



Civil Resolution Tribunal

Date Issued: May 19, 2022

File: SC-2021-009699

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Torres v. 1025704 B.C. Ltd.*, 2022 BCCRT 589

BETWEEN:

ALINA TORRES

APPLICANT

AND:

1025704 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is over a daycare deposit. The applicant, Alina Torres, says the respondent daycare, 1025704 B.C. Ltd., which operates as Hellokids Childcare

Centre (Hellokids), has refused to refund her \$750 deposit that she paid on January 28, 2021 for her child's spot with a September 1, 2021 start. Mrs. Torres says she gave notice of her child's withdrawal on May 28, 2021 and so should be entitled to her deposit's return. Mrs. Torres claims the \$750 plus \$250 for "unnecessary stress".

2. Hellokids says the parties' contract clearly said there would be no refund of the deposit if no care had started, as was the case here for this child. Hellokids denies its agreement was ambiguous as Mrs. Torres alleges.
3. Mrs. Torres is self-represented. Hellokids is represented by its owner, Soudabeh sadat Mousavi.

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). CRTA section 2 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. CRTA section 39 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 parties of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.
6. CRTA section 42 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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether Mrs. Torres is entitled to the refund of her \$750 paid deposit, under the parties' contract terms.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mrs. Torres must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. The background facts are undisputed. On January 20, 2021, Mrs. Torres emailed Hellokids and asked if her 2nd child could start daycare in September 2021. Hellokids responded that they could, and would send her the forms, which it did on January 25, 2021. On January 27, 2021, Mrs. Torres returned the completed forms and paid the non-refundable registration fee and the \$750 deposit. Mrs. Torres' claim in this dispute is only for a refund of the \$750 deposit.
11. It is further undisputed that on May 28, 2021 Mrs. Torres advised Hellokids that she wanted to withdraw both her children. This meant her 2nd child would never attend Hellokids.
12. This dispute turns on whether the parties' January 27, 2021 contract requires Hellokids to refund the \$750 deposit. I find it does not. My reasons follow.

13. Immediately below Mrs. Torres' signature on the "Registration Form", which undisputedly was included in the parties' contract, reads (quote reproduced as written, my bold emphasis added):

The Registration fee is Non-refundable. Also, our policy for deposit is that we will hold your child's space you are requesting at an agreed upon time, if the registration and security deposit are paid in full. If you wish to withdraw and two full calendar months' notice from the 1st of the month are given then this fee will be only applied on your last day of care. If no two full calendar months' notice are given **or cancel the care service before starting date then the security deposit will be withhold (No Refund). This will be in effect whether or not care has taken place.** Hellokids only accept the Withdraw form after starting my childcare service (Minimum 3 months' enrolment is required)

14. Mrs. Torres argues that the spelling and grammatical errors in the above quote left the meaning of the deposit's refund policy unclear. She says she understood that if her child had not attended the daycare, there was no requirement for the "Withdrawal From Childcare" form, and so there was no need to withdraw them. Mrs. Torres says she gave more than 2 months' notice, which is all the "withdrawal" form required.
15. I do not accept Mrs. Torres' position. When determining a contract's terms, the parties' subjective beliefs are not relevant. Rather, the test is what a reasonable bystander would understand the contract's terms to be. So, I find that I must determine what a reasonable bystander would understand to be the contract's terms about the deposit and any applicable refund. See *Aubrey v. Teck Highland Valley Copper Partnership*, 2017 BCCA 144, at paragraphs 47 and 48.
16. I acknowledge there are spelling, grammar, and punctuation errors, and agree the contract is not ideally worded. However, I find the above-quoted policy is sufficiently clear that if the child never starts care with Hellokids, as was the case here, there is no refund of the paid deposit. Relatedly, I find a reasonable bystander would

conclude that if a child had not started care, a “no refund” policy applied to the paid deposit.

17. Next, contrary to Mrs. Torres’ apparent assertion, I find the terms of her child’s new daycare’s contract irrelevant to the parties’ obligations under their own contract.
18. Finally, contrary to Mrs. Torres’ argument, the fact that Hellokids might be able to fill the spot is not determinative. This is because the parties’ contract expressly specified that there would be no refund of the paid deposit.
19. Given the above, I find Mrs. Torres’ claim must be dismissed. I find she is not entitled to a refund of the \$750 deposit given the contract’s terms.
20. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mrs. Torres was unsuccessful, so I dismiss her claim for reimbursement of CRT fees. Hellokids did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

21. I order Mrs. Torres’ claims and this dispute dismissed.

Shelley Lopez, Vice Chair