



Civil Resolution Tribunal

Date of Original Decision: March 21, 2024

Date of Amended Decision: March 27, 2024

File: SC-2023-003303

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *DG v. Northey (dba Learn, Play, Grow Daycare)*, 2024 BCCRT 299

B E T W E E N :

DG and TKCN

APPLICANTS

A N D :

CINDY NORTHEY (Doing Business As LEARN, PLAY, GROW
DAYCARE)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about cancelled daycare services.

2. DG and TKCN registered their daughter, E, in daycare with Cindy Northey, doing business as Learn, Play, Grow Daycare. In February 2023, Mrs. Northey told the applicants that she had the opportunity to take her own children, who attended the daycare, to a party where they would be exposed to chicken pox. After the conversation, the applicants told Mrs. Northey that if she chose to expose her children to chicken pox, they intended to keep E out of daycare for 13 days and asked for a refund for those days. Mrs. Northey responded by terminating the applicants' daycare.
3. The applicants claim \$2,250, including \$1,200 paid as a deposit when they started daycare, and \$1,050 for unused days in February 2023.
4. Mrs. Northey says the daycare contract entitled her to terminate services immediately without providing any refund. She asks me to dismiss the applicants' claim.
5. The applicants are represented by DG. Mrs. Northey is self-represented.
6. As permitted by *Civil Resolution Tribunal Act* section 86, I have taken initiative to anonymize the applicants' names in the public version of this decision to protect the identity of the applicants' minor child.
7. For the reasons that follow, I allow the applicants claim.

JURISDICTION AND PROCEDURE

8. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under CRTA section 118. CRTA section 2 states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
9. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.

10. 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 court.
11. Where permitted by CRTA section 118, 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

12. The issue in this dispute is whether Mrs. Northey breached the parties' contract, and if so, how much she has to pay the applicants.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicants must prove their 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.
14. In May 2022, the applicants registered E in Mrs. Northey's daycare. When they registered E, the applicants signed a contract setting out the parties' respective obligations and rights. The contract specifically incorporates by reference (includes) the daycare's handbook, which sets out termination and cancellation policies.
15. On June 29, the applicants paid Mrs. Northey \$1,200 as a deposit for their last month's daycare fees. As set out in the handbook, this was calculated at \$75 per day for 16 days. E began attendance in July, going each week from Monday to Thursday.
16. The applicants say on January 30, 2023, Mrs. Northey texted them that one of her children was sick. The applicants say they did not send E to daycare, and consistent with the handbook, say Mrs. Northey agreed to 1 day's credit. Mrs. Northey does not

dispute this allegation, so I find the applicants had 1 day of credit to apply for February.

17. On the morning of February 1, 2023, the applicants paid Mrs. Northey \$1,125 for February's daycare fees, and sent E to daycare, as normal. That afternoon, when picking up E, TKCN says Mrs. Northey asked about "chicken pox parties."
18. While the parties disagree on some specific details, Mrs. Northey said she was considering exposing her own children, who attended the daycare, to a child who had chicken pox at a party. Mrs. Northey sent the applicants an email that evening referring to a "chicken pox opportunity" and noting that some parents may choose not to send their children to the daycare over a period of time.
19. On February 2, while E was at daycare, the applicants emailed Mrs. Northey to express their discomfort about the exposure. They asked Mrs. Northey to refund 13 days of daycare if she chose to proceed with exposing her children to chicken pox and said they would resume payment when daycare resumed.
20. As February 3 was a Friday, E did not have daycare. That day, Mrs. Northey responded to the applicants by email. She said she had notified them about a potential exposure to chicken pox her "sons had this past week." She said they were not sick and were not presenting any symptoms of chicken pox.
21. In submissions, Mrs. Northey says her children never attended the event. She argues she always discussed attending the party as a potential event. However, that does not explain why she said her children had been exposed the week prior, or why she felt it necessary to say they were not exhibiting symptoms of chicken pox at the time she sent the February 3 email. She also does not say she did not – or would not – take her children to the event in the February 3 email. She does not address that the applicants only asked for a refund if she chose to proceed with exposing her own children.

