



Civil Resolution Tribunal

Date Issued: December 8, 2023

Files: SC-2022-009122

and SC-CC-2023-003455

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McGrath v. Hubbard (dba Tiny Bubbles Daycare)*, 2023 BCCRT 1081

B E T W E E N :

KELSEY MCGRATH

APPLICANT

A N D :

TRENA HUBBARD (Doing Business As TINY BUBBLES DAYCARE)

RESPONDENT

A N D :

KELSEY MCGRATH

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about daycare fees. Kelsey McGrath has two children who attended a daycare operated by Mrs. Trena Hubbard¹, doing business as Tiny Bubbles Daycare.
2. In February 2022, Mrs. Trena Hubbard injured her back and was unable to operate her daycare. Ms. McGrath says she paid fees to Mrs. Trena Hubbard on the understanding that the daycare would only be closed for two weeks. When it became clear the closure would be longer, Ms. McGrath gave notice and asked for a refund of her fees. Mrs. Trena Hubbard declined.
3. Ms. McGrath claims \$2,348, broken down as follows: \$1,200 in fees for two children for March, \$200 for two enrollment deposits, \$800 for closures taken by Mrs. Trena Hubbard in 2021, and \$148 in income tax interest allegedly associated with daycare expenses.
4. Mrs. Trena Hubbard counterclaims for \$1,873 as follows: \$1,500 in fees for two children for March 2022, a \$40 late fee, and \$333 in “holiday funding”.
5. The parties are each self-represented.
6. For the reasons that follow, I allow Ms. McGrath’s claim in part and dismiss Mrs. Trena Hubbard’s counterclaim.

JURISDICTION AND PROCEDURE

7. 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.

¹ The CRT has a policy to use inclusive language that does not make assumptions about a person’s gender. As part of that commitment, the CRT asks all parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout its process. When asked, Mrs. Trena Hubbard requested to be referred to as Mrs. Trena Hubbard. I have honoured that request.

8. 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.
9. 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.
10. 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.
11. This decision is about 2 linked disputes, SC-2022-009122 and SC-CC-2023-003455, which I find make up a claim and counterclaim. So, I have issued one decision for both disputes. I have relied on the evidence and arguments submitted in both disputes in coming to my decision.

ISSUES

12. The issues in this dispute are:
 - a. Does either party owe the other daycare fees for March 2022?
 - b. Does Mrs. Trena Hubbard owe Ms. McGrath damages for breach of contract, return of a deposit, or for CRA interest arrears?
 - c. Does Ms. McGrath owe Mrs. Trena Hubbard additional fees under the parties' contract?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, each party as applicant must prove their respective claims on a balance of probabilities. This means “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.
14. In 2020, Ms. McGrath enrolled her child, C, in Mrs. Trena Hubbard’s daycare. The parties agree Ms. McGrath paid a \$100 deposit at that time that would be credited to Ms. McGrath’s final month’s payment for C.
15. Ms. McGrath enrolled B in 2021. Ms. McGrath says she paid another \$100 deposit. Mrs. Trena Hubbard says she waived the deposit since C already attended the daycare. Ms. McGrath did not provide any evidence she paid a second deposit, such as a receipt or an e-transfer record. So, I find Ms. McGrath has only proved she paid \$100 as a deposit.
16. When Ms. McGrath enrolled her children, Mrs. Trena Hubbard provided a policy document that also served as the parties’ contract. In January 2022, Mrs. Trena Hubbard made changes to the policy and provided a copy to Ms. McGrath. Ms. McGrath (and her husband) signed the updated contract on February 1, 2022.
17. Neither provided the original contract, but the updated contract’s first page had a “Document Update Log.” It flagged changes to daycare closures due to unforeseen circumstances, holidays, and sick time, and with respect to ongoing, non-refundable fees in the event of a closure. I address the contracts in more detail below.
18. The parties agree C and B attended daycare throughout February 2022. On Sunday, February 27, Mrs. Trena Hubbard told Ms. McGrath the daycare would be closed for 1 week due to a back injury, but she was looking for help for the following week.
19. On March 1, Mrs. Trena Hubbard said Ms. McGrath should plan for a 2-week closure but could not give a firm date. However, Mrs. Trena Hubbard said while the doctor had recommended 4 to 6 weeks, “I will not be more than 2 weeks tops.”

