



Civil Resolution Tribunal

Date Issued: June 24, 2021

File: CS-2020-009423

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Halliwell v. Meadow Highlands Mobile Home Co-Operative*,
2021 BCCRT 700

B E T W E E N :

DAVID HALLIWELL

APPLICANT

A N D :

MEADOW HIGHLANDS MOBILE HOME CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about member participation in a housing co-operative. The applicant, David Halliwell, is a member of the respondent co-operative association, Meadow Highlands Mobile Home Co-Operative (Co-op). Mr. Halliwell says that, at a January

30, 2020 general meeting, the Co-op adopted a policy that requires members to pay a “fine” if they do not participate in the Co-op. According to Mr. Halliwell, this policy is discriminatory and contrary to the Co-op’s rules. He asks for orders that the Co-op stop “fining” members who decide not to volunteer and return any amounts that have been paid. The Co-op denies that it fines members for non-participation and says that its policy is aimed at reducing costs for members.

2. Mr. Halliwell is self-represented. The Co-op is represented by a member of its Board of Directors.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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.

7. The CRT's jurisdiction over cooperative association claims is set out in Division 5 of the CRTA. Section 125(1)(c) says that the CRT has jurisdiction concerning a decision of an association or its directors in relation to a member.
8. Mr. Halliwell included in his evidence extracts from the *Cooperative Association Act* (CAA): section 20, which restricts an association from carrying on business or exercising powers that are contrary to its memorandum of association, and section 156, which governs court proceedings that a member may bring against an association, including for oppressive or unfairly prejudicial actions. Section 126(1)(c) of the CRTA specifically states that the CRT does not have jurisdiction over claims under section 156, which may be dealt with by the British Columbia Supreme Court.
9. Mr. Halliwell did not make any submissions about sections 20 or 156 of the CAA, or request any remedies under these sections. His only requested remedy is that the Co-op stop "fining" members. I find that this falls within the scope of section 125(1)(c) and, therefore, that I have the jurisdiction to address this claim.

ISSUES

10. The issues in this dispute are:
 - a. Whether the Co-op's participation policy violates its rules, and
 - b. Whether the assessments the Co-op has collected under the participation policy should be refunded.

EVIDENCE AND ANALYSIS

11. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is relevant and necessary to provide context to my decision.
12. The Co-op was incorporated under the previous *Co-Operative Associations Act* in 1975. It continues to operate under the current version of the legislation, the CAA.

The Co-op provides its members with pads upon which the members place mobile or manufactured home units.

13. All members pay monthly occupancy charges which the Co-op refers to both as pad fees and pad assessments. In its membership application form, the Co-op makes applicants aware that the Co-op “requires volunteer participation to keep operating costs down” and sets out the expectation that all residents will volunteer at some time. The application contains a list of committees in which applicants may express interest, although the evidence suggests that there are other ways that members may contribute, such as participating in bake sales or picking up trash.
14. Under section 18 of the CAA, a co-operative association’s rules are binding on the association and all of its members. The Co-op’s members have adopted rules and policies that govern how the Co-op functions. In addition, the terms of the occupancy agreement (OA), which is Schedule A to the Co-op’s rules, apply to the members. Section 6.01 of the OA requires that members comply with the Co-op’s rules and policies.
15. A past version of the policies addressed the Co-op’s expectation that members participate in volunteer activities. The Co-op says that the reference to volunteering was the subject of discussion among members, some of whom questioned whether mandatory participation was actually “volunteering”.
16. At a town hall meeting in January of 2020, the members discussed proposed changes to the policies about volunteering and various other issues. On January 14, 2020, the Board of Directors approved policy amendments, including a change from a volunteering to a participation policy. At the January 30, 2020 general meeting, the members approved a motion to accept the amended policies.
17. Policy 10, Participation, states that the Co-op determines its pad assessments “on a cost sharing basis” and that it uses volunteers to “cut down on costs”. The policy also says that members “are expected to step in wherever possible and whenever called upon” and that members “not co-operating in this program will be asked to meet with

the Board of Directors to explain their reasons for not participating and may ultimately be charged an additional fee” on their household pad assessment.

