrawal period or other outstanding charges after they removed their child from care. KidiKare claims a $1,120 childcare fee for the notice period, late pickup fees totalling $300, $70 for a lunch fee, and $100 for a fee it says it paid to a collection agency. The respondents deny that they are responsible for any of these amounts.

Does the parties' contract include KidiKare's policies?

14. Although the parties agree that they had an agreement for KidiKare to provide childcare services to the respondents, they disagree about the nature of the agreement and its terms. KidiKare says the Handbook is the "actual legal written contract between parents and the daycare centre", and all of the policies, including

the requirement for notice of withdrawal, are part of their agreement with the respondents.

15. The respondents' position is that they did not have a "written or signed contract" with KidiKare. They say that they dealt with KidiKare through social media messages and conversations and formed an agreement about the monthly fees through those dealings. The respondents admit that they received the Handbook but say they did not notice the withdrawal section until after the child began attending KidiKare. The respondents say the Handbook was not presented as containing a contract and that they never agreed to its terms, either verbally or in writing.

16. The fact that KidiKare sent the respondents the Handbook does not, by itself, establish that the respondents agreed to its contents or that the Handbook formed part of their agreement. The onus is on KidiKare to establish that the respondents agreed to be bound by the policies in the Handbook and incorporate them into their agreement.

17. The Handbook is presented as information and does not state that it or any portion of its contents amount to a contract. The Handbook does not contain any form of acknowledgment that parents have read and agree to be bound by its contents.

18. The registration forms signed by the respondents address health and contact information. The respondents' signatures on the forms indicated consent to sharing health information with the health authority, consent for emergency medical attention, and confirmation of the child's immunization information. There are no signatures that acknowledge the terms of the parties' agreement, and no mention of the financial terms of the arrangement. Further, the forms do not reference the Handbook or state that the contents of the Handbook are incorporated into any agreement between the parties.

19. The email messages that KidiKare exchanged with the respondents talk about providing information and filling out the registration forms. They do not mention the

formation of a contract or request that the respondents acknowledge that they had read or agree to the Handbook.

20. This is not a situation where the parties have a signed agreement and there is a question about whether terms listed elsewhere are incorporated into it, as was the case in *Revolution Resource Recovery Inc. v. New Image Contracting Ltd.*, 2020 BCCRT 1331. I am satisfied that the forms signed by the respondents do not amount to a contract. Instead, I find that the parties' agreement was formed verbally and was not reduced to writing. I also find that the parties' agreement did not expressly include the contents of the Handbook, and that the parties did not implicitly incorporate those terms through their conduct. Based on the information before me, I find that the parties' agreement was for KidiKare to provide childcare services to the respondent at differing monthly rates depending on the number of days per week that the child attended.

Did KidiKare breach the parties' agreement?

21. The respondents suggest that KidiKare breached the agreement by failing to operate in a safe manner. The respondents say that KidiKare did not always have adequate staff given the number of children in its care, and that they once saw a staff member consume alcohol in front of the children. In addition, they say that this person spoke to them in an aggressive manner and made unprofessional comments about other daycare facilities.

22. KidiKare says it complies with all relevant licensing requirements and its premises are regularly inspected by health and municipal authorities. KidiKare denies that there were any safety issues and says that the respondents' allegations are "made-up stories". KidiKare suggests that any aggressive behaviour was on the respondents' part.

23. The respondents suggest that KidiKare did not comply with fundamental terms of the agreement and that they should not have to pay anything as a result. If there is a fundamental breach of a contract, the wronged party can end the contract

immediately and they do not have to perform any further terms of the contract (see *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BCCA) at paragraphs 21 to 23). I find that the respondents bear the burden of proving that a breach of contract occurred and that the breach was fundamental.

24. Although an inadequate number of staff could be construed as a safety issue in a daycare, it is not clear to me how the respondents could comment on how many children and staff members were present at the facility when they were not there. The respondents also did not explain why, if they became aware of what they felt was a safety issue in June, they left their child in care until September. I find that the evidence does not establish a safety issue from staffing. I also find that the allegations of alcohol consumption, aggressive behaviour and unprofessional comments are not substantiated by the evidence. Finally, I acknowledge the respondents' submission that their child was reluctant to attend KidiKare, but find that this does not establish that KidiKare was unsafe or otherwise being operated in a way that might breach the parties' agreement.

