Civil Resolution Tribunal

Date Issued: September 6, 2022

File: SC-2022-002239

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *CM v. YR,* 2022 BCCRT 989

B E T W E E N :

C.M.

APPLICANT

A N D :

Y.R.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about daycare fees. The applicant, C.M., operates a "license not required" (LNR) daycare. Beginning in February 2022, the respondent Y.R. sent her

child to the applicant's daycare. The applicant claims $842, which is for $640 for April 2022 fees plus $202 for a March 2022 subsidy. The applicant says the respondent owes the government subsidy portion as they never received the subsidy funding and they say the April fees are owing because the respondent terminated the agreement in late March 2022 without 1 months' notice as required.

2. The applicant's daycare was undisputedly closed between March 1 and 15, 2022 and the applicant does not claim fees for that period. The respondent says her child did not attend daycare after February 24, 2022, as her child was ill after the daycare reopened, until late March. The respondent also says the applicant refused to provide care after March 24, and so the respondent says she owes nothing. The respondent further says the applicant's childcare services were negligent and inadequate.

3. To protect the identity of the respondent's minor child, I have anonymized the parties' names in the published version of this decision.

4. The parties are each self-represented.

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). 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.

6. 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. 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.

7. 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.

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.

9. The respondent notes she has filed a complaint to "the island health licensing officer". This CRT dispute is a civil proceeding and so it is separate and unrelated to that complaint and any decision from the licensing officer. I make no findings about that complaint.

ISSUE

10. The issue is whether the respondent owes the applicant daycare fees for March and April 2022.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove their claim on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.

12. The respondent's child started at the applicant's daycare on February 1, 2022. The parties' January 31, 2022 contract's relevant terms are:

    a. Childcare is provided Mondays to Thursdays, at $40 per day.

b. Fees are due on the 1st of the month.

c. Subsidized families are “welcome”. The contract does not say how the subsidy payment is applied against the respondent’s fee obligation.

d. The respondent must pay fees for the schedule agreed to, regardless of whether the child attends. While the contract does not specify the child’s attendance days, the parties’ texts show the child’s schedule was 4 days per week.

e. The parties agree to each give 1 month’s written notice of when the child is to be withdrawn. After the 1st month, the parent agrees to pay 1 month’s fee in lieu of notice.

13. The applicant became ill in late February or early March and their daycare was undisputedly closed between March 1 and March 15, 2022. The applicant’s March 22 invoice for $224 set out the following breakdown: 10 billable days from March 16 to 31 ($400), $26 overdue from February, minus $202 subsidy = $224. The respondent paid the $224. Nothing turns on the fact the respondent did not pay March fees on the 1st as required, which I infer was a result of the parties’ friendly relationship that existed up until March 24, 2022.

14. I note the respondent says she thought that the invoice was a “carry over” to be applied to April fees because her child did not attend in March. I find the applicant’s invoice was clear that it was for March, not April. When the applicant confirmed around March 24, 2022 that the invoice was for March fees, the parties’ previously friendly relationship deteriorated.

15. In this dispute, the applicant claims the $202 March subsidy portion, because the respondent undisputedly refused to apply for that subsidy and so the applicant never received that funding. The applicant also claims $640 for April fees ($40 x 16 billable days), which together totals the claimed $842.

The $202 March subsidy

16. The parties' texts in evidence show they agreed the respondent's daycare fees would be partly funded by government subsidy. In particular, subsidy covered $20.20 per day out of the applicant's $40 per day fee. This subsidy rate is not disputed and is set out in the government's child care subsidy documentation in evidence.

17. However, contrary to the respondent's argument, I find that she was obligated to pay the applicant's daycare fees as required by the parties' contract to the extent any subsidy was not paid. This is so even though the respondent's child was sick in late March and did not attend the daycare while it was operational between March 16 and 31, 2022.

18. In other words, as set out in paragraph 12(d) above, I find the contract clearly required payment for days the daycare was operational, whether the child attended or not. I find the fact that the respondent may not have been eligible for a subsidy in March when her child did not attend is not relevant to the respondent's contractual obligations.

