



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Mark German v. Laura Jamieson Housing Co-operative*, 2020 BCCRT 983

B E T W E E N :

MARK GERMAN

APPLICANT

A N D :

LAURA JAMIESON HOUSING CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Herb Morton

INTRODUCTION

1. The applicant, Mark German, is a member of the respondent Laura Jamieson Housing Co-operative (the Co-op).
2. On November 8, 2018, Mr. German moved from unit #309 to another unit in the Co-op. Following his move, the Co-op required him to pay for pet damage to a bedroom carpet in his former unit. Mr. German says he is not liable for this cost, as the damage was not identified by the time of a move out inspection. Alternatively, he says his liability should be limited to the depreciated cost rather than the replacement cost for a new carpet.
3. Mr. German also says that he applied to the Co-op for a grant for his daughter to attend a summer camp. He says the Co-op's Board of Directors (directors) declined to consider his request as he had not paid for the damaged carpet. He requests that the directors be ordered to give his grant application due consideration.
4. Mr. German is self-represented. The society is represented by a director.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over certain cooperative association claims under section 125 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 125(1)(c) says that the CRT has jurisdiction over a claim concerning a decision of the Co-op or its directors in relation to a member.
6. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
7. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email or a combination of these. I am satisfied an

oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

8. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 127 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

10. The issues in this dispute are:

- a. Is Mr. German liable for the cost of replacing the carpet?
- b. If so, is he liable for the amount of \$420 as determined by the directors?
- c. Should the directors be ordered to give due consideration to Mr. German's request for reimbursement for his daughter's 2019 summer camp attendance fees?

Carpet Damage

Evidence

11. I have considered all of the evidence provided by the parties, but will only refer to the information which is necessary to my decision. In these reasons, I will refer to the actions taken by Mr. German and his partner as being his actions.
12. A first inspection report was completed on September 9, 2018 for unit #309, in relation to Mr. German's planned move to another unit in the Co-op. Mr. German steamed the carpet and then used "Rug Doctor", the night before his move out. A

final inspection was completed on November 11, 2018, with the final inspection report being signed by Mr. German and 2 inspectors.

13. The inspection report used various codes, such as RC for Co-op responsibility, ROM for old member responsibility, and RNM for new member responsibility. The first inspection noted a stained carpet. Under the heading “Responsible for Correcting”, the report noted “RC – not needed yet.” This item was initialed as approved at the time of the final inspection.
14. The new occupant moved into unit #309 on November 12, 2018. On November 15, 2018, she raised a concern about the condition of the carpet.
15. On December 1, 2018, the new occupant of unit #309 emailed the directors saying that the carpet in one of the small bedrooms was in an unacceptable condition due to being soiled by a pet. She noted that an attempt was made to clean it by the last occupants but the strong odour of perfumed chemicals and urine had persisted.
16. The new occupant invited the directors to look at the carpet in question. In an email dated December 4, 2018, the new occupant objected to Mr. German being invited as she did not wish to be involved in a discussion with the previous occupant.
17. On December 11, 2018, the directors sent Mr. German a letter saying that the carpet in bedroom #3 of unit #309 was stained in several places and smelled of animal urine. The letter attached photos taken in early December 2018. The directors said that although the carpet was not due for replacement until at least 2022, they had agreed to have it replaced in the next few weeks. The directors concluded that the cost for the carpet replacement was Mr. German’s responsibility. Although laminate flooring would be installed, he would be charged with the lesser cost of replacing the carpet.
18. By email of December 11, 2018, Mr. German said he would not pay the full cost for replacing the carpet as it had depreciated in value.
19. By letter of January 8, 2019, the directors acknowledged that the carpet had been installed in 2010. However, it was not due for replacement until around 2023. The

directors cited section 10 of the Occupancy Agreement, as well as the Co-op's Maintenance and Flooring policies. They advised that paragraphs 10.01 to 10.04 of the Occupancy Agreement required members to replace items damaged in the suite, with no mention of depreciation of value or other cost considerations.

