



# Civil Resolution Tribunal

Date Issued: March 15, 2021

File: CS-2020-005893

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Gunn v. Lakewood Terrace Housing Co-operative*, 2021 BCCRT 285

**B E T W E E N :**

JANIS GUNN and RODGER LEVESQUE

**APPLICANTS**

**A N D :**

LAKWOOD TERRACE HOUSING CO-OPERATIVE

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kristin Gardner

## **INTRODUCTION**

1. This dispute is about a request for an internal move within a housing co-operative.
2. The applicant, Janis Gunn, is a member of the respondent housing co-operative, Lakewood Terrace Housing Co-operative (co-op). The other applicant, Rodger Levesque, was an associate member of the co-op living with Ms. Gunn as an

occupant of the co-op. The applicants say the co-op's board of directors (directors) unreasonably and without sufficient explanation denied Mr. Levesque's application for an internal move into an available 2-bedroom unit. The applicants request an order granting Mr. Levesque's application for an internal move. In the alternative, the applicants request disclosure of the directors' reasons for denying Mr. Levesque's application.

3. The co-op says that Mr. Levesque's move application was properly considered, and it did not have to provide reasons for denying the application. The co-op says Mr. Levesque was provided the opportunity to appeal the directors' decision, and the appeal was properly denied because Mr. Levesque did not meet the criteria for a principal membership. The co-op also says that this Civil Resolution Tribunal (CRT) dispute is moot because Mr. Levesque no longer lives in the co-op.
4. Ms. Gunn represents herself and Mr. Levesque. The co-op is represented by a director.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT's formal written reasons. 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.
6. 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.
7. 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.

8. 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.
9. As noted, the co-op says the requested remedy to grant Mr. Levesque's internal move application is moot because Mr. Levesque no longer lives at the co-op. The applicants do not dispute that Mr. Levesque signed a one-year tenancy agreement at another residence, as of July 15, 2020. The co-op says this breaches its Occupancy Agreement, which is grounds for termination of Mr. Levesque's membership. It argues that it is inappropriate for Mr. Levesque to remain as an associate member and says he should withdraw his membership.
10. Both section 159.5(3) of the *Cooperative Associations Act* (CAA) and section 126(2) of the CRTA say the CRT does not have jurisdiction to decide any claim about termination of membership in a cooperative association. This includes any matter under section 171 of the CAA, which deals with a terminated member's right to possession being terminated. Based on this legislation, I have not considered whether Mr. Levesque's move out of the co-op is grounds for his membership termination. In any event, given that Mr. Levesque remains an associate member of the co-op, I find this dispute is not moot.

## **ISSUES**

11. The issues in this dispute are:
  - a. Whether Mr. Levesque's application for an internal move should be granted, and
  - b. If not, whether the co-op must disclose its reasons for denying Mr. Levesque's application for an internal move and principal membership.

## **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 of the parties' evidence and submissions but refer only to what is necessary to provide context for my decision.

### ***Background***

13. The background facts are undisputed. Mr. Levesque lived in the co-op for about 9 years as an associate member. He initially lived with another co-op principal member, who is not a party to this dispute. In September 2016, Mr. Levesque moved in with Ms. Gunn on what was intended to be a temporary basis.

14. Ms. Gunn is a principal member of the co-op and occupies a 2-bedroom townhouse. Mr. Levesque also has 3 children, so the applicants say they were under-housed with 5 people living in a 2-bedroom unit. Not knowing when other units might become available in the co-op, the applicants each applied for an internal move to address their under-housing situation: Ms. Gunn applied for an internal move into a 3-bedroom unit to fit all 5 people, and Mr. Levesque applied for an internal move into a 2-bedroom unit for him and his children.

15. At a May 12, 2020 directors' meeting, the directors voted not to add Mr. Levesque onto the internal move wait list (wait list). Mr. Levesque asked to appeal the directors' decision, and he attended their May 27, 2020 meeting. The directors advised Mr. Levesque by letter dated June 12, 2020, that they denied his appeal of the decision not to grant him a place on the wait list, and they considered the matter resolved.

