



Civil Resolution Tribunal

Date Issued: September 29, 2021

File: CS-2020-009952

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Esfandiari v. Railyard Housing Co-operative*, 2021 BCCRT 1051

BETWEEN:

ELHAM ESFANDIARI

APPLICANT

AND:

RAILYARD HOUSING CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about charges associated with a member's withdrawal from membership in a housing co-operative. The applicant, Elham Esfandiari, was a member in the respondent co-operative association, Railyard Housing Co-operative (Co-op). Ms. Esfandiari says that she gave, and the Co-op accepted, notice to vacate her home on August 31, 2020. She says that the Co-op inappropriately charged her

housing costs for September of 2020, as well as carpet cleaning charges. She asks for an order that the Co-op reimburse her \$2,063 in housing charges and \$124.94 in carpet cleaning charges. The Co-op says that, under its rules and policies, Ms. Esfandiari is responsible for these amounts.

2. Ms. Esfandiari 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
4. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
5. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under CRTA section 127, 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. Ms. Esfandiari made submissions about what she says are inadequacies with the Co-op's management structure and her view that it should be organized in a different manner. I acknowledge these submissions but, as she did not request any remedies about them, I will not address them further.

ISSUES

8. The issues in this dispute are:
 - a. Whether the effective date of Ms. Esfandiari's notice to leave the Co-op was August 31 or September 30,
 - b. Whether Ms. Esfandiari is entitled to reimbursement of \$2,063 in housing charges, and
 - c. Whether Ms. Esfandiari is entitled to reimbursement of \$124.94 in carpet cleaning charges.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, an applicant bears the burden of proof on a balance of probabilities. I have considered the evidence and submissions provided by the parties, but will refer to only the information that I find relevant and necessary to provide context to my decision.
10. The Co-op was incorporated in 2018. The Co-op filed an amended set of rules with the British Columbia Registrar of Companies on March 14, 2019, with an Occupancy Agreement (OA) attached as Schedule A.
11. Section 18 of the *