20. By letter of May 9, 2019, the directors advised Mr. German that he was being charged \$595.00 for the carpet replacement. The directors explained that while they appreciated Mr. German's concern about depreciation, this was currently not part of the Co-op's rules or policies. Past practice had been that members paid replacement costs for anything damaged by their pets.
21. On September 4, 2019, the directors advised Mr. German that they understood his general concerns around depreciation and were looking to address this issue with the membership before the end of the Operating Agreement in 2022. In the meantime, the directors were required to follow the policies and rules as written. The directors agreed to waive the installation cost of \$175, reducing the amount owed by Mr. German to \$420. This amount was due by September 25, 2019.
22. On September 26, 2019, the directors noted that Mr. German had failed to pay the \$420. They advised that he was required to pay this amount by October 7, 2019. The directors told Mr. German that if he failed to do so, they intended to take whatever other action it deemed necessary up to and including the termination of his membership in the Co-op.
23. On October 7, 2019, Mr. German provided a cheque to the Co-op for \$420 dated September 26, 2019. In the memo section on the cheque, he wrote that the payment was to remove arrears, but he was still disputing the carpet replacement cost.

Analysis

24. In a civil proceeding like this one, the applicant must prove his or her claims on a balance of probabilities.

25. I find that the dispute about the carpet replacement cost must be addressed based on the Co-op's Rules, Occupancy Agreement (Schedule A to the Rules), and policies. These are all binding, as explained below.
26. Section 18 of the CAA says that the Co-op's Rules are binding on the Co-op and its members. Rule 1.4 says that the terms and conditions of the Occupancy Agreement are binding on each member and the Co-op.
27. Rule 17.2 says that the directors may propose policies. The policies take effect if they are approved by an ordinary resolution (defined as a simple majority) at a general meeting.
28. Paragraph 6.01 of the Occupancy Agreement requires members to follow the Co-op's policies as though they were contained in the Rules. Paragraph 6.01 of the Occupancy Agreement says that if there is a conflict or inconsistency between the Rules, the Occupancy Agreement and the policies, the Rules and Occupancy Agreement govern. So, the policies are also binding, unless they are in conflict with the Rules or Occupancy Agreement.
29. The Co-Op's policies are set out in a *Member Policy Manual* (Manual) which has seven sections. In section 1, policy S1-1.1.4 says that the members approve policies and must follow them, and the directors enforce policies.
30. Policy S1-2.3 says that effective policies make the Co-op run well. They strike the right balance between the needs of members and the needs of the Co-op.
31. Mr. German says the requirement that he pay for the damaged carpet is in breach of the Co-op's policy about move out inspections. Further, the requirement that he pay for more than the depreciated value of the carpet results in unjust enrichment for the Co-op. He states that he entered an "unconscionable bargain" when he paid the \$420 because his membership in the Co-op was threatened.
32. The directors say they have a responsibility for recouping replacement costs for property damaged by members. The suite inspections are simple and volunteer-run by the maintenance and membership committees. It was only after Mr. German

moved out that the directors were alerted to the carpet damage and the need to follow-up.

33. The directors say that damage caused by pets is a member responsibility. Paragraph 10.03 of the Occupancy Agreement says that the member is liable for any damage caused by a pet of the member. Policy S18-18.13 provides that members are responsible for any damage caused by their pet. The directors advise that there is no historical precedent at the Co-op for reducing replacement costs based on depreciated value.
34. I do not consider it unfair or oppressive for the Co-op to have told Mr. German of the steps it might take to enforce payment of the arrears assessed for the carpet damage. Such action was consistent with the Arrears Policy set out in Section 5, item 5, of the Manual.
35. Mr. German acted responsibly in paying the arrears as claimed by the Co-op, while disputing this liability. The fact Mr. German paid the \$420 for the carpet replacement does not affect his right to have this dispute determined by the CRT.
36. Mr. German relies on the policy in the Manual about the determination of a member's responsibility for repairs or replacements based on move out and move in inspections. The policy at section 4, at item 7.4 (S4-7.4.1) says that at the time of the initial pre-move out inspection, and at the time of the final inspection on move out day, the Co-op will determine whether the repairs or replacements will be a Co-op or member responsibility. Where an item is the member's responsibility and it is necessary for the Co-op to complete the work, the Co-op will charge the expense back to the member.
37. This policy is reinforced by the procedures in the Manual at S7-2 (*Move In & Move Out Inspections Procedure*). These provide for a pre-move out inspection by the Building Maintenance Committee to identify any necessary repairs or replacements as a member or Co-op responsibility. The member will complete the repairs that are their responsibility within 7 days of the inspection. The Co-op will complete the repairs which are its responsibility 15 days before the move out date. The Co-op will