22. Mrs. Northey continued in her email to quote the daycare handbook policy on terminating care. It provided that Mrs. Northey could, with written notice, terminate care at any time if it was in “the best interest of the child and the daycare”.
23. Mrs. Northey then quoted the policy about refunds. In short, it only allowed refunds in certain circumstances, none of which apply here, and concluded saying “There are no refunds given for any other reason.”
24. Mrs. Northey concluded by saying she was terminating the childcare contract as the relationship between the parents and the daycare was “not the best fit.” She did not provide any explanation at the time why she believed that to be the case.
25. While Mrs. Northey argued in submissions that her relationship with DG was strained and sent text messages about his behaviour after she cancelled the contract, she provided no evidence that she had clearly communicated concerns about his behaviour at any time prior. The applicants specifically say she did not.

Breach of Contract

26. Mrs. Northey argues she is entitled to stop providing daycare services while not returning the applicants’ deposit and daycare fees. I disagree.
27. As noted above, the contract’s language only allows Mrs. Northey to terminate daycare services when it is in “the best interest of the child and the daycare”. Mrs. Northey said the parent-provider relationship was not the best for the daycare, but provided no explanation as to how terminating services was in E’s best interest.
28. I note the contract uses the word “and,” not “or”. So, I find Mrs. Northey must prove both to be entitled to terminate the contract. Since she did not do so, I find she has breached the parties’ contract by unilaterally terminating E’s care.
29. Further, the contract requires Mrs. Northey to give written notice. While the contract does not establish a specific notice period, I find it must mean more than “immediately.” Without some period of time, the term would have no practical

meaning. Since Mrs. Northey terminated daycare services without any warning, I find she did not give notice and breached the contract.

Damages

30. Given Mrs. Northey's breach, the applicants are entitled to damages. Damages for breach of contract are generally intended to place the innocent party in the position they would have been in had the contract been carried out by both parties. If the contract had been carried out by Mrs. Northey, the applicants would have received care for E for all of February 2023 in exchange for their \$1,125 payment.
31. Despite paying for the whole month, I find the applicants only received care for 2 days, February 1 and 2. Mrs. Northey terminated the contract on February 3. As set out above in calculating the deposit amount, daycare fees are \$75 per day. February's daycare fees of \$1,125 imply the applicants paid for 15 days of daycare. They used 2, so did not receive anything for 13 days' payment. So, including 1 day of credit for January 30, as set out above, I find the applicants are entitled to damages of \$75 per day for 14 days, totaling \$1,050.
32. In addition, since Mrs. Northey breached the parties' contract, I find the applicants are entitled to a return of their \$1,200 deposit for the last months' daycare fees.
33. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on their deposit and daycare fees from February 3, 2023, the date Mrs. Northey cancelled the parties' contract, to the date of this decision. This equals \$122.71.
34. Under CRTA section 49 and the 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 the applicants are entitled to reimbursement of \$125 in CRT fees.

35. I allow the applicants claim for \$15.62 for registered mail to deliver CRT documents. The applicants also claimed \$54.99 for a device license but did not explain what it was or how it pertained to this dispute. I dismiss that portion of their claim.

ORDERS

36. Within 7 days of the date of this order, I order Mrs. Northey to pay the applicants a total of \$2,513.33¹, broken down as follows:

- a. \$2,250 in debt and damages,
- b. \$122.71 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$140.62, for \$125 in CRT fees and \$15.62 for dispute-related expenses.

37. The applicants are entitled to post-judgment interest, as applicable.

38. This is a validated decision and order. Under CRTA section 58.1, 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

¹ Amendment Notes: The total amount of damages in paragraph 36 has been amended to correct an arithmetical error under CRTA section 64(c). The changes are shown as underlined text in this amended decision.