20. The parties then discussed how to address payment for March. An e-transfer log shows Ms. McGrath typically e-transferred daycare fees for both children, totalling \$1,600, around the 21st of each month for the following month. Consistent with that, on February 20, 2022, Ms. McGrath e-transferred \$1,600 for March. On March 4, 2022, she e-transferred \$800. The log does not say whether the e-transfers were deposited or cancelled, only that they were sent.
21. The parties' texts from that time show Mrs. Trena Hubbard said she did not deposit the February 20 transfer and instead asked for \$800 "for just 2 weeks." Mrs. Trena Hubbard said if she is back sooner, they would "update" the amount. Ms. McGrath agreed and said \$800 was very fair. The text messages do not include any information that explains what either party thought the \$800 was for. However, both parties refer to this amount in their submissions as a "hold fee" of \$400 for each child, representing a half-month's payment. I find that was its purpose.
22. When Ms. McGrath uploaded the parties' text exchange about March fees, she titled it "Proof [Mrs. Trena Hubbard] did not deposit etransfer although I did send." I agree with Ms. McGrath that she made payment on time, and I dismiss Mrs. Trena Hubbard's claim for a late fee. As she provided no other evidence about fees she paid for March, I also find Ms. McGrath paid \$800 for March 2022, not \$1,200, as she claims.
23. On March 11, Mrs. Trena Hubbard said the daycare would be closed again the following week but that she was working on a few ideas. On March 14, Ms. McGrath asked if there was a plan for the next few weeks.
24. On March 15, Ms. McGrath gave notice to leave the daycare "dated back to February 27." She says she originally made her decision to stay based on Mrs. Trena Hubbard's representation she would be off for 1-2 weeks. Ms. McGrath also asked to "square up" for sick time, training days, and snow days Mrs. Trena Hubbard had taken in 2021.

25. So, is Ms. McGrath required to pay fees for March? If not, is she entitled to a refund for the \$800 she paid?
26. Both the disputed payment and the period of time it concerned are after Ms. McGrath signed the updated contract. So, I must apply the updated contract's terms.
27. The updated contract has a section titled "Closure due to Unforeseen Circumstances." It says, in part, in the event of a closure not within Mrs. Trena Hubbard's control, a parent must pay a non-refundable monthly payment to hold their child's spot, with the amount to be determined by Mrs. Trena Hubbard. Given the parties' references to the \$800 as a "hold fee" in their submissions, I find it was the hold fee anticipated by this section.
28. That section of the contract also says: "In the event the family decides to withdraw from care during the closure, one month written notice is required (during which time the non-refundable monthly payment to hold the spot will still apply and be due), or else one regular month's payment and no notice required."
29. Here, I accept Ms. McGrath's position that she chose not to give notice only because she was told the closure would be limited to 2 weeks. I find that but for Mrs. Trena Hubbard's unambiguous message, Ms. McGrath would have given notice on or before March 1. Had she given notice on March 1, Ms. McGrath would still be obligated to pay the hold fee under the contract but would not have to pay one month's fees.
30. So, I find Mrs. Trena Hubbard is not entitled to daycare fees for March. However, I find she is entitled to the non-refundable \$800 hold fee. So, I dismiss each party's claims about March's daycare fees.
31. With respect to the \$100 deposit, as noted above, the parties agree it should be applied to monthly fees for the last month of care. So, Ms. McGrath is entitled to a credit of \$100 for her last month's payment, which was for February 2022. I order Mrs. Trena Hubbard to pay Ms. McGrath \$100.

