Civil Resolution Tribunal

Date Issued: December 20, 2024

File: SC-2023-007646

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tsoupakis v. Produckidvity Business Services Inc.*, 2024 BCCRT 1299

B E T W E E N :

KATIE TSOUPAKIS and KONSTANTINOS TSOUPAKIS

APPLICANTS

A N D :

PRODUCKIDVITY BUSINESS SERVICES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Mark Henderson

INTRODUCTION

1. This dispute is about a contract for a co-working space and a childcare space.

2. The applicants, Katie Tsoupakis and Konstantinos Tsoupakis, contracted with the respondent, Produckidvity Business Services Inc. for co-working space on the condition that they were also prioritized for a childcare space at the respondent's

daycare. The respondent cancelled the applicants' childcare space because the applicants were no longer using the co-working space. The applicants seek the return of $5,000 paid for the co-working lease.

3. Katie Tsoupakis represents the applicants. An authorized employee represents the respondent.

4. For the reasons below, I dismiss the applicants' 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 *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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. 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. I find that an oral hearing is not necessary.

7. 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.

8. 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.

9. The respondent delayed filing its Dispute Response. The applicants requested a default decision. I find that the respondent did eventually file a Dispute Response. I also find that the interests of justice warrant resolving the dispute on its merits.

10. The applicants say their total loss is $5,040. I find the applicants acknowledged the CRT's small claims jurisdiction of $5,000 and decided to waive the amount of their claim that exceeds the CRT's small claims jurisdiction.

ISSUES

11. The issues in this dispute are:

    a. Did the respondents breach the contract by cancelling the childcare space?

    b. Are the applicants entitled to the return of their fees?

EVIDENCE AND ANALYSIS

12. 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.

13. The respondent did not provide any evidence beyond its submissions, despite having the opportunity to do so.

Background

14. The respondent provides co-working spaces complemented by childcare services.

15. The applicants had difficulty securing a childcare space when their parental leave ended. The applicants said that the respondent advertised priority on their daycare waitlist for people who paid for co-working office space.

16. The applicants agreed to pay for a co-working space for a total of $840 per month starting January 1, 2023. The contract did not provide a specific end date for the agreement.

17. In a July 17, 2023, letter, the respondent told the applicants it was cancelling the applicants' childcare space as of August 31, 2023. The respondent said its business model revolves around offering coworking spaces complemented by childcare services. The respondent said it had a limited number of co-work/childcare packages available. Since the applicants were no longer using the package, the respondent decided to offer the childcare space to a family requiring the childcare space and the co-working space. The letter did not say if the applicants had asked to cancel their co-working space.

18. The letter did not explain how the respondent concluded the applicants were no longer using the co-work/childcare package.

19. The applicants say the respondent did not give them an opportunity to renew the co-working contract. The applicants seek the return of the money they paid for the co-working space.

Did the respondents breach the contract by cancelling the childcare space?

20. Before signing, the applicants reviewed the respondent's contractual terms and noted a clause that said the minimum commitment for the co-working space was six months. The contract also said that if the party received priority daycare access, ending the lease before the minimum six months may result in loss of the childcare space. The agreement did not provide a specific end date. The agreement did not say what other factors may cause a co-working member to lose the childcare space.

21. The applicants contacted the respondent to ask whether ending their co-working lease after 6 months would still result in losing the childcare space. On December 6, 2022, the respondent replied to the applicants, confirming that the clause about losing the childcare space only applied if the applicants ended the tenancy before the 6-month term had completed. Once again, the respondent did not explain what other scenarios might cause a party to lose their childcare space.

22. The respondents rely on the terms of the contract and offered minimal submissions in their response.

23. I find it appropriate to rely on the contractual interpretation principle of *contra proferentem.* This principle means that ambiguity in a contract should be resolved against the person who drafted the contract and relies on it, and in favour of the other party.

24. Here, I find that the respondent drafted the contract and seeks to rely on it. I find that the contract primarily deals with the co-working arrangement and does not explain what factors might cause a party to lose the childcare space. Without more information about the agreement for the childcare space, as opposed to the co-working space, I do find that the contract is ambiguous about reasons for cancelling the childcare space.

25. The applicants say they were promised an indefinite childcare space. I find there is no clause in the contract that guarantees an indefinite childcare space. I also find that the response e-mail of December 6, 2022, does not guarantee an indefinite childcare space. Despite the ambiguity in the contract, I find I am not able to infer that the contract guaranteed an indefinite childcare space.

26. The parties did not provide a separate contract for the daycare services. So, it is unclear if there were additional terms related to the daycare services. Based on the available evidence, the contract did not grant an indefinite childcare space. So, I find that cancelling the childcare space was not a breach of contract.

Are the applicants entitled to the return of their rental fees?

27. The applicants seek the return of their rent for the whole six-month term. The applicants say they agreed to the co-working space on the condition that they would have an indefinite childcare space.

28. First, I find that despite the ambiguity in the contract, the contract does not say the childcare space was indefinite. I find the contract is silent on the factors that might cause the childcare space cancellation.

29. I find the requested relief amounts to a claim for recission of the contract. To claim recission, the applicants must prove a fundamental breach of the contract.

30. Not every breach of contract is a fundamental breach. Where a party fails to fulfill a primary contractual obligation in a way that deprives the other party of substantially the whole benefit of the contract, it is a fundamental breach (*Hunter Engineering Co. v. Syncrude* Canada *Ltd.*, [1989] 1 SCR 426). In other words, a fundamental breach destroys the contract's entire purpose, and makes further performance impossible (*Bhullar v. Dhanani*, 2008 BCSC 1202).

31. Here, I find the applicants have not proved a fundamental breach of contract. It is not clear if the applicants used the co-working space or only rented it to hold the daycare spot. In either event, I find that the applicants had the benefit of the co-working space and the childcare space for six months. There is no basis to award the applicants their fees for the six months that they had the benefit of the co-working space and the childcare space.

32. So, I find the applicants are not entitled to the return of their rental fees.

33. 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. Since the applicants were unsuccessful, I dismiss their claim for CRT fees. Neither party claimed dispute-related expenses.

ORDER

34. I dismiss the applicants' claim and this dispute.

Mark Henderson, Tribunal Member