



Civil Resolution Tribunal

Date Issued: May 5, 2021

File: SC-2020-009806

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hou v. Octopus Academy Surrey Inc.*, 2021 BCCRT 474

B E T W E E N :

KAI CHIEH HOU

APPLICANT

A N D :

OCTOPUS ACADEMY SURREY INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about a deposit for childcare services. The applicant, Kai Chieh Hou, says that he and his spouse paid a \$455 deposit to the respondent, Octopus Academy Surrey Inc. (Octopus Academy), to reserve a space for childcare. Mr. Hou

says that Octopus Academy refused to return the deposit when he withdrew his child, and asks for an order that Octopus Academy return the \$455. Octopus Academy says that, under its policies, the deposit is not refundable.

2. Mr. Hou is self-represented. Octopus Academy is represented by an employee.

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 Octopus Academy's "non-refundable" policy formed part of the parties' agreement, and
 - b. Whether Mr. Hou is entitled to the return of the \$455 deposit.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, an applicant must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant and necessary to provide context for my decision.
9. Mr. Hou and his spouse contacted Octopus Academy in the summer of 2020 about the possibility of enrolling their child. They toured the facility on August 10, 2020. Octopus Academy says there was a discussion of its policies, including its policies about payments on withdrawal from the program, during this tour. In contrast, Mr. Hou says the staff member who conducted the tour was late, so the tour was short and there was no discussion of policies.
10. In an August 10, 2020 email addressed to Mr. Hou's spouse, Octopus Academy provided information about its program. The email provided information about fees and instructions for payment. It also stated that there was a \$100 non-refundable registration fee and a \$455 deposit that was "refundable as long as you advise us a calendar month prior withdrawing" (reproduced as written). The email attached a registration form and advised that the parents' handbook was being updated but would be provided later. In an August 11, 2020 exchange, Octopus Academy confirmed that the deposit would be required only to secure a space once one became available. There was no mention of any requirement to complete the registration form to secure the space.

11. On August 25, Octopus Academy advised Mr. Hou's spouse that a space would be available in April 2021. In order to secure the spot, Octopus Academy asked for \$555, representing the registration fee and the deposit. This message again stated that the handbook was being updated, and attached another copy of the registration form.
12. Mr. Hou and his spouse sent Octopus Academy an electronic transfer of \$555 on August 25, 2020. Octopus Academy confirmed the receipt of the transfer on August 26, 2020, and sent Mr. Hou's spouse the updated parents' handbook on September 3, 2020. There was no communication about the registration form or acknowledgment of the handbook's contents.
13. On December 9, 2020, Mr. Hou's spouse emailed Octopus Academy to withdraw the child's application and request the deposit's return. Octopus Academy replied on December 11, 2020 and declined to return the deposit, citing its policy that if a child is withdrawn from the program prior to starting, the deposit is forfeited. Mr. Hou and his spouse considered keeping the spot, but later decided to withdraw the child.
14. Mr. Hou says that he agreed to the terms in Octopus Academy's email messages, namely that the \$100 registration fee was non-refundable but that he would be able to get a refund of the \$455 deposit so long as he gave a calendar month of notice before withdrawing his child from the program. According to Mr. Hou, he never signed the registration form, did not receive the parents' handbook until after the deposit was paid, and did not know the details of the withdrawal policy until after he filed his dispute with the CRT. As he did not agree to a non-refundable deposit, he asks that the \$455 be returned.
15. Octopus Academy says the deposit signifies a parent's commitment to enroll their child in its program for 12 months. Octopus Academy describes the registration form as its contract and says it instructed Mr. Hou to review and complete the contract. Octopus Academy does not dispute Mr. Hou's submission that he did not sign the registration form, but suggests that Mr. Hou agreed to be bound by its policies and contractual terms when he sent in his deposit.

16. The parties disagree about the terms of their agreement and, specifically, whether Octopus Academy's policies were incorporated into their agreement. I find that the fact that documents were attached to email messages the parties exchanged does not, by itself, mean that the contents of those documents formed part of the parties' agreement. The test is whether a reasonable person in one party's situation would have believed and understood that the other party was consenting to the terms (see *Salminen v. Garvie*, 2011 BCSC 339 at paragraph 27).
17. Octopus Academy's parents' handbook contains information about its policies, including those around payment. It states that, if a child is withdrawn from the program before starting, the deposit is forfeited. The registration form also contains references to this policy. The last page of the registration form includes a number of items for parents to initial, as well as a space for a signature. The items to initial include an acknowledgment that the parent agrees with the terms and conditions in the parents' handbook and "[i]f for any reason your child is withdrawn from the program prior starting, the deposit is forfeited" (reproduced as written).
18. As noted, the parents' handbook was in the process of being updated and was not sent to Mr. Hou until after the deposit had been paid. Although the registration form contains a clause that incorporates the handbook contents into its contract, Octopus Academy did not notify Mr. Hou that the registration form contained contractual terms or require that the signed form be returned in order to reserve the child's space or during the interval between receiving the deposit and the request for its return. I find this to be significant given Octopus Academy's position that this form represents its contract.
19. I find that a reasonable person would not have understood that, by paying the deposit, Mr. Hou was agreeing to policies in a handbook he did not have and a form he did not sign, as contemplated by *Salminen*. Therefore, I find that Mr. Hou did not agree to be bound by Octopus Academy's policies and they do not form part of the parties' agreement.

20. I find that the parties' agreement was made based on the terms set out in Octopus Academy's email messages which stated that the deposit would be returned so long as Mr. Hou gave a month's notice of his child's withdrawal. As he did so, I find that Mr. Hou is entitled to the return of the \$455 deposit.
21. I find that Mr. Hou is also entitled to pre-judgment interest under the *Court Order Interest Act* applies to the CRT. Calculated from December 9, 2020 (being the date of the refund request), this equals \$0.83.
22. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Mr. Hou is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order Octopus Academy to pay Mr. Hou a total of \$580.83, broken down as follows:
 - a. \$455 as reimbursement of the deposit,
 - b. \$0.83 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 for CRT fees.
24. Mr. Hou is entitled to post-judgment interest, as applicable.
25. 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.

26. 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