25. While I do not doubt that the respondents found some of their interactions with KidiKare staff to be unpleasant, I find that the evidence before me does not prove the respondents' allegations. Therefore, it is not necessary for me to consider whether these allegations could amount to a failure to comply with fundamental terms such that KidiKare breached its agreement with the respondent.

Do the respondents owe KidiKare the amounts claimed?

26. Although the respondents were entitled to end the childcare arrangement, they were required to pay KidiKare any outstanding amounts. The question is whether the respondents agreed to pay the amounts KidiKare claims.

27. KidiKare produced two separate September 26, 2020 invoices for the respondents that reflect what it says are the outstanding charges. The first invoice was for $1,490 and included a charge of $1,120 for the October fees, plus a $70 charge for lunch and two $150 charges for late pick-ups. It appears that KidiKare consolidated seven

instances of late pickups into these two charges. The revised invoice was for $1,545 to reflect a reduction in the lunch charge from $70 to $35, the removal of the $300 in late pickup charges, and the addition of 29 pick-up charges totalling $390. KidiKare says that it revised the invoice after the CRT's facilitation process to correct an error in the amount of the lunch charge and to set out the late pick-up charges in detail.

28. The charge for the October monthly fees is related to the withdrawal policy set out in the Handbook. As noted above, I have determined that the Handbook was not incorporated into the parties' agreement. I find that KidiKare has not established that the respondents otherwise agreed to pay fees in lieu of notice of withdrawal. Therefore, the respondents are not responsible for any fees for October 2020 and I dismiss this claim.

29. The "late pickup" charges documented on the invoice are not mentioned in the Handbook or registration forms, but the respondents say they understood that "late fees" would be paid at $20 per hour. They say they were shocked to see a rate of $150 per hour on the initial September 26 invoice. Although the respondents also question the manner in which the late fees were shown on the revised invoice, they did not deny that they were late picking up their child on those dates. I find that the respondents agreed to pay late fees at a rate of $20 per hour, and are responsible for the $300 that KidiKare claimed for this item in their Dispute Notice.

30. The revised invoice lists a $35 charge for lunches. The respondents say that their child brought a lunch box each day and they did not consent to the child receiving meals from KidiKare. This position is not consistent with the translated text message the respondents submitted, which states that the respondents wanted their child "to use the food menu this week, let's see which one he eats the most". I find that these messages show that the respondents agreed to use the lunch service for one week, and that they are responsible for the associated costs.

31. The revised invoice shows charges for seven lunches at $5 per day, for a total of $35. KidiKare did not explain why the respondents were charged for seven days' worth of

lunches when their child was attending the facility five days per week. I find that the respondents are responsible for five days' worth of lunches, or $25.

32. KidiKare also claimed reimbursement of $100 it says it spent on a collection agency. The evidence before me shows that KidiKare corresponded with the respondents directly about the outstanding invoice, but there is no indication that a collection agency was involved. I find that KidiKare has not proven their claim that they paid a collection agency $100 (or any amount), and dismiss this claim.

33. In summary, I find that the respondents are responsible for $300 in late pickup fees and $25 for lunch charges. The *Court Order Interest Act* applies to the CRT. I find that KidiKare is entitled to pre-judgment interest on the $325 from October 26, 2020 (being the due date for the amounts listed on the September 26 invoice) to the date of this decision. This equals $0.79.

34. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As KidiKare was partially successful, I order the respondents to reimburse KidiKare for half of its CRT fees of $125, or 62.50. KidiKare also claimed dispute-related expenses of $22.72 for registered mail, which I find to be reasonable. Half of these expenses equals $11.36, and I order the respondents to pay KidiKare this amount.

ORDERS

35. Within 30 days of the date of this order, I order the respondents to pay KidiKare a total of $424.65, broken down as follows:

    a. $350 in debt under the parties' agreement,

    b. $0.79 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $73.86, for $62.50 in CRT fees and $11.36 for dispute-related expenses.

36. KidiKare is entitled to post-judgment interest, as applicable.

37. The remainder of KidiKare's claims are dismissed.

38. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

39. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Lynn Scrivener, Tribunal Member