inspect the unit 10 days before the move out and will complete all remaining repairs. Those that are the member's responsibility will be charged back to the outgoing member. A detailed summary of any requested charge back items for the member will be provided to the management service provider within 15 days after move out (S7-2.10).

38. If any additional repairs are found to be necessary at the time of the move in inspection with the new occupant, policy S4-7.4.4 provides that the matter will be fixed promptly by the Co-op. I find it significant that this policy makes no provision for such an expense to be charged back to the member.
39. In this case, the damage to the carpet was not identified until a few days after the move in inspection. I find that the logic of the policy is clear. The member is only responsible for damage found by the time of the move out inspection. The Co-op is responsible for damage which was not identified until the time of a subsequent move in inspection. It would be clearly inconsistent with this policy to hold the former occupant liable for damage found at the time of the move in inspection, or at a later date.
40. For reasons set out below, I find that this specific policy is not inconsistent with any Rule or other provision in the Occupancy Agreement and must be followed.
41. Paragraph 10.01 of the Occupancy Agreement says that a member must keep the interior of the unit in good condition and repair. Paragraph 10.03 of the Occupancy Agreement says that the member is liable for any damage caused by the member's pet. Similarly, policy S18-18.13 provides that members are responsible for any damage caused by their pet. Paragraph 10.04 of the Occupancy Agreement provides that a member must make all repairs as required by the Occupancy Agreement in a manner acceptable to the directors. I consider that these provisions concern a situation where the member remains in possession of the unit. So, they do not apply in this case.

42. Paragraphs 10.06 and following of the Occupancy Agreement concern withdrawal from or termination of membership in the Co-op. In this case, Mr. German was making a move from one unit to another, so those provisions do not apply.
43. I do not consider that the Occupancy Agreement provides specific direction which applies to the issue in this case.
44. I find that the other provisions in the Occupancy Agreement and Manual concerning a member's responsibility for damage caused by their pet are general in nature. They apply to the determination of a member's responsibility to repair or replace damaged items, as identified in the initial pre-move out inspection and at the time of the final inspection on move out day, or at other times while the member occupies the unit.
45. I find that the specific policy concerning move out inspections applies to determining the extent of a member's responsibility for damage to a unit, when the member is moving out of the unit.
46. This policy is not inconsistent with the Co-op's Rules or Occupancy Agreement. So, the policy must be followed. I find that Mr. German is not responsible for the expense relating to the carpet damage in unit #309, as this damage was not identified by the time of the final move out inspection.
47. I find that Mr. German is not liable for any cost of replacing the carpet in unit #309. I order that the Co-op return the amount of \$420 to Mr. German, with interest.
48. In view of my conclusion on this basis, I need not address whether a member's responsibility for replacing a damaged item should be based on the cost for a new item or on some formula for determining its depreciated value in relation to the age of the item and its expected lifetime.
49. In their January 9, 2019 letter, the directors cited paragraphs 10.01 to 10.04 of the Occupancy agreement as requiring members to replace items damaged in a unit, with no mention of depreciation of value or other cost considerations. However, the word "replace" does not appear in paragraph 10 of the Occupancy Agreement. The

fact that a member is liable for damage caused by the member's pet does not address how the member's liability for such damage should be assessed. While I make no finding on this question, the directors may wish to consider developing policy on this issue.

Summer Camp Funding

Background and Evidence

50. On July 9, 2019, Mr. German advised that his daughter was going to karate camp (Vancouver Seiyu Karate) that summer. He requested that his daughter be considered for the Co-op's Kids Camp Program. He enclosed a summer camp receipt for \$230.
51. A copy has been provided of a Youth Excellence Society (YES) Summer Camp flyer. This states that the Society is a charitable, non-profit organization that provides leadership training to youth through the support of the province's co-operative and credit union movement.
52. The Co-op's budget report for the period October 1, 2018 to September 30, 2019 shows the amount of \$2,500 as an allowance for YES camp and other Co-op sanctioned community donations.
53. The minutes for the directors' meeting on July 24, 2019 refer, as item 5(a), to a request for funds for a resident child's camp. Under the heading "Discussion", it was noted that the unit was already in arrears and this issue should first be settled.

Positions of the Parties

54. Mr. German says he did not receive any response to his July 9, 2019 request. The directors' meeting minutes dated July 24th, 2019 revealed that his application was not considered by the directors because his unit was in arrears. He submits his daughter should not have been ineligible to apply for the 2019 summer camp program because his household was in arrears. He says the consideration of his application was unfairly prejudiced. His account was in arrears because he was

disputing the validity of the flooring replacement costs, and not because he failed to pay his housing charges.

55. Mr. German cites the policy at S2-2.1 concerning the responsibilities of the Co-op's president and vice-president for education. These responsibilities include explaining the Rules, policies and directors' decisions to members in terms that everyone can understand. Mr. German requests an order for the directors to perform due consideration of his daughter's application for the summer camp program.
56. The Co-op says it does not have a Kids Camp Program. It has donation funding that is used for the YES camp and other co-op sanctioned community donations. The YES summer camp is designed to promote leadership training and is funded by BC's co-operative movement. In terms of community donations, this budget amount has been used to fund Christmas hampers, event supplies, and Co-Operative Housing Federation expenses over the last few years. This amount has not been used to fund other summer camps.
57. The Co-op says that when Mr. German was a director prior to the dispute, he was privy to a discussion of expanding this donation funding to include other types of summer camps. However, there was a recognition by the directors that a policy, procedure, and application for fairly allocating camp subsidy would first need to be developed as there are many young people in the Co-op. The Co-op says Mr. German was aware of this past discussion and made a request before the policy, procedure, and application framework had been established. The directors felt that the dispute about the damaged carpet should be resolved before moving forward with Mr. German to establish the framework needed for this type of funding to be allocated at the Co-op.

Analysis

58. I accept the Co-op's evidence about the absence of an existing policy framework in 2019 for considering applications for funding for summer camp programs other than the YES camp.

59. Mr. German paid the \$420 in arrears to the Co-op on October 7, 2019. It is not evident whether the Co-op proceeded with establishing a policy, procedure, and application framework for considering other types of summer camps.
60. I find that Mr. German was not denied consideration under an existing policy or program for summer camp funding. I consider that the question as to whether the Co-op should provide funding on a broader basis for summer camp programs for the children of its members is a matter to be determined by the Co-op.
61. In the absence of a policy, procedure, or application framework in the summer of 2019 for considering other types of summer camps, I do not find it appropriate to order the Co-op to consider Mr. German's application for reimbursement of the fees for his daughter's attendance at a karate camp program in the summer of 2019.
62. I dismiss Mr. German's request for an order for the directors to perform due consideration of his daughter's application for the 2019 karate summer camp program.

CRT FEES, EXPENSES AND INTEREST

63. No expenses are claimed apart from CRT fees.
64. Under section 49 of the CRTA 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.
65. Since Mr. German was partially successful, I order a partial reimbursement of \$100 for CRT fees. I do not order any reimbursement to the Co-op.
66. The *Court Order Interest Act* applies to the CRT. Mr. German is entitled to pre-judgment interest on the \$420 from October 7, 2019 to the date of this decision. This equals \$6.35.

ORDER

67. I order that within 14 days of this decision, the Co-op pay Mr. German a total of \$526.35, broken down as follows:

- a. \$420 as reimbursement of carpet replacement costs;
- b. \$6.35 for pre-judgment interest; and,
- c. \$100 for CRT fees.

68. Mr. German is also entitled to post-judgment interest under the *Court Order Interest Act* from the date of this order.

69. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Herb Morton, Tribunal Member