



# Civil Resolution Tribunal

Date Issued: January 26, 2022

File: SC-2021-005095

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Martian v. Suniara (dba Kool Kidz Daycare)*, 2022 BCCRT 102

BETWEEN:

RILEY MARTIAN

**APPLICANT**

AND:

NEELAM SUNIARA (Doing Business As KOOL KIDZ DAYCARE)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about a refund for daycare services.
2. The applicant, Riley Martian, withdrew her child's care from the respondent, Neelam Suniara (Doing Business As Kool Kidz Daycare), after one day. Ms. Riley seeks a

refund of the \$600 she says she paid Ms. Suniara for the first month of daycare services.

3. Ms. Suniara says Ms. Martian is not entitled to any refund under their contract.
4. Ms. Martian is self-represented. Ms. Suniara is represented by a lawyer, Odette Dempsey-Caputo.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.
8. 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.

## **ISSUE**

9. The issue in this dispute is whether Ms. Martian is entitled to a \$600 refund for unused childcare services.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Ms. Martian as the applicant must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
11. It is undisputed that Ms. Martian contacted Ms. Suniara in the last week of April 2021 about providing daycare services for her young child. It is also undisputed that during a tour of Ms. Suniara’s daycare facilities on April 28, 2021, Ms. Suniara offered Ms. Martian a 2-week trial period because her child had never attended daycare before. The terms of this 2-week trial period offer are at the center of this dispute, as discussed below.
12. Ultimately, Ms. Martian registered her child for full-time care with Ms. Suniara commencing on May 10, 2021, and pre-paid \$600 in fees for the whole month of May. At the end of the first day, Ms. Martian says she concluded Ms. Suniara’s daycare was not a good fit for her child, and she requested a refund of the unused fees. Ms. Suniara has refused to refund Ms. Martian anything.
13. Ms. Suniara provided a copy of the parties’ written agreement, which Ms. Martian undisputedly signed on April 30, 2021, 2 days after Ms. Suniara had offered the 2-week trial period. The agreement’s payment policy set out the fees for full-time care, that parents must give one months’ notice to withdraw or change their childcare arrangements, and that any pre-paid fees will be returned upon a month’s notice, among other terms. The agreement does not mention anything about a trial period.
14. Ms. Martian says Ms. Suniara verbally explained that the first 2 weeks of childcare would be an “introductory phase”, and that Ms. Suniara assured her that she would

refund any unused childcare services if she decided the daycare was not a suitable option during that time. Ms. Martian says Ms. Suniara's verbal offer of a trial period induced her to register her child in full-time care.

15. In contrast, Ms. Suniara says the trial period offer was only applicable for children in part-time care. Ms. Suniara says Ms. Martian decided to secure a full-time spot, so she declined the trial period offer and signed a contract for full-time care, which provided no refunds of pre-paid fees with less than one-months' notice. Ms. Suniara says she explained to Ms. Martian that by registering her child for full-time care, she would not be entitled to the 2-week trial period, which Ms. Martian denies.
16. Both parties provided excerpts from text messages they exchanged. However, neither parties' excerpts consistently show the dates and times of the various messages. I find the timing of the parties' communications is relevant because Ms. Martian was initially seeking part-time care, but at some point, opted to secure a full-time spot. While the parties clearly discussed a 2-week trial period, I am unable to conclude that this was after Ms. Martian advised Ms. Suniara that she was considering registering for full-time care.
17. I find there is no explicit discussion in the parties' text messages about whether the 2-week trial period would apply to a child registered in full-time care. However, I find Ms. Suniara did text Ms. Martian that there was no discount for unused days (as Ms. Martian would be starting care part-way through the month), and that she had to pay a full month to "hold the space", when registering her child for a full-time spot. I find these conditions for full-time care are wholly inconsistent with a 2-week trial period, where Ms. Martian could remove her child from care without notice and receive a refund.
18. I find the parol evidence rule applies here. This rule says that, where there is a written agreement, outside evidence cannot be admitted to vary, modify, add to, or contradict the written agreement's terms, unless the written agreement is unclear or ambiguous (see *Athwal v. BlackTop Cabs Ltd.*, 2012 BCCA 107, at paragraphs 42 to 44). Here,

I find there is no ambiguity in the agreement's payment policy that no refunds are provided with less than one month's notice.

19. I do not accept Ms. Martian's argument that the parties' earlier verbal agreement about a 2-week trial period was a collateral contract to the main written agreement. A collateral contract is unenforceable if it is inconsistent or clearly contradicts the terms of the written agreement (see *River Wind Ventures Ltd. v. British Columbia*, 2011 BCCA 79, at paragraph 14). As noted, I find the alleged agreement about a 2-week trial period is inconsistent with the written agreement's payment policy that pre-paid fees are only returned on one-month's notice.
20. I also do not accept that Ms. Suniara's "promise" to provide a trial period was intended to induce Ms. Martian into registering her child in full-time care. Based on Ms. Suniara's various representations about full-time care and the terms of the written contract, I find Ms. Martian knew or ought to have known that registering for a full-time spot came with different terms and conditions than part-time care, including no trial period. Even if the parties initially agreed to a 2-week trial period, I find that once Ms. Martian decided to register for a full-time spot, the written agreement replaced any previous verbal agreements between the parties.
21. So, I find only the parties' written agreement applies to this dispute. Given that Ms. Martian provided less than one month's notice of removing her child from care, I find she was not entitled to any refund under the agreement. I dismiss Ms. Martian's claim.
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. Ms. Martian was unsuccessful and so I dismiss her claim for CRT fees. As the successful party, Ms. Suniara did not pay any fees or claim any dispute-related expenses, so I make no order.

## **ORDER**

23. I dismiss Ms. Martian's claims and this dispute.

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Kristin Gardner, Tribunal Member