



Civil Resolution Tribunal

Date Issued: April 11, 2022

File: SC-2021-007749

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Li v. Beibei's Kids Land Ltd.*, 2022 BCCRT 416

BETWEEN:

XU LI

APPLICANT

AND:

BEIBEI'S KIDS LAND LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Beibei's Kids Land Ltd. operates a daycare called Tiny Hoppers. Xu Li's daughter, C, attended Tiny Hoppers in September 2021. Mr. Li says C consistently came home dirty, which he says is unsanitary. Also, on September 16, 2021, it is undisputed that C got a scratch on her forehead that Tiny Hoppers' staff did not notice. Mr. Li alleges that Tiny Hoppers neglected C while she was in its care. Mr. Li

initially asked for an order that Tiny Hoppers refund the \$1,600 he paid for September 2021, and the \$1,600 deposit and \$150 registration fee he paid to secure C's spot. He later conceded that he only paid \$1,500 for September 2021.

2. Tiny Hoppers denies neglecting C. It says that it is normal for toddlers to get bumps and scrapes during outdoor play. It also says that it is normal for toddlers' clothes to get dirty when playing outside and denies this is a health or safety concern. Tiny Hoppers says that the parties' contract says that the tuition, deposit, and application fee are all non-refundable. Tiny Hoppers asks me to dismiss Mr. Li's claims.
3. Mr. Li is self-represented. Tiny Hoppers is represented by its owner, Lena Jin.

JURISDICTION AND PROCEDURE

4. 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.
5. 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. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
6. 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.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Did Tiny Hands breach the parties' contract by failing to provide reasonably safe care for C?
 - b. Is Mr. Li entitled to a refund of any part of the application fee, security deposit, or September 2021 tuition?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Li as the applicant must prove his case on a balance of probabilities, which means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Before turning to the merits of this dispute, I note that there are 2 signed documents in evidence. C's mother, LL, signed these documents, not Mr. Li. Neither party raised this issue. I find that it is implicit in Mr. Li's submissions that LL entered into a contract with Tiny Hoppers on her own behalf and as Mr. Li's agent. I therefore find that Mr. Li is a party to the daycare contract with Tiny Hoppers, and therefore has standing (or legal authority) to bring this claim. I also find that he is bound by any terms LL agreed to on his behalf.
11. The following facts are undisputed. In August 2021, Mr. Li paid a \$1,600 deposit and \$150 application fee to secure C's spot in Tiny Hoppers starting September 1, 2021. Mr. Li also paid \$1,500 in tuition for September 2021. On September 15, 2021, Mr. Li emailed Tiny Hoppers to complain that C was "caked with sand and dirt" when he picked her up.

12. On September 16, 2021, C had a scratch on her forehead when Mr. Li picked her up. Tiny Hoppers' teachers had not noticed it until Mr. Li pointed it out because C had not cried or told anyone about the scratch. The scratch is a thin scratch between 2 and 3 centimeters long. C did not return to Tiny Hoppers after September 16, 2021. Tiny Hoppers refused Mr. Li's demand for a refund. Again, none of this is disputed.
13. Mr. Li argues that Tiny Hoppers breached the parties' contract by failing to provide safe care to C. Mr. Li says that the parties' contract required Tiny Hoppers to make sure C was "safe from harm or injury" and to "always keep eyes on the children".
14. In contracts for professional services, which I find includes childcare, it is an implied term of the contract that the professional will perform the work to a reasonable standard. In the context of daycare, I find that it was an implied term of the parties' contract that Tiny Hoppers would provide a reasonably safe environment for C. I do not agree with Mr. Li that it is reasonable to imply a contractual term that essentially guarantees a child will never receive any injuries of any severity.
15. The next question is whether Tiny Hoppers breached that term by failing to change C's clothes when they became dirty and wet from playing outside, or by failing to prevent C from getting scratched while playing. Mr. Li emphasizes the importance of cleanliness and sanitation in the context of the COVID-19 pandemic. Mr. Li also says that while the cut was minor, it could have been much worse if it had been on her eye and or become infected. Mr. Li also says that the fact that around 2.5 hours passed between the scratch and Mr. Li picking C up shows that Tiny Hoppers' teachers were not paying close enough attention to C.
16. For its part, Tiny Hoppers argues that small children get dirty and sometimes get small injuries. It says that it had the required teacher-to-children ratio under the *Child Care Licensing Regulation* (CCLR), which Mr. Li does not dispute. It says that the fact that no teacher noticed the small scratch does not mean that C was not adequately supervised since she did not react to it. Finally, Tiny Hoppers says that it

has a sanitation protocol, but it does not include changing or washing clothes that get dirty from outside play.

