Civil Resolution Tribunal

Date Issued: June 25, 2024

File: SC-2023-007293

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Young-Macdonald v. Olson*, 2024 BCCRT 598

B E T W E E N :

FIONA MORRIGAN YOUNG-MACDONALD

APPLICANT

A N D :

DESIREE OLSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. The applicant, Fiona Morrigan Young-Macdonald, says the respondent, Desiree Olson, wrongfully kept a deposit after she decided to switch daycares. Ms. Young-Macdonald claims for a refund of $980. She relies on, among other things, the *Business Practices and Consumer Protection Act* (BPCPA).

2. Ms. Olson denies liability. She says Ms. Young-Macdonald forfeited the deposit by switching daycares before service began.

3. The parties are self-represented.

4. For the reasons that follow, I find Ms. Young-Macdonald has proven her claim.

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. In resolving disputes, the CRT must apply principles of law and fairness.

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. 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.

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.

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.

ISSUE

9. The issue in this dispute is whether Ms. Young-Macdonald is entitled to a refund of $980.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. Young-Macdonald as the applicant must prove her claims on a balance of probabilities. 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.

11. Ms. Olson runs a daycare. In June 2023, Ms. Young-Macdonald heard from a friend that Ms. Olson had a spot available. Ms. Young-Macdonald texted Ms. Olson on June 28, 2023. Ms. Olson offered her a spot but said that Ms. Young-Macdonald had to pay a $980 deposit. The parties' financial documents both show that Ms. Young-Macdonald transferred $980 to Ms. Olson that same day. It is undisputed that Ms. Olson did not specify whether the deposit was non-refundable before Ms. Young-Macdonald sent it.

12. Also on June 28, 2023, Ms. Olson emailed Ms. Young-Macdonald written documents including a registration form and parent handbook. I find these documents together were the parties' written contract. The registration form referred to the deposit. It said it was $960 rather than $980. The form says, and the parties agree, that the additional $20 Ms. Olson collected was for emergency supplies and not part of the deposit. I find nothing turns on how much of the money was for the deposit or other uses for reasons discussed below. The form also said that the daycare program would start on July 10, 2023, and that cancelling before then would cause the complete forfeiture of the deposit.

13. It is undisputed that several days later, on July 4, 2023, Ms. Young-Macdonald called Ms. Olson. She said she had decided to go with a different daycare provider. She asked for her deposit back. Ms. Olson refused to refund the entire amount. However, she attempted to electronically return $20 for the emergency supplies and $60 for partial reimbursement. Documents show Ms. Young-Macdonald refused to accept the transfers.

To what extent, if any, is Ms. Young-Macdonald entitled to a refund of $980?

14. The parties disagree on whether the deposit was refundable. So, I will start with the law of deposits. If the contract is silent about the deposit's conditions, it is forfeited if the payer repudiates the contract. This can happen when, for example, a party fails to perform their side of the contract. In such circumstances the non-repudiating party may keep the full amount of the deposit without proof of damages. See, for example, *Tang v. Zhang*, 2013 BCCA 52 and *Argo Ventures Inc. v. Choi*, 2020 BCCA 17 at paragraphs 39 to 41.

15. In the text messages the parties referred to the $980 sum as a deposit. They were silent about whether it was refundable. So, I find these messages show that Ms. Olson was entitled to keep the deposit if Ms. Young-Macdonald repudiated the contract. I find Ms. Young-Macdonald did so on July 4, 2023, when she told Ms. Olson that she would not perform the contract. So, I find Ms. Olson was entitled to keep the deposit unless Ms. Young-Macdonald can show another reason why it should be returned.

16. Ms. Young-Macdonald relies on the BPCPA. She says their contract was a future performance contract that failed the requirements of BPCPA section 19(d). Ms. Olson did not directly address these arguments.

17. BPCPA section 17 defines a future performance contract as a contract between a supplier and consumer for goods or services for which the supply or payment in full is not made at the same time as the contract. Section 17 lists certain exclusions which I find do not apply here. I find that this was a future performance contract since neither the supply of daycare services nor full payment were made at the same time as the contract.

18. BPCPA section 19(d) says that a future performance contract must contain the date on which the contract is entered into. BPCPA section 23(2)(a) says a future performance contract must also contain the supply date, which means the date on

which the goods or service will be supplied to the consumer. I note this for the purpose of showing that the contract date and supply date are not the same things.

19. I have reviewed both the registration form and handbook. The documents do not show the date on which the contract is entered. So, I find Ms. Olson breached BPCPA section 19(d).

20. I considered interpreting the "contract" under BCPCA section 19(d) to include the parties' text messages and emails, which show the date of June 28, 2023. However, I find this would be an overly broad interpretation in favour of the supplier that would run counter to the purpose of the BPCPA. The BPCPA's purpose is consumer protection, and as such "its terms should be interpreted generously in favour of consumers". See *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 at paragraph 37. I find that BPCPA section 19(d) required Ms. Olson to put the contract date in the registration form or handbook. I find it was insufficient for the contract date to be inferred from the dates generated automatically by the emails and text messages.

21. BPCPA Section 23(5) allows a consumer to cancel a future performance contract within 1 year of the date they receive the contract if it does not include the information required in section 19. BPCPA section 54 requires a consumer who wishes to cancel a future performance contract to give notice by any method that creates evidence of their intention to cancel the contract on a specific date.

22. Ms. Young-Macdonald sent the $980 and received contract documents on June 28, 2023. I find that Ms. Young-Macdonald had until June 28, 2024 to cancel the contract under BPCPA sections 23(5) and 54. Previous CRT decisions have held that the Dispute Notice may satisfy this condition. See, for example, *Skyview Services Ltd. v. French*, 2023 BCCRT 23. Although CRT decisions are not binding, I agree with this approach. I find that Ms. Young-Macdonald provided the required notice by serving the Dispute Notice on Ms. Olson by at least August 8, 2023. This is when Ms. Olson filed her Dispute Response.

23. BPCPA section 27 says that if a consumer cancels a contract, the supplier must provide a full refund within 15 days after the cancellation notice was given. Given this, I find that Ms. Olson had to return $980 to Ms. Young-Macdonald by August 23, 2023 at the latest. Nothing turns on how much of this amount was a deposit or for emergency supplies. So, I order Ms. Olson to pay $980 to Ms. Young-Macdonald.

24. The *Court Order Interest Act* applies to the CRT. Ms. Young-Macdonald is entitled to pre-judgment interest on the $980 refund from August 23, 2023, the deadline to return the funds, to the date of this decision. This equals $42.12.

25. 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. I see no reason in this case not to follow that general rule. I find Ms. Young-Macdonald is entitled to reimbursement of $125 in CRT fees. The parties did not claim any specific dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Ms. Olson to pay Ms. Young-Macdonald a total of $1,147.12, broken down as follows:

    a. $980 as a refund,

    b. $42.12 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees.

27. Ms. Young-Macdonald is entitled to post-judgment interest, as applicable.

28. This is a validated decision and order. 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.

David Jiang, Tribunal Member