### ***Should Mr. Levesque's application for an internal move be granted?***

16. At the outset, I note that the applicants seek an order granting Mr. Levesque's application for an internal move and submit he should be offered the next 2-bedroom unit that becomes available in the co-op. However, I find that the directors' decision at issue was about whether to place Mr. Levesque on the wait list, not whether to guarantee him a specific 2-bedroom unit. Given I do not have any evidence before me about where on the co-op's wait list Mr. Levesque would have been placed had

his application been granted, I restrict my analysis to whether Mr. Levesque should be placed on the co-op's wait list.

17. Co-op Rule 17.2 says that the directors may propose policies. The policies take effect if they are approved by an ordinary resolution at a general meeting. Paragraph 6.01 of the co-op's Occupancy Agreement requires members to follow the co-op's policies as though they were contained in the Rules
18. The co-op has an Internal Move Policy (move policy), which was approved by the directors on October 28, 2019. The move policy provides that to apply for a place on the wait list, in addition to being a member in good standing, an associate member must qualify to become a principal member. So, because Mr. Levesque was an associate member of the co-op, I find he had to qualify to become a principal member as part of his application to be placed on the co-op's wait list.
19. The co-op's move policy procedures provide that when the membership committee receives an internal move application from an associate member, it interviews the member to assess whether they meet the membership selection criteria for a principal membership, as if they were an external applicant. The membership committee then makes a recommendation to the directors, and the directors determine whether the member is in good standing and decides whether to approve or refuse the principal membership.
20. The co-op also has a Member Selection Policy (selection policy), which was approved by the directors on September 15, 2016. Paragraph 17 of the selection policy states that the criteria for principal membership includes consideration of the potential member's: ability to pay housing charges, special needs unit requirements, skills and experience, degree of housing need, impact on community, and commitment to: co-operation, being involved in a meaningful and productive way in the co-op, good neighbourliness, inclusive community living, maintaining the upkeep of their unit, and acting and living co-operatively by the co-op's rules and policies.
21. The membership committee interviewed Mr. Levesque on May 9, 2020 to determine his eligibility to be placed on the wait list. The membership committee emailed a

summary of its interview to the directors on May 9, which was filed in evidence. Based on the email, I find the membership committee asked Mr. Levesque about how he handled conflicts within the co-op community, his cooperation, unit maintenance, and his contribution as a member. Citing specific examples from the interview, the membership committee concluded Mr. Levesque did not meet the criteria for and was unanimous in not recommending Mr. Levesque be added to the wait list.

22. The directors' May 12, 2020 meeting minutes show that the directors reviewed the membership committee's summary of its interview with Mr. Levesque and voted to accept the committee's recommendation that Mr. Levesque be denied a place on the wait list.
23. As noted above, Mr. Levesque appealed the directors' decision and attended their May 27, 2020 board meeting. The directors' May 27 meeting minutes show that Mr. Levesque sought to understand why his request for a place on the wait list was refused. He stated he could not address concerns that he is unaware of. The minutes show the directors told Mr. Levesque there were concerns about his past conflicts, to which Mr. Levesque replied he had no ongoing conflicts, and, to his knowledge, all previous conflicts had been resolved. As noted, the directors denied Mr. Levesque's appeal, and he was not placed on the wait list.
24. The applicants argue that the directors relied on "gossip and innuendo" to make their decision, and in so doing, they acted in bad faith. The applicants say there is no evidence of any outstanding conflicts that should disqualify Mr. Levesque from being granted a principal membership and placement on the wait list.
25. The co-op says the directors' decision was properly based on its conclusion that Mr. Levesque should not be granted a principal membership, which was a prerequisite for his being placed on the wait list. It points to co-op Rule 2.3, which states that the co-op's directors may, in their discretion, approve or refuse any application for membership. Further, paragraph 7 of the move policy states that the directors may, at their discretion, waive some or all, of the move policy. The co-op says this shows the directors' discretion in this matter is extremely broad.