17. Generally, when a person alleges that a professional's work was below a reasonable standard, they must provide expert evidence to prove the standard of care. The 2 exceptions to this rule are when the alleged breach is not technical or when the breach is so egregious that it is obviously below the standard of care. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.
18. I find that Mr. Li requires expert evidence to prove the standard of care. I find that having dirty clothes from playing outside and getting a relatively minor scratch do not show that Tiny Hoppers' care of C was obviously inadequate. I note that under section 1 of Schedule E of the CCLR, a daycare like Tiny Hoppers with children between 30 months and school age must have 1 staff person for every 8 children. With that context, I find that it is not obvious that failing to directly supervise all children at all times is below the standard of care. Because there is no evidence of the standard of care, I find that Mr. Li has not proven that Tiny Hoppers breached the parties' contract by failing to provide a reasonably safe environment for C.
19. I note here that Tiny Hoppers relied on an incident report it says Vancouver Coastal Health wrote about the scratch incident. Mr. Li alleges that the submitted report is a forgery. Given my conclusion, I find that I do not need to decide this issue. I have not put any weight on the incident report.
20. I turn then to whether Mr. Li is entitled to a refund under the parties' contract. LL signed 2 documents, a "Withdrawal Policy" and a "Parent Handbook Acknowledgement Form", which were both attached to a Parent Handbook. Mr. Li says that these are just "policies" that Tiny Hoppers imposed and are not contractual. I disagree. I find that both documents clearly indicate that the person signing them is agreeing to their terms.

21. Turning first to the \$150 application fee, the Parent Handbook says that it is non-refundable, even if the child does not get a spot in Tiny Hoppers. I therefore dismiss Mr. Li's claim for a refund of the application fee.
22. The Withdrawal Policy and Parent Handbook both say the security deposit is non-refundable. The Withdrawal Policy says that parents must give one calendar month's written notice. The more detailed Parent Handbook says that parents must give 30 days' written notice of withdrawal. I find that this discrepancy does not matter here because September has 30 days. The Parent Handbook also says that Mr. Li must give written notice before the first day of the child's last month. I find that this means that Mr. Li's withdrawal on September 17, 2021, meant that he was responsible for tuition until October 31, 2021. I therefore find that Mr. Li is not entitled to a refund of September 2021's tuition.
23. However, I find that this does not end the matter. Both documents say that the security deposit is non-refundable and that it applies to the final month's tuition. As discussed above, the monthly tuition was \$1,500 but Mr. Li paid a \$1,600 deposit. I find that the contract is ambiguous about what happens to any excess deposit when the deposit is more than the last month's tuition. I find that the legal doctrine called "contra proferentem" applies. Contra proferentem means that when a contract is ambiguous, the ambiguity should be resolved against the party who drafted the contract, here Tiny Hoppers. I therefore find that Mr. Li is entitled to a \$100 refund for the leftover balance after the deposit was applied to October 2021's tuition.
24. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Li is entitled to prejudgment interest on the \$100 refund from October 1, 2021, to the date of this decision. This equals \$0.24.
25. 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. While I have ordered Tiny Hoppers to pay a small portion of Mr. Li's claimed refund, I find that Mr. Li has been substantially unsuccessful. I

decline to order Tiny Hoppers to reimburse him for any CRT fees. Tiny Hoppers did not pay any CRT fees or claim any dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Tiny Hoppers to pay Mr. Li a total of \$100.24, broken down as follows:

a. \$100 in debt, and

b. \$0.24 in prejudgment interest under the COIA.

27. Mr. Li is entitled to post-judgment interest, as applicable.

28. 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.

29. 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.

Eric Regehr, Tribunal Member