



Civil Resolution Tribunal

Date Issued: April 12, 2022

File: SC-2021-005061

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Goodridge v. Niagara Care Community Ltd.*, 2022 BCCRT 419

BETWEEN:

BRIAN GOODRIDGE

APPLICANT

AND:

NIAGARA CARE COMMUNITY LTD. and MLUNGISI MAKHAZA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Brian Goodridge, contracted with the respondent, Niagara Care Community Ltd. (Niagara), for Niagara to provide residency and nursing care services for a family member, EG. The other respondent, Mlungisi Makhaza, is Niagara's employee.

2. Mr. Goodridge says Niagara improperly charged for nursing care fees for the month of December 2020 after EG passed away on December 6, 2020. He says Niagara breached both the *Residential Care Regulation* (RCR), the *Business Practices and Consumer Protection Act* (BPCA), and the parties' contract. He seeks a refund of \$4,687.41, which he inadvertently paid through preauthorized debit. Mr. Goodridge did not describe a claim against Mr. Makhaza in his personal capacity.
3. The respondents deny liability. They both say that Niagara appropriately charged the claimed sum under the contract's terms.
4. Mr. Goodridge represents himself. Niagara's chief operating officer, Kris Coventry, represents both respondents.
5. For the reasons that follow, I dismiss Mr. Goodridge's claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. 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

10. The issues in this dispute are as follows:
 - a. Did Niagara breach the BPCPA or the RCR?
 - b. If not, was Niagara entitled to charge for 30 days' worth of services after EG passed away under the parties' contract?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Goodridge must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. The essential facts are documented. On January 7, 2020, Mr. Goodridge, EG, and Niagara entered into a written contract. Under its terms, Niagara agreed to provide 1) nursing care for EG at the monthly rate of \$5,750 and 2) room and board at the monthly rate of \$2,500 for EG. The contract said both services commenced on January 10, 2020. Both EG and Mr. Goodridge agreed to be liable for these fees and to pay for the services by preauthorized debit.
13. The contract did not have a specific end date. However, page 9 said that a resident such as EG could terminate the contract at any time by providing 30 days' written notice. The resident would still continue to be liable for the "daily rate" for the entire notice period. The contract did not define the "daily rate". Page 7 said that Niagara

would consider a resident's passing, such as EG's, the start of 30 days' notice to terminate the contract.

14. Mr. Goodridge paid a deposit of \$4,125 as required by the contract and EG moved into Niagara's facility. EG passed away in a hospital on December 6, 2020. Niagara says it considered this to be the start of the 30-day notice period. It charged for and automatically withdrew nursing care and room and board fees of \$8,250 plus a \$62.39 cleaning fee for December 2020. It also charged \$1,064.52 for January 1 to 4, 2021, based on what it calculated to be a daily rate of \$266.13. Niagara then returned the deposit to Mr. Goodridge, less the January 2021 fees, for a total of \$3,060.
15. Mr. Goodridge disputes liability for all nursing care fees after EG passed away from December 7 to 31, 2020. He says this equals \$4,687.41. The parties agree that Niagara refunded \$741.94 for the nursing charges for January 1 to 4, 2021. So, the January 2021 nursing charges are not in dispute. Further, Mr. Goodridge does not dispute any room and board fees for December 2020 or January 2021 or any other periods of time. Only the December 2020 nursing care fees are in dispute.

Issue #1. Did Niagara breach the BPCPA or the RCR?

16. Mr. Goodridge relies on section 25(2)(a) of the BPCPA. It says that a consumer may cancel a continuing services contract by giving notice of cancellation and the reason for the cancellation to the supplier at any time if there has been a material change in the consumer's circumstances. Section 25(3)(a) defines a material change to include the consumer's death.
17. I find section 25 of the BPCPA inapplicable to this dispute. This is because for the reasons that follow, I find the parties' contract is not a continuing services contract.
18. Section 17 of the BPCPA defines a continuing services contract to mean a future performance contract that provides for performance of services on a continuing basis and is designated by regulation (my emphasis). Section 2 of the *Consumer Contracts Regulation* says contracts for services such as exercise, gym membership or travel clubs are continuing services contracts. I find that the parties' contract falls outside of

these categories. So, I find Mr. Goodridge is not entitled to a refund under section 25 of the BPCPA.

19. Mr. Goodridge also says Niagara breached section 48(1)(a) of the RCR, which is made under the *Community Care and Assisted Living Act* (CCALA). That section says that before admitting a person to a community care facility, a licensee must advise the person or their representative of all charges, fees, or other payments that the person in care may have to pay in return for accommodation and other services offered by the community care facility.
20. The parties' contract says that Niagara agreed to provide nursing services as prescribed by the CCALA and "accompanying regulations". So, I find the RCR applies. I find that Niagara was a licensee and had to advise Mr. Goodridge of all charges, fees, or other payments in accordance with RCR section 48(1)(a). However, for the reasons that follow, I find Niagara did so.
21. As noted above, Mr. Goodridge signed the written contract on January 7, 2020. He also initialed each page. Niagara's representative signed as well. Given the contract date, I find this occurred before EG was admitted on January 10, 2020. So, I find that Niagara advised Mr. Goodridge of the fees at issue, so long as they were in the contract. I find that the contract clearly stated that upon EG's death the contract did not end. Instead, the parties entered into a 30-day notice period during which the "daily rate" was payable for the entire notice period.
22. Mr. Goodridge submits that the daily rate must only include room and board fees and not nursing care services. He says this is because Niagara did not provide any nursing care services during the notice period.
23. While I acknowledge this argument, in law, notice periods are commonly used to provide a party compensated time to arrange their affairs. For example, a room or nursing resources may remain idle until a new resident moves in. Based on the contract's wording, I find the parties' objective intention was for the notice period to serve such a purpose. So, I find Niagara was entitled to charge for both the nursing

care services and room and board during the notice period. I find this was so, even though EG had passed away at the start of the notice period. Accordingly, I also find that it was reasonably clear that the “daily date” for the notice period was the monthly cost of both these services, divided by the number of days in the month.

24. In summary, I find the parties’ contract was reasonably clear and explained what fees Niagara would charge. I find it unproven that Niagara had to take further steps to explain the contract or that it otherwise breached the RCR.

Issue #2. If not, was Niagara entitled to charge for 30 days’ worth of services after EG passed away under the parties’ contract?

25. As noted earlier, Niagara charged for the month of December 2020. For the reasons discussed above, I find it was entitled to do so under the contract’s written terms. So, I dismiss Mr. Goodridge’s claims.
26. In submissions Niagara said it agreed to return a further \$322.58. I find that it is not obligated to do so under the contract, so I make no orders about this. I dismiss Mr. Goodridge’s claims against Niagara.
27. Mr. Goodridge did not describe any claims against Mlungisi Makhaza in his personal capacity. So, I dismiss those claims as well.
28. 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 dismiss Mr. Goodridge’s claims for reimbursement. The respondents did not claim for any specific dispute-related expenses.

ORDER

29. I dismiss Mr. Goodridge's claims and this dispute.

David Jiang, Tribunal Member