



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Shehnaz Motani v. Granville Gardens Housing Co-operative*, 2020 BCCRT
1045

B E T W E E N :

SHEHNAZ MOTANI

APPLICANT

A N D :

GRANVILLE GARDENS HOUSING CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Luningning Alcuitas-Imperial

INTRODUCTION

1. Ms. Motani is a member of Granville Gardens Housing Co-operative (the cooperative). She occupies a unit in the cooperative. This dispute is about the backyard and side fencing around Ms. Motani's unit.

2. Ms. Motani says that the fencing is incorrectly placed around her unit. The fencing is not placed in a straight line. The fencing blocks her access to the backyard and to the side of her unit. She says that the cooperative discriminated against her when applying its 1996 fencing policy.
3. The cooperative says that the fence was installed properly. In particular, the fencing is not straight as it was built around an adjacent garden bed. The cooperative denies discriminating against Ms. Motani.
4. Ms. Motani is self-represented. The cooperative is represented by a member of the its board.
5. For the reasons set out below, I find partially in favour of Ms. Motani in this dispute. I order the cooperative to move the backyard fencing and the adjacent garden bed.

JURISDICTION AND PROCEDURE

6. 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). 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. Should the cooperative move the backyard fencing and the adjacent garden bed around Ms. Motani's unit?
 - b. Should the cooperative move the side yard fencing around Ms. Motani's unit?
 - c. Is the cooperative responsible for repairing any damage and restoring landscaping in the yard of the unit?
11. In August 2020, Ms. Motani contacted the tribunal. She asked that I order the cooperative to halt work being done at that time on the repair and staining of the fencing because this dispute was pending. In a September 2020 preliminary decision, I determined that the issue of any repair and staining work on fencing around Ms. Motani's unit was beyond the scope of this dispute. I limit my decision to the three issues above.

BACKGROUND, EVIDENCE AND ANALYSIS

12. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision.
13. In a civil proceeding like this one, Ms. Motani must prove her claims on a balance of probabilities.
14. The cooperative is a housing complex with multiple buildings. Each unit has a cement pad in the backyard.

15. Ms. Motani lives in a townhouse unit #72 at the end of one of the buildings. There is an area of common property beside her unit. Unit #74 is across from Ms. Motani's unit. Unit #70 is adjacent to her unit.
16. The cooperative has a set of rules from 2002. An occupancy agreement is schedule A to those rules. The directors of the cooperative formulated a fencing policy in 1996, which was adopted at a general meeting of the members.
17. I discuss the rules and policy relevant to this dispute below as necessary.
18. Originally, the cooperative placed privacy panels in between the units. Members were allowed to install their own backyard fencing under the fencing policy. Ms. Motani chose not to install any fencing around her unit.
19. In 2014, an engineering and consulting group recommended that the cooperative implement a policy to prevent the members from installing their own fencing. If additional fencing was required, the member should use a standard contractor appointed by the cooperative. The group also recommended the cooperative consider removing all poorly installed fencing for marketability reasons.
20. In 2019, the cooperative's maintenance committee recommended that the cooperative replace backyard fences installed by the members. The committee also recommended that the cooperative install new backyard fences for units where the members had chosen not to previously install a fence.
21. The cooperative's directors accepted these recommendations in July 2019. Work on the fences started in September 2019. The work around Ms. Motani's unit was completed in October 2019.
22. Ms. Motani later spoke to the cooperative about her concerns with the fencing. The cooperative agreed to make changes to the fencing around her unit to allow more access to the side windows of her unit and to place the fencing in a straight line. The changes were completed in December 2019.

23. Ms. Motani continued to speak to the cooperative about her concerns with the fencing. The cooperative said that the backyard fence around her unit had to accommodate the adjacent garden bed. The cooperative's landscape committee needed space to work on and maintain the garden bed. The cooperative also said that backyard is common property. The backyard was not part of the unit assigned to Ms. Motani and was not for her exclusive use.

Backyard fencing

24. For the following reasons, I find that the fencing policy requires the cooperative to move the backyard fence and garden bed. The policy requires backyard fencing that is the width of Ms. Motani's unit and a length of 17 feet measured from the back wall of her unit. The current fencing does not conform to this requirement. I find that no exception can be made for accommodation of the garden bed.
25. The fencing policy is quite brief. The policy requires certain types of material, dimensions, and other matters. As well, the policy outlines a process for members to have new fencing approved by the cooperative.
26. I find that the 1996 fencing policy is binding on the cooperative and Ms. Motani. It is in effect. There is no mention in the CAA, the rules, or the occupancy agreement about fences. I find that the policy is not inconsistent with the CAA, the rules, or the occupancy agreement.
27. I first considered the question of whether the cooperative had authority to install the fences. The policy is silent on this point. However, the directors are responsible under section 76(1) of the CAA to manage and supervise the business of the cooperative. This broad responsibility is also explained in the cooperative's rule 17.1. I therefore conclude that the directors had the authority to install the fences. I find that it would be inconsistent with the CAA and the rules to conclude otherwise.
28. Turning to the placement of the backyard fencing, the key portion of the policy requires the fences to be 4 feet high and 17 feet in length (or the length of two 8 feet panels plus posts) measured from the back wall of the member's unit. No

exceptions to this are contemplated unless the contours of the ground warrant it. Backyard fences should conform to the contours of the ground.