Closures for Illness, Training, and Weather

32. As noted above, Ms. McGrath claims \$800 for 10 closed days in 2021 she says were not granted under the parties' original contract. These days covered a variety of reasons, including illness, training, and weather. While there are provisions for Mrs. Trena Hubbard to take personal time, Ms. McGrath says these closures go beyond what was permitted.
33. Mrs. Trena Hubbard advised Ms. McGrath of these closures when they occurred. Ms. McGrath did not request a refund or disagree about the closures until the parties disagreed over the March fees.
34. Where parties agree to make changes to a contract, typically there must be "fresh consideration," meaning party must get something of value. Where parties have an ongoing contract, sometimes called a "going transaction", the court has acted to protect the parties' legitimate expectations arising from changes, even in cases where the change is made without fresh consideration. So long as the change is not unconscionable or the result of one party's duress, the change is typically enforceable. See: *Rosas v. Toca*, 2018 BCCA 191 at paragraphs 176, 183.
35. Here, I find Mrs. Trena Hubbard requested permission to take additional time and Ms. McGrath granted it. There is no evidence Ms. McGrath was under duress or that the requests were unconscionable. So, I find the parties agreed to the change, and Ms. McGrath cannot now back out of her agreement. I dismiss her claim for compensation for the 2021 closures.

Tax Penalty

36. Ms. McGrath says Mrs. Trena Hubbard refused to give her receipts for her daycare fees. Ms. McGrath says when her income taxes were audited, the CRA required receipts, and she could not provide them. Mrs. Trena Hubbard ultimately did provide receipts, though they were dated for 2022.

37. However, Ms. McGrath did not provide evidence that clearly showed she owed arrears as a result of the delayed daycare receipts. The only evidence about the amount owing is a partial message from the CRA. It shows someone owes \$147.55 for “arrears interest” but does not clearly specify this amount is related to Ms. McGrath or her daycare fees. I find she not proven her CRA payments were the result of Mrs. Trena Hubbard’s failure to provide a receipt and dismiss this aspect of her claim.

Holiday Fundings

38. Mrs. Trena Hubbard says she is entitled to \$333 for “holiday funding.” Under the parties’ contract, if a parent withdraws their child before Mrs. Trena Hubbard has taken all of her four weeks of annual vacation, the parent must pay a pro-rated amount equal to the percentage of their time in care, based on their monthly rate. Given my decision, I do not need to determine if Mrs. Trena Hubbard has calculated the amount accurately.

39. The contract requires Mrs. Trena Hubbard to give one month minimum notice before taking holiday time. It also explicitly says the intent of the holiday funding clause is to deter a parent from withdrawing their children from care immediately before Mrs. Trena Hubbard takes holidays. However, there is no suggestion Ms. McGrath withdrew the children to avoid holidays. Instead, Ms. McGrath withdrew the children because the daycare was going to be closed for an indeterminate period of time while Ms. McGrath recovered from her back injury.

40. I find Mrs. Trena Hubbard included the explanation to limit the holiday funding clause’s application. If she intended the holiday funding clause to apply in all circumstances, I find she would not have included the explanation clause in the parties’ contract.

41. So, I find the holiday funding provision does not apply and I dismiss that aspect of Mrs. Trena Hubbard’s claim.

42. The *Court Order Interest Act* applies to the CRT. Ms. McGrath is entitled to pre-judgment interest on the \$100 deposit from March 1, 2022, the date she would have given notice, to the date of this decision. This equals \$5.44.
43. 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. In the circumstances, I find Ms. McGrath was substantially unsuccessful in her application and Mrs. Trena Hubbard was unsuccessful in her counterclaim. So, I find this an appropriate circumstance for each party to bear their own CRT fees. Neither party claimed dispute-related expenses.

ORDER

44. Within 14 days of the date of this order, I order Mrs. Trena Hubbard to pay Ms. McGrath a total of \$105.44, broken down as follows:
- a. \$100 in debt for the enrollment deposit, and
 - b. \$5.44 in pre-judgment interest under the *Court Order Interest Act*.
45. Ms. McGrath is entitled to post-judgment interest, as applicable.
46. I dismiss the balance of the parties' claims.
47. 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.

Christopher C. Rivers, Tribunal Member