26. I find the directors' discretion to make decisions about granting a membership or placement on the wait list is very broad and guided only by section 84 of the CAA, which sets out the duties of co-operative directors. Section 84(1) says when exercising their powers and performing their functions, every director must: (a) act honestly and in good faith with a view to the best interests of the co-op, (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, (c) act in accordance with the CAA and its regulations, and (d) in accordance with the association's memorandum and rules.
27. Here, I find that the directors followed the applicable rules and policies in terms of the procedure for considering Mr. Levesque's application for an internal move. Based on the membership committee's May 9, 2020 interview summary, I find it fairly canvassed issues relevant to the selection policy. The applicants allege the directors relied on information about alleged conflicts Mr. Levesque had with other members, which was not disclosed to the applicants. However, I find the evidence shows the concern was not necessarily that Mr. Levesque had been involved in previous (or current) undisclosed conflicts, but that he demonstrated a lack of insight into how he dealt with a specific past conflict, which Mr. Levesque himself raised with the committee.
28. Further, I find the conflicts issue was not the only basis for the directors' decision not to grant Mr. Levesque a principal membership and thus a place on the wait list. I find the directors properly relied on the membership committee's concerns that Mr. Levesque did not appear motivated to join any co-op committees, and had not made any substantial contribution to the maintenance committee in the past (despite reported skills in maintenance and home renovations), among other concerns. I find Mr. Levesque's interview provided a reasonable basis for the directors to conclude he did not meet the selection criteria of commitment to cooperation, good neighbourliness, and being meaningfully involved in the co-op.
29. On balance, I find the applicants have not shown the directors acted in bad faith or without the best interests of the co-op in mind, nor that the directors failed to exercise the required care, diligence and skill in making its decision. I find I must dismiss the

applicants' claim for an order that the co-op grant Mr. Levesque a place on the internal move wait list.

***Must the co-op disclose its reasons for denying Mr. Levesque's application?***

30. The applicants say the directors did not provide adequate reasons for denying Mr. Levesque's application. They also say the directors' references to past conflicts were vague and came from anonymous sources. The applicants argue that principles of natural justice require the directors to disclose any accusations made against Mr. Levesque so that he can properly address them.
31. The co-op says it is not required to provide any rationale for its decision whether to grant a membership or place Mr. Levesque on the wait list. Nevertheless, it says the directors did disclose to Mr. Levesque that one factor they considered was a history of past conflict, which it says was a sufficient basis to not grant him a principal membership or a place on the wait list.
32. The co-op also says that principles of natural justice do not apply to this decision. I agree. While I note section 172 of the CAA requires housing co-operative decisions about terminating memberships to be made in accordance with principles of natural justice, the CAA does not provide the same for all other types of co-op decisions. Further, there is no free-standing common law right to procedural fairness for decisions of voluntary associations: see *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26, paragraph 24. While a minimum level of procedural fairness may be required where an association decides to expel a member (such as when employment or property rights are engaged), I find this does not apply to the decision here because Mr. Levesque was not expelled from the co-op. I find the applicants have not shown there is any co-op rule, policy, piece of legislation, or common law rule that requires the directors to provide reasons for a decision to not grant a principal membership.
33. As noted, the move policy specifically states that associate members are to be considered for a principal membership, as if they were an external applicant. I find a



co-op is not expected or required to provide fulsome (or any) reasons for denying a membership to every external applicant. The same applies to Mr. Levesque. I dismiss the applicants' request for an order that the co-op disclose its reasons (including any accusations of conflict) for denying Mr. Levesque's application for an internal move and principal membership.

34. 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. As the applicants were unsuccessful, they are not entitled to reimbursement of their CRT fees. The co-op did not pay any fees or claim any dispute-related expenses, so I make no order.

## **ORDER**

35. I order the applicants' claim, and this dispute, dismissed.

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Kristin Gardner, Tribunal Member