19. So, there were 10 billable days from March 16 to 31. At the $20.20 daily subsidy rate, this equals the claimed $202. I find the applicant is entitled to the $202 because that amount is outstanding under the parties' contract and because the applicant undisputedly did not receive those funds through the subsidy program.

April fees - $640

20. As noted, I find the respondent owed daycare fees under the contract at $40 per day, regardless of whether the subsidy was in fact paid. I accept that the billable fees would have been $640 for April, which is not disputed. Again, what the respondent might have received for a subsidy is not relevant to the parties' contractual obligations.

21. The parties' contract required 1 months' notice of termination by either party. As noted, it also said the parent (the respondent) would pay 1 months' fees in lieu of

notice. The parties' contract undisputedly ended in late March 2022, without 1 months' notice. So, this claim turns on which of the parties terminated the relationship.

22. Both parties say the other terminated the agreement. Their text messages on March 24 have a back and forth in them and so the answer to this issue is not straightforward.

23. At first, the respondent refused to pay anything further and refused to complete the subsidy paperwork. The applicant responded they loved having the child there but it was the respondent's choice if they wanted to terminate the agreement. The respondent continued to argue about the charges and that she was not going to pay anything more. The applicant reiterated at 3:01 p.m. that since "you won't be bringing [the child] back this month that counts as not giving one months' notice…". The respondent did not dispute she had decided to end the contract.

24. The parties had a further exchange about the $224 invoice that the applicant reiterated was for March fees. At 3:14 p.m. the respondent texted, "I just want to make sure that we are both being taken [care of] financially and for clarification reasons I think we need to sit down to see what we both mean … regardless we intend to come there on the 28th next Monday". The applicant responded with a "thumbs up" emoji.

25. On balance, I find the respondent terminated the parties' contract, not the applicant. I say this because I find the respondent made it clear she was cancelling the subsidy and would not pay anything for April fees. The respondent did not dispute the applicant's statements about the respondent's decision to remove her child from care or that she had not given 1 months' notice. I find the respondent's planned attendance on March 28 was to discuss the financial billing, not for the child to receive care. In any event, I find that by the time the respondent said she would attend on March 28 and when the applicant responded with a thumbs-up emoji, the applicant reasonably understood that the respondent had already terminated the contract.

26. With that, I find the applicant is entitled to the claimed $640 for April 2022 fees, because the respondent terminated the contract without 1 months' notice. So, under the contract the respondent was required to pay 1 months' fees in lieu of notice.

Alleged incompetent and negligent services

27. Next, the respondent alleges that the applicant's care was incompetent and negligent. The respondent says her child was always crying and was not well stimulated. As the party asserting negligence or incompetence, the respondent has the burden to prove it. I find she has not done so. First, she did not give any details of how and when the care was allegedly inadequate. Second, in all of the parties' many texts between February 1 and March 23, they were clearly friendly in tone and the respondent never expressed any concern about her child's care. As an example, on March 21, 2022, the respondent texted "we miss you guys" after the applicant's daycare had been closed from the beginning of March due to illness. I find no evidence of negligence or incompetence and so I allow the applicant's claim as set out above.

Interest, fees, and expenses

28. The *Court Order Interest Act* (COIA) applies to the CRT. I find the applicant is entitled to pre-judgment COIA interest on the $842. Calculated from April 1, 2022 (a date I find reasonable) to the date of this decision, this interest equals $4.32.

29. 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. As the applicant was successful, I allow their claim for reimbursement of $125 in CRT fees. The applicant did not claim dispute-related expenses.

ORDERS

30. Within 21 days of this decision, I order the respondent to pay the applicant a total of $971.32, broken down as follows:

    a. $842 in debt,

b. $4.32 in pre-judgment COIA interest, and

c. $125 in CRT fees.

31. The applicant is entitled to post-judgment interest, as applicable.

32. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair