



Civil Resolution Tribunal

Date Issued: January 18, 2024

File: SC-2023-000508

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ross v. Trask*, 2024 BCCRT 49

BETWEEN:

KATHARINE ROSS

APPLICANT

AND:

RENATE TRASK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Katharine Ross, provided respite care services under a written agreement with the respondent home share provider, Renate Trask.

2. Ms. Ross says on December 30, 2022, Ms. Trask ended the parties' agreement without providing the required 30 days' notice. Ms. Ross claims \$4,200 as the amount she would have earned in those 30 days had she been given notice.
3. Ms. Trask denies ending the contract. She says shifts were available had Ms. Ross produced the documents required to meet her contractual obligations.
4. Each party is 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). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. 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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.
7. 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 court.

ISSUES

8. The issues in this dispute are:
 - a. Did Ms. Trask breach the parties' contract by ending it without giving 30 days' notice?
 - b. If so, what are Ms. Ross's damages?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Ms. Ross must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Ms. Ross does not argue that she was Ms. Trask's employee or claim damages for wrongful dismissal. So, for the purposes of this dispute, I accept that the parties were independent contractors.
11. On September 20, 2022, the parties signed a written agreement. Under that agreement, Ms. Ross was to provide support, care, and supervision of a supported individual in Ms. Trask's home, among other duties, on an as-needed basis. Ms. Ross's shifts began in September 2022.
12. The agreement said shifts were scheduled as follows. Ms. Trask was to send a written request for services, including specific dates and times. Ms. Ross then had 48 hours to accept or decline the request. There was no guarantee of minimum hours, and Ms. Trask was not required to accept any shifts. From context I find that in practice, near the end of each month Ms. Trask gave Ms. Ross a schedule of shifts for the upcoming month. Importantly, the contract said either party could cancel a shift with at least 2 hours' notice.
13. Ms. Ross says in December 2022, Ms. Trask began cancelling shifts more frequently. Ms. Trask does not deny this but says it is the nature of the work. She says she had to cancel shifts for the client's medical reasons, family visits, care agency visits, and

other circumstances outside of her control. She says whenever possible, she offered alternate hours, but she always complied with the contract's 2 hours' notice requirement. Ms. Trask also says Ms. Ross cancelled many shifts, particularly in December 2022.

14. In late December 2022, Ms. Trask gave Ms. Ross a calendar of available shifts for January 2023. On December 30, Ms. Ross texted Ms. Trask. She said if Ms. Trask continued to "pull any more days," which I take to mean cancel shifts, she would have to go back to her old job or find work with another client.
15. Ms. Trask then called Ms. Ross. The parties disagree about what was said. Ms. Ross says Ms. Trask was angry and said if Ms. Ross was going to "be like that," then Ms. Trask no longer needed her services. Ms. Trask says she does not recall telling Ms. Ross that she no longer needed Ms. Ross's services. I prefer Ms. Ross's evidence here because it is more consistent with the surrounding evidence. Specifically, that night Ms. Trask sent Ms. Ross an email stating that she was cancelling respite service for January 2023, without explanation. She also sent a text instructing Ms. Ross to return keys and other items. I do not agree with Ms. Trask that the agreement survived this because there was no guarantee of minimum monthly hours. I find by cancelling January's services and asking Ms. Ross to return the keys without any explanation, Ms. Trask ended the parties' agreement in breach of the 30-days' notice clause.
16. Ms. Trask argues that she was entitled to cancel the January shifts or end the agreement because Ms. Ross was failing to meet her contractual obligations. Specifically, she says Ms. Ross failed to provide proof of WorkSafe coverage, a valid class 4 driver's licence, an ICBC driver's abstract and a criminal record check. I note the agreement did not explicitly require Ms. Ross to have a class 4 driver's licence. As for the rest of the requirements, I find the agreement did not require Ms. Ross to proactively submit proof to Ms. Ross. It was up to Ms. Trask to ask for the information she needed.
17. Ms. Trask says she asked for these things many times and finally told Ms. Ross she had until December 30 to provide them. Ms. Ross denies this. Ms. Ross says she

gave Ms. Trask a copy of her driver's abstract on September 21 during her first orientation shift, and if Ms. Trask needed something more, she should have asked for it. On balance, I find Ms. Trask has not proven that Ms. Ross breached her contractual obligations. Ms. Trask offers no supporting evidence, such as documentation of requests for information. I find it unlikely that Ms. Trask would have asked for these things and failed to document the requests, given the evidence shows the parties texted and emailed each other about other things. I find Ms. Ross did not breach the agreement, and certainly not in a way that would give Ms. Trask the right to terminate the agreement without notice.

18. As noted, the agreement said either party could end it with 30 days' written notice. I find that Ms. Trask breached the agreement on December 30, 2022, by ending it with only a day's notice.
19. So, what are Ms. Ross's damages? Damages for breach of contract are generally meant to put the non-breaching party in the same position as if the contract had been performed (see *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319). If Ms. Trask had given 30 days' notice, Ms. Ross would have worked the month of January. She says she would have earned \$4,200. Ms. Trask does not specifically dispute this, and it is supported by a calendar showing the dates Ms. Ross was originally offered shifts in January. That said, the parties likely would have cancelled some shifts in January like they did in previous months. I find Ms. Ross likely would have earned around \$3,500-\$4,000.
20. Unless the contract says otherwise, the non-breaching party is generally required to mitigate or minimize their losses. In other words, Ms. Ross cannot recover losses she successfully avoided. Ms. Trask raised the issue of mitigation in her Dispute Response filed at the outset of this dispute. She said the applicant likely went back to work for a former employer. Ms. Ross concedes that she returned to work in January for a former employer or contractor but says she earned "far less" than she would have earned working with Ms. Trask. She does not say how much she earned, or provide any accounting of the difference. Ms. Ross is the only party who could

provide this evidence. When a party fails to provide relevant evidence, the CRT may make an adverse inference. An adverse inference is when the CRT assumes that the reason a party did not provide evidence is that the evidence would not help their case. I find that evidence about what Ms. Ross earned in January is clearly relevant, and I find that an adverse inference is appropriate. As “far less” could mean a range of differences in earnings, I will infer that Ms. Ross earned income that made the difference on the smaller end of “far less”. On a judgment basis, I find Ms. Ross’s damages are \$700.

21. The *Court Order Interest Act* applies to the CRT. Ms. Ross is entitled to pre-judgment interest on the \$700 from December 31, 2022, to the date of this decision. This equals \$34.74. Neither party paid any CRT fees and neither claims any dispute-related expenses, so I make no other orders.

ORDER

22. Within 14 days of the date of this order, I order Ms. Trask to pay Ms. Ross a total of \$734.74, broken down as \$700 in damages and \$34.74 in pre-judgment interest under the *Court Order Interest Act*.
23. Ms. Ross is entitled to post-judgment interest, as applicable.
24. 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.

Micah Carmody, Tribunal Member