



Civil Resolution Tribunal

Date Issued: May 3, 2021

File: CS-2020-007823

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Kalinowska v. Amicae Housing Cooperative*, 2021 BCCRT 469

B E T W E E N :

BOGUMILA KALINOWSKA

APPLICANT

A N D :

AMICAE HOUSING COOPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about over-housing fees in a housing co-operative.
2. The applicant, Bogumila Kalinowska, was a member of the respondent housing co-operative, Amicae Housing Cooperative (co-op). Ms. Kalinowska says the co-op

incorrectly charged her an over-housing charge in September and October 2020, after her family member moved out. Ms. Kalinowska claims \$530 for the over-housing charges.

3. The co-op says it was entitled to charge Ms. Kalinowska the over-housing fee under co-op policy. It denies having waived the same fee for another member, as claimed by Ms. Kalinowska.
4. Ms. Kalinowska represents herself. The co-op is represented by its director.
5. I dismiss Ms. Kalinowska's claims for the reasons explained below.

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.

ISSUE

10. The issue is whether the co-op incorrectly charged Ms. Kalinowska an over-housing fee and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this one Ms. Kalinowska, as the applicant, has the burden of proving her claim on a balance of probabilities. I have weighed the evidence and reviewed the submissions of both parties but only refer to that necessary to explain and give context to my decision.
12. The co-op is a 56-unit not for profit housing cooperative that was incorporated in 1982.
13. Section 18 of the *Co-operative Associations Act* (CAA) says that the co-op's filed rules are binding on all co-op members. The co-op filed an amended set of rules with the BC Registrar of Companies on August 25, 2016, including an attached Occupancy Agreement (OA). Co-op rule 1.4 says the OA is binding on all members. Section 6.01 of the OA says the co-op's policies are also binding. I will refer to the co-op's applicable policies below.
14. The facts are largely undisputed. In 2020 Ms. Kalinowska lived in a 2-bedroom apartment in the co-op with her adult son. She receives a monthly provincial disability benefit, so her rent was subsidized by the co-op in conjunction with a federal housing program. At the end of August 2020 Ms. Kalinowska's son moved out. As a result, Ms. Kalinowska was "over-housed" according to the co-op, meaning she had too many bedrooms for the size of her household.
15. Based on the co-op's completed housing charge calculation forms and correspondence to Ms. Kalinowska, I find the co-op charged her a \$249 monthly over-housing charge for September, October and November, 2020.
16. It is undisputed that Ms. Kalinowska gave the co-op notice and moved out at the end of November 2020.

17. Ms. Kalinowska agrees that she was over-housed in her 2-bedroom apartment but says the co-op's over-housing policy did not apply to her because her rent was subsidized and so only the co-op's subsidy policy applied. As I explain below, I disagree.

18. The co-op's members approved an amended subsidy policy at their July 16, 2017 meeting, as set out in the meeting minutes. The policy explains that the co-op may provide rental assistance, or a subsidy, to members based on their income. Section 17 says:

Housing charges for households that are over-housed will be assessed according to the amount of subsidy that would be provided to that household in an appropriately sized unit, according to the co-op's over-housing policy.

19. In the same way, the co-op members approved an over-housing policy on November 29, 2017, effective January 16, 2018. The policy explains that, for a household of 1 permanent resident, such as Ms. Kalinowska, a 1-bedroom apartment is an appropriately sized unit. The over-housing policy requires over-housed members to move to an appropriately sized unit when one becomes available in the co-op. The policy says the household, or member, is permitted to stay in the current unit until an appropriately sized unit becomes available.

20. I agree with Ms. Kalinowska that the over-housing policy does not mention subsidized members. However, as it refers to "members" throughout the policy, I find it applies to all co-op members, whether their occupancy fees are subsidized or not. Further, as the subsidy policy specifically refers to over-housing charges, I find the over-housing policy must apply to subsidized members.

21. I also disagree with Ms. Kalinowska's argument that the co-op gives an over-housed member a choice between signing up for an appropriately sized unit on the internal move list or paying the over-housing fee. First, Ms. Kalinowska has provided no evidence such as meeting minutes or co-op correspondence that supports her position. Second, the co-op denies this. Third, the over-housing policy says the co-op will place the over-housed member on the internal move list within 6 months of

determining the member is over-housed. It does not say the member has a choice, but rather that the co-op will place them on the list. So, I find there is no option for a member to opt out of the over-housing fee by placing their name on the internal move list, under the co-op's policies.

22. Ms. Kalinowska also says the co-op should waive the over-housing charge for her because they waived it for another member who temporarily received social assistance. Ms. Kalinowska did not explain who this other member was or when their over-housing charge was waived. The co-op denies waiving any over-housing charge. Ms. Kalinowska provided no other reason why the co-op should waive the charge. I find she has failed to prove that the over-housing charge should be waived.
23. On balance, I find the over-housing policy applies to Ms. Kalinowska.
24. Under the subsidy policy, I find Ms. Kalinowska was only entitled to the amount of subsidy for a 1-bedroom unit, even though she lived in a 2-bedroom unit in the fall of 2020. Based on the co-op's housing charge calculation forms and correspondence to Ms. Kalinowska, I find that subsidy equals \$563, which is the occupancy charge of a 1-bedroom unit (\$938) minus the shelter portion of Ms. Kalinowska's social assistance income (\$375). I further find the co-op correctly charged Ms. Kalinowska a monthly over-housing charge of \$249 in the fall of 2020, which is the occupancy charge of a 2-bedroom unit (\$1,187) minus Ms. Kalinowska's subsidy (\$563) and minus the shelter portion of Ms. Kalinowska's social assistance income (\$375). So, I find the co-op correctly determined Ms. Kalinowska's over-housing charge in accordance with its over-housing and subsidy policies.
25. I note that Ms. Kalinowska claimed \$530 for over-housing charges. I find Ms. Kalinowska's valuation of the over-housing charge is likely based on 2 months of paying an over-housing charge of \$265, which was the figure estimated by the co-op in an August 26, 2020 letter, before the calculations were completed. I find nothing turns on Ms. Kalinowska's use of the over-housing charge estimate when she first filed her dispute in October 2020. In any event, as I find Ms. Kalinowska is not entitled

to reimbursement of the over-housing charges, I find nothing turns on her valuation. I dismiss Ms. Kalinowska's \$530 claim.

CRT FEES and EXPENSES

26. Neither party paid any fees nor claimed any dispute-related expenses. In any event, I would have found Ms. Kalinowska was not entitled to reimbursement of any CRT fees or dispute-related expenses under the CRTA and CRT rules, as she was unsuccessful in her claims.

ORDER

27. I dismiss Ms. Kalinowska's claims and this dispute.

Sherelle Goodwin, Tribunal Member