



# Civil Resolution Tribunal

Date Issued: December 23, 2024

File: SC-2023-007831

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gao v. Kenny Wong (dba The Peak Tutoring Centre)*, 2024 BCCRT 1305

B E T W E E N :

WEI GAO

**APPLICANT**

A N D :

Kenny Wong (Doing Business As THE PEAK TUTORING CENTRE)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This dispute is about a refund for tutoring sessions.
2. The applicant, Wei Gao, enrolled her child in a series of 8 group tutoring sessions with the respondent, Kenny Wong (Doing Business as The Peak Tutoring Centre). Mrs. Gao says she tried to cancel the first session, but Ms. Wong said that group tutoring sessions could not be rescheduled or refunded. Mrs. Gao says she signed

no agreement with Ms. Wong, and if she had known about the cancellation rules, she might not have hired Ms. Wong. Mrs. Gao seeks a refund of the full \$360 she paid Ms. Wong for the tutoring sessions.

3. Ms. Wong agrees there was no written contract, but says she told Mrs. Gao over the phone that she was enrolling her child in group lessons that could not be rescheduled or refunded. Ms. Wong says Mrs. Gao is not entitled to any refund.
4. Mrs. Gao is represented in this dispute by a family member. Ms. Wong is self-represented.
5. For the reasons set out below, I dismiss Mrs. Gao's claim.

## **JURISDICTION AND PROCEDURE**

6. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
7. 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. 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.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
9. Both parties provided English translations of a series of text messages written partially in another language. These translations essentially match, and neither

party disputed the accuracy of the other's translations. So, I accept the translations as accurate.

## **ISSUES**

10. Is Mrs. Gao entitled to a refund for tutoring sessions?

## **EVIDENCE AND ANALYSIS**

11. As applicant in this civil dispute, Mrs. Gao must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' evidence and submissions, but refer only to what is necessary to explain my decision.

12. The parties agree to the following facts:

- Mrs. Gao's child attended a series of 8 group tutoring sessions from May 13 to June 24, 2023.
- Mrs. Gao then enrolled her child in a second series of group tutoring sessions, scheduled for every Saturday from July 8 to August 26, 2023. She paid Ms. Wong \$360 for that series of sessions.
- On July 7, 2023, the day before the first class in the second series, Mrs. Gao texted Ms. Wong to say her child would not attend class on July 8.
- The parties then disagreed about rescheduling and a refund for the July 8 session. Mrs. Gao's child did not attend any sessions in the second series.

13. Mrs. Gao says there were supposed to be 10 tutoring sessions in the second series, and Ms. Wong says there were supposed to be 8. The text messages in evidence shows that the parties agreed to 8 scheduled sessions. However, for the reasons set out below, I find nothing turns on this.

14. The parties agree there was no written contract. Verbal contracts are enforceable, although their terms may be harder to prove.

15. As noted above, Ms. Wong says that before Mrs. Gao paid for the first tutoring series, she told Mrs. Gao over the phone that group lessons could not be rescheduled or refunded. Mrs. Gao says she was never told this, and not informed of any rescheduling or refund policies. She says that in the absence of an agreed-upon policy, a business must give a customer a refund upon request
16. There is no record of the alleged phone conversation about rescheduling and refunds, So, I accept that Ms. Wong did not inform Mrs. Gao about any rescheduling, cancellation, or refund policies.
17. However, I agree with Ms. Wong that it is unreasonable to expect a refund for a group class if a student misses a session, since the space is already reserved for the student, and the teacher must be paid for teaching the group class even if one student does not attend.
18. More importantly, the text messages show that after the parties initially disagreed about the refund for the July 8 class, Ms. Wong texted Mrs. Gao and said someone was going to be absent from the Wednesday July 12 class. Ms. Wong offered to let Mrs. Gao's child attend the July 12 class for free, as a substitute for the missed July 8 class. Mrs. Gao did not reply to this message, and her child did not attend the July 12 class.
19. Based on this text message offering a substitute class, I find Mrs. Gao is not entitled to any refund. She has not explained why her child could not attend the July 12 class, which would have made up for the missed July 8 class. Also, Mrs. Gao has not explained why her child could not attend any of the 7 other classes in the series. Because Mrs. Gao refused to send her child to the July 12 class, or any of the remaining classes, I find Ms. Wong is not responsible for any loss.
20. Also, on July 19, Ms. Wong texted Mrs. Gao to offer her a partial refund if she gave up her child's spot in the remaining classes and permitted another student to use it. Again, Mrs. Gao did not respond. So, even if I found Mrs. Gao was entitled to a refund, I would not order Ms. Wong to refund the entire \$360.

21. In making these findings, I note that Mrs. Gao does not dispute that she received these text messages offering a substitute class and a partial refund.
22. Finally, Mrs. Gao says she is entitled to a refund because Ms. Wong did not give her a receipt. Ms. Wong admits this, and says it was because Mrs. Gao registered over the phone rather than in person. I find the lack of receipt does not entitle Mrs. Gao to a refund.
23. I have also considered whether Mrs. Gao is entitled to a refund under the BC Business *Practices and Consumer Protection Act* (BPCPA). However, I find the BPCPA does not apply. The BPCPA contains terms about cancelling “future performance contracts.” Section 17 of the BPCPA defines a future performance contract as an agreement for services where the full amount is not paid, or where services are not supplied in full, at the time of the parties’ agreement. Since Mrs. Gao paid in full when she booked the 8 tutoring sessions, I find the parties did not have a future performance contract.
24. The BPCPA also applies to “direct sales contracts”. It defines direct sales contracts as contracts entered into in person at a place other than the supplier's permanent place of business. In this case, the parties agreed to the contract over the phone, which is not in person, so I find it was not a direct sales contract, and the BPCPA’s cancellation provisions do not apply.
25. For all the reasons set out above, I find Mrs. Gao is not entitled to a refund.
26. Neither party paid CRT fees or claimed dispute-related expenses, so I order no reimbursement.

## **ORDER**

27. I dismiss Mrs. Gao's claim.

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Kate Campbell, Vice Chair