18. Policy 13.3, which is also titled Participation, sets out that \$25 will be applied to a member’s monthly pad assessment for non-participation. It also sets out how members may apply to have this non-participation assessment removed.
19. Copies of the new policies were circulated to members on June 23, 2020. In an August 10, 2020 letter, the Board of Directors advised the members that it was “now commencing the process of enforcing” the \$25 monthly non-participation assessment. The letter asked members to return a form identifying whether they agreed to pay the non-participation assessment, whether they already participated or volunteered, or whether they wished to meet with the Board of Directors to discuss their reasons for not participating or volunteering.
20. The minutes of the August 27, 2020 meeting of the Board of Directors show that the majority of members responded. Some members wanted to pay the non-participation assessment, some members said they do participate, and others said they wished to meet with the Board to discuss their reasons for not participating. Several members did not respond, and these members were added to the list of members meeting with the Board of Directors. The Co-op says that not all of these meetings have taken place due to restrictions related to the COVID-19 pandemic.
21. The Co-op has collected some “participation income” and, according to its proposed budget, projects that it will receive additional funds through this stream in the upcoming fiscal year. Mr. Halliwell did not say whether he was one of the members from whom a non-participation assessment had been collected.
22. The parties disagree about whether the participation policy and the non-participation assessment violate or contravene section 6.03 of the OA, Uniform application. This section says that all rules and policies apply to all members of the Co-op “uniformly and without preference or discrimination”.

23. Mr. Halliwell says that all members should be treated equally and that it is unfair that the non-participation assessment is “supplementing” the pad assessments of all owners. He questions whether participation is mandatory or whether members are participating simply by paying their pad assessments. Mr. Halliwell says that he has given publications to the Board of Directors that he says highlight problems with requiring participation in housing co-operatives. He also questions whether a structure that allows member to “voluntarily buy their way out of participation” supports efforts for more participation. Mr. Halliwell states the he filed this dispute on behalf of a group of owners to determine whether “fining” non-participating members is “legal” or consistent with section 6.03 of the OA or the rules.
24. The Co-op says that assessments collected under the participation policy are not fines, and that this income is included in revenue and applied to cover the total expenses divided equally among members. According to the Co-op, member participation helps it maintain affordability and contributes to the Co-op community. The Co-op says that, if a member cannot participate, someone else in their household can have their “participation effort” credited to the member. The Co-op also points out that any member can present motions or points for discussion and to be “voted on, and decided by the majority of the members, one way or the other”.
25. I find that there is a potential issue of standing in this dispute. There are no other named applicants and Mr. Halliwell does not have the standing (or entitlement) to claim remedies on behalf of non-parties. However, given my conclusions below, I find that it is not necessary to decide the question of standing.
26. Although Mr. Halliwell initially questioned the procedure used to implement the policy, he later agreed in his submissions that the policy “went through due process and was adopted”.
27. In adopting policies that require member participation, the Co-op’s members exercised their democratic rights to make policies that are aimed at keeping their pad assessments as low as possible and that allow members to choose whether they participate or pay the non-participation assessment. While there may be other

approaches to funding a cooperative association that do not involve member participation, I find that the Co-op's participation policies do not offend the CAA, the rules, or the OA generally.

28. With respect to section 6.03 of the OA specifically, this section does not require that all members of the Co-op be treated equally as Mr. Halliwell suggests. Rather, it requires that the Co-op apply the rules, the OA and the policies to all members "uniformly and without preference or discrimination". Therefore, I will consider whether the evidence shows that the Co-op is applying the participation policy in a way that is not consistent with section 6.03.
29. While the evidence before me confirms that the Co-op has applied the updated participation policy, it does not contain specific information about members who have paid the non-participation assessment, their circumstances, or the decisions that the Co-op has made when applying the participation policy. The information before me suggests that the Board of Directors will take into account a member's particular situation, such as members who have made significant contributions in the past and are now considered to be "retired" for health or other reasons. The non-participation assessment also does not apply to members who are living in care facilities or who are deceased and whose estates have not yet been finalized.
30. There is no indication that the Board of Directors has treated members differently when considering their reasons for non-participation and making decisions about whether the non-participation assessment applies. I find that it would be speculative to conclude that the Board of Directors has given preference to certain owners or applied the participation policy in a non-uniform or discriminatory manner. Based on the evidence before me, I find that Mr. Halliwell has not established that the Co-op has applied the participation policy or made decisions about which members must pay the non-participation assessment in a way that offends section 6.03 of the OA.
31. As Mr. Halliwell has not met the burden of proving his claims, I dismiss them. I would point out that nothing in my decision prevents any member from bringing a motion to change the participation policy to the membership for consideration.

CRT FEES AND EXPENSES

32. Under section 49 of the CRTA, and the CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Halliwell was not successful, I dismiss his claim for reimbursement of CRT fees.

ORDERS

33. I dismiss Mr. Halliwell's claims and this dispute.

Lynn Scrivener, Tribunal Member