



Civil Resolution Tribunal

Date Issued: February 1, 2023

File: SC-2022-002510

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EY v. Hoang (dba D Nails & Spa)*, 2023 BCCRT 93

BETWEEN:

EY

APPLICANT

AND:

DONG HOANG (Doing Business As D NAILS & SPA)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about alleged negligent nail services.
2. The minor applicant, EY, says that she had a manicure performed by the respondent, Dong Hoang (Doing Business As D Nails & Spa), on April 5, 2022. EY says that several hours after the nail service, one of her fingers became infected and required

treatment with antibiotic cream. EY claims an \$85 refund for the nail service, plus \$500 for pain and suffering.

3. Mr. Hoang says EY has not established that she had her nails done at his business or that the nail service caused her any injury. I infer that Mr. Hoang says I should dismiss this dispute.
4. EY is represented by a litigation guardian, her father DY, who is a lawyer. Mr. Hoang is self-represented.
5. In the published version of this decision, I have anonymized EY's name and her litigation guardian's, given EY is a minor.

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.
10. In submissions, EY seeks to increase the amount of her claim to add reimbursement for a prescription medication and unspecified mileage costs. Since these amounts were not included in the Dispute Notice, I find they are not properly before me, and it would be procedurally unfair to consider them. In any event, I find nothing turns on the additional claims given my decision below to dismiss EY's claims.

ISSUES

11. The issue in this dispute is to what extent, if any, Mr. Hoang must pay EY \$85 for a nail service refund and \$500 for pain and suffering.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant EY must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. I note that Mr. Hoang did not submit any documentary evidence and EY did not provide any written final reply submissions, despite having the opportunity to do so.
13. EY says that she went to Mr. Hoang's business on April 5, 2022 and received gel nail extension services. She says she paid the respondent \$75 in cash, plus an additional \$10 tip. EY says that evening, the pinky finger on her right hand became swollen and sore, and by the following day, she says there was also pus oozing from under the fingernail. She says that despite washing her finger with antibacterial soap and applying topical non-prescription ointment for several days, the infection did not improve. She says it was only after obtaining a prescription for topical antibiotic cream on April 11, 2022, that the infection gradually resolved.

14. EY provided no documentary evidence showing she attended Mr. Hoang's business, as claimed. Mr. Hoang argues that because EY has failed to provide a receipt for the services, she has not proven he did the manicure. However, given EY says she paid in cash, I find it is likely she was not given a receipt.
15. Further, EY says she returned to Mr. Hoang's business with her parents about a week after the service to request a refund. This is supported by an affidavit from EY's mother, RY, and Mr. Hoang specifically admits that DY came to his business to confront him about EY's alleged infection. Based on this evidence, I find it unlikely that EY is mistaken or is being untruthful about Mr. Hoang performing the alleged nail services. Overall, I find it is more likely than not that Mr. Hoang provided EY with nail services on April 5, 2022, though nothing ultimately turns on this given my conclusion below.
16. This brings me to EY's allegation that Mr. Hoang's services were negligent. To succeed in a claim for negligence, EY must prove Mr. Hoang owed her a duty of care, Mr. Hoang failed to meet the required standard of care, that failure caused EY damages, and the damages were reasonably foreseeable: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
17. I am satisfied that Mr. Hoang owed his client EY a duty of care in providing her with nail services. I find the main issues are whether EY has established that Mr. Hoang breached the standard of care, or whether any breach caused her alleged injury.
18. I find that EY is essentially asking that I infer Mr. Hoang breached the standard of care and caused her injury based on her assertion that she developed an infection close in proximity and time to Mr. Hoang's services. However, EY does not say how Mr. Hoang's services caused the alleged infection. For example, she does not suggest that he cut her finger or even broke the skin during the services. In fact, she does not say there was anything unusual or deficient with Mr. Hoang's manicure that might have resulted in an infection. So, I find EY has not proven Mr. Hoang breached the standard expected of a professional nail technician.

19. Further, I find EY has not established that her alleged infection resulted from the nail services Mr. Hoang provided. She provided only 2 somewhat blurry photographs of her right hand taken on April 6, 2022. I acknowledge that the photographs appear to show the area above EY's pinky finger is swollen and red, though I find they do not show any pus coming from under the nail. I also cannot determine the cause of the alleged infection from the photographs.
20. EY says that due to a doctor shortage, she was unable to have her finger medically assessed in person. I accept EY's evidence that she obtained a prescription for an antibiotic cream during a virtual appointment on April 11, 2022. However, she provided no medical records or other expert evidence to connect the infection to Mr. Hoang's nail services.
21. In the absence of any supporting evidence that EY suffered an injury as a result of the nail services, I find there is insufficient evidence to conclude Mr. Hoang was negligent or otherwise responsible for the alleged infection. Therefore, I dismiss EY'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. As EY was unsuccessful, I dismiss her claim for CRT fees. Mr. Hoang did not pay any fees, and neither party claimed dispute-related expenses.

ORDER

23. I dismiss EY's claims and this dispute.

Kristin Gardner, Tribunal Member