



# Civil Resolution Tribunal

Date Issued: April 23, 2021

File: CS-2020-005017

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Ashton v. Broadoaks Housing Cooperative*, 2021 BCCRT 424

B E T W E E N :

MARION ASHTON

**APPLICANT**

A N D :

BROADOAKS HOUSING COOPERATIVE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. The applicant, Marion Ashton, is a member in the respondent cooperative association, Broadoaks Housing Cooperative (co-op).
2. Ms. Ashton says the co-op's current formula for setting housing charges based on the number of bedrooms in a unit is inequitable. A housing charge is the amount a

co-op member must pay monthly to occupy their unit. Ms. Ashton seeks an order that the co-op's board of directors change the formula to "a flat rate, per square foot, housing charge". The co-op says its directors cannot unilaterally change the housing charge formula. The co-op says housing charges must be approved by the membership at a general meeting.

3. Ms. Ashton's next claim relates to her June 8, 2020 email request for the co-op to add her spouse as a joint member. I will refer to Ms. Ashton's spouse anonymously as "B". It is undisputed that the co-op approved the application on condition that Ms. Ashton or B pay to increase Ms. Ashton's current share value from \$500 to \$1,000. Ms. Ashton asks for an order that the co-op approve the joint member application without any further share purchase.
4. Ms. Ashton is self-represented. The co-op is represented by a director.
5. For the reasons that follow, I dismiss Ms. Ashton's claims.

## **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.
10. The CRT's authority over cooperative association claims is set out in CRTA section 125(1). I find both Ms. Ashton's claims relate to an interpretation of the *Co-operative Associations Act* (CAA) and co-op rules, and falls under CRTA section 125(1)(a). I find Ms. Ashton's claim over her request to add B as a joint member falls under section 125(2)(c) as well. Even though B is not yet a member, it was Ms. Ashton's request and the directors' approval was conditional on her increasing her share value. So, I find Ms. Ashton's claim is about the directors' decision in relation to a member. For these reasons, I find I have authority to consider both Ms. Ashton's claims.

## **ISSUES**

11. The issues in this dispute are:
  - a. Must the co-op directors change the housing charges to a flat rate, per square foot formula?
  - b. Is the co-op permitted to require Ms. Ashton to pay \$500 as a condition of joint membership approval for her spouse?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicant must prove her claims on a balance of possibilities. In other words, I must find it more likely than not that Ms. Ashton's position is correct, based on the evidence in this dispute.
13. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

14. The co-op was incorporated in 1984 and continues to exist under the CAA. The co-op filed an amended set of rules with the BC Registrar of Companies on May 19, 2005, with an attached Occupancy Agreement (OA). I find the co-op's May 19, 2005 rules and attached OA apply in this dispute.

***Must the co-op directors change the housing charge to a flat rate, per square foot formula?***

15. It is undisputed that the co-op has a mix of 2, 3 and 4-bedroom units with different floorplans and variations in unit size and yard space. The co-op currently sets its housing charge on a flat rate based on the number of bedrooms in the unit, which it has done since 1985. Ms. Ashton occupies one of the co-op's smaller units.
16. Ms. Ashton argues that the current housing charge formula is inequitable. She says it results in members who occupy the smaller units paying more per square foot as compared to members who occupy larger units.
17. Ms. Ashton claims the co-op directors have been "unresponsive to community efforts to enact an equitable housing charge formula". Ms. Ashton alleges that by demonstrating an "unwillingness to grapple effectively with this matter, the Board is failing to exercise its obligation under sections 84 (Duties of Directors) and 105 (Duties of Officers)" of the CAA.
18. As mentioned, Ms. Ashton seeks an order that the co-op directors change the housing charge to a flat rate calculated by square foot. Ms. Ashton also asserts that the maintenance costs are inequitable but she seeks no specific order about them.
19. There are no floorplans in evidence and I find it is not necessarily the case that a square foot formula would be more equitable overall. For example, the evidence suggests that some units are larger to accommodate wheelchair accessibility.
20. I also find Ms. Ashton's allegations about the directors are unfounded. I find on the submitted emails, general meeting minutes, and committee reports that the directors have been responsive and reasonably involved in examining housing charge options. The general meeting minutes and correspondence show that the housing charge

formula is a relatively complex and contentious issue. As a result, the co-op formed a Housing Charges Review Committee to investigate options and provide recommendations about the housing charges. It is undisputed that this review was delayed for several reasons and is not complete.

21. I find the directors cannot unilaterally change the way the housing charge is calculated. Section 4.02 of the OA states that the directors set and recommend the housing charge to the members. The housing charge must then be “approved by ordinary resolution at a general meeting of the Co-op”. So, I find any decision to change the housing charge must be made by membership vote at a special or annual general meeting as provided by the OA.
22. I find Ms. Ashton has established no basis under which the CRT has authority to intervene with the co-op’s democratic process in setting the housing charges and I dismiss Ms. Ashton’s claim.

***Is the co-op permitted to require Ms. Ashton to pay \$500 as a condition of joint membership approval for her spouse?***

23. As mentioned, Ms. Ashton seeks an order that the co-op approve her request to add B as a joint member without having to pay to increase her current share value to \$1,000. A joint member is a person who is one of 2 or more persons who jointly hold 1 membership in a cooperative association: see CAA section 1(1). A share purchase is an amount each member pays to become a member and is part of the co-op’s capital.
24. Under CAA sections 13(2) and 42, joint members own the membership shares jointly and share one vote. So, if B was admitted Ms. Ashton and B would hold the same shares jointly. The question is whether the directors are permitted to require an additional share purchase to add Ms. Ashton’s spouse, B, as a joint member. For the reasons that follow, I find that the directors are permitted to the require payment as a condition of their approval.

25. By way of background, the co-op's share structure is set out in a registered 1984 memorandum. The memorandum says the co-op's capital consists of an unlimited number of shares of \$10 each. Ms. Ashton has been a member for about 30 years and her share purchase was \$500.
26. In 1997, the members voted to raise the share purchase price from \$500 to \$1,000 for new members. The co-op did not require existing members to increase their share value. At present, the co-op says there are 7 'legacy' members remaining, including Ms. Ashton, whose share value is \$500. The other members hold share values of \$1,000. This is not disputed.
27. The co-op says the 'legacy' exception created a 2-tiered system of share ownership, which it has moved away from ever since. It is undisputed that the co-op currently requires all new members to pay \$1,000 for their shares. The co-op also has a written policy that requires any 'legacy' member to bring their shares up to \$1,000 if they move internally to a different unit. It has no specific rule or policy dealing with a situation where a 'legacy' member seeks to add a person as a joint member as Ms. Ashton is requesting here.
28. Ms. Ashton says share price and joint membership are distinct. She argues that she should not have to increase her share value to add her spouse because she and B will hold the shares jointly and she already holds the required shares as a 'legacy' member. Ms. Ashton says without clear policy, the co-op has no grounds to require her to increase her share value.
29. The co-op says the 1997 legacy exception does not apply to Ms. Ashton's joint membership request. It says that B would become a "new member". The co-op says to add B as a joint member they must pay the "extra financial expense" to be consistent with the current \$1,000 membership share cost, which is an additional \$500.
30. The CAA section 1(1) definition of member includes a joint member. I agree with the co-op that B would effectively be a new member through the joint application.

31. I find the legacy exemption only applied to existing members in 1997 and does not apply to B. The 2005 rules that govern joint membership applications do not include any legacy exceptions. I find nothing particularly turns on the absence of written policy about legacy member spouses.
32. Rule 2.1 says a person who is at least 19 years old may be admitted as a member by submitting a written application, a subscription for the purchase of shares by the co-op, and any required payment for shares, each as set by the directors from time to time (*emphasis mine*).
33. Rule 2.3 says the directors may, in their discretion, approve, refuse or postpone any application for membership.
34. Rule 3.1 says 2 or more persons may apply for joint membership in the co-op under rule 2.1, and if approved under rule 2.3, the joint members hold the membership shares in joint tenancy.
35. I find rules 2.1, 2.3 and 3.1 must be read together. I find these rules permit the directors to require a share payment from B, as a new member, when approving the joint membership application. Based on the broad language in rule 2.1 underlined above, I find the payment can include adding to a joint member's existing shares. I find the rules permit the directors to require payment from Ms. Ashton or B to make their share value equal to other members' share values as a condition of the new joint membership approval.
36. Ms. Ashton does not say and there is no evidence of financial hardship, or some unfairly prejudicial circumstances and so, I find this is not an issue here.
37. I find the co-op is permitted to require a \$500 payment as a condition of its approval of Ms. Ashton's joint membership request and so, I dismiss this claim.

## **CRT FEES AND EXPENSES**

38. In accordance with the CRTA, and the CRT rules, I find Ms. Ashton is not entitled to reimbursement of her CRT fees or any dispute-related expenses because she was unsuccessful in her claims. The co-op did not pay any fees or claim any expenses.

## **ORDERS**

39. I dismiss Ms. Ashton's claims and this dispute.

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Trisha Apland, Tribunal Member