29. I interpret the policy as contemplating a backyard of a rectangular shape that is the width of the particular unit and with a length of 17 feet unless the contours of the ground warrant an exception.
30. Having examined the photographic evidence, I find that the backyard fencing around Ms. Motani's unit does not conform to the fencing policy. One side of the fence is not aligned with the width of the unit's back wall. Rather, it was built to accommodate the garden bed. The backyard shape is thus not rectangular with the dimensions required by the policy.
31. I find that the policy does not allow an exception for the garden bed.
32. I consider the garden bed is an addition or enhancement to the common property of the cooperative. It is not part of the natural "contours of the ground" that is a basis for an exception from the fencing policy. In reaching this conclusion, I accept the evidence of Ms. Motani that the garden bed was built within the last year or so.
33. The cooperative did not address the specific wording of the policy about the dimensions or about when an exception is warranted.
34. I acknowledge the cooperative's authority over common property. It is reasonable for the cooperative to seek to preserve the enjoyment that comes from gardens in that common property. However, the cooperative formulated a binding fencing policy before the installation of the garden bed.
35. Given the discussion by Ms. Motani and the cooperative about the "size" of a backyard, I also considered Ms. Motani's argument that the cooperative discriminated against her when applying the fencing policy. In support of her argument, Ms. Motani cited item 17.03 of the occupancy agreement. Item 17.03 states that all rules and policies apply to all members uniformly. Ms. Motani says that backyards must therefore be of equal size.

36. I disagree with Ms. Motani's argument. The size of a fenced backyard will be dictated by the width of each unit. The widths of the units may differ throughout the complex.

Side fencing

37. For the following reasons, I find that Ms. Motani is not entitled to side fencing that is placed at a distance that is equal to the space created by the fencing around unit #74. In particular, I find that the cooperative's fencing policy does not address fencing at the side of end units.

38. While the fencing policy specifically addresses backyard fences and the dimensions required, the cooperative's policy and rules are silent about placement of fences on the side of end units. There is no specific direction applying to Ms. Motani's claim. In the absence of such direction, I find it is not appropriate to order the cooperative to modify the fencing along the side of Ms. Motani's unit.

39. I acknowledge that the cooperative heard Ms. Motani's concerns and made reasonable changes in December 2015 that widened the space at the side of her unit. While the cooperative ensured that Ms. Motani had access to her side windows to clean them, the policy does not require set dimensions for the side yard. It is open to the cooperative to formulate additions or revisions to its fencing policy to address this question.

40. As well, I cannot examine whether a policy regarding the placement of fences on the sides of end units was applied to Ms. Motani without preference. As I have already stated above, no such policy exists.

Repairs of damage and restoration of landscaping

41. Ms. Motani claims damage to the yard and landscaping from the incorrect application of the cooperative's fencing policy. This included bush stumps impeding access and posing a risk to injury.

42. Having considered the evidence, I find there is not enough evidence of damage to the yard and landscaping. Ms. Motani did not provide specific details or photos about the damage despite submitting many general photos of the yard. She also provided no information about costs incurred to repair damage or mitigate risks. She also provided no evidence showing how the alleged damage was related to the 2019 fencing work. For example, I do not understand how the tree stumps relate to the fencing. I decline to order the cooperative to make any repairs to the yard or landscaping in the unit occupied by Ms. Motani.

CRT FEES, EXPENSES AND INTEREST

43. Ms. Motani asks that the cooperative pay her dispute-related fees and expenses.

44. 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.

45. I see no reason in this case not to follow that general rule. Ms. Motani was partially successful in this dispute, having been successful on one of the three issues noted above. I therefore order the cooperative to reimburse Ms. Motani for one-third of her CRT fees for a total of \$75.00.

46. Neither party claimed any other dispute-related expenses.

ORDERS

47. I order that:

- a. The cooperative move the fencing and garden bed so that the backyard fence is the width of Ms. Motani's unit with a length of 17 feet measured from the back wall of her unit. The cooperative must begin this work within one month of this decision with work to be completed within a reasonable time period after that.

- b. The cooperative pay Ms. Motani \$75 within 14 days, in reimbursement of one-third of her CRT fees.

48. I dismiss Ms. Motani's remaining claims.

49. Ms. Motani is also entitled to post-judgment interest under the *Court Order Interest Act*.

50. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court 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.

Luningning Alcuitas-Imperial,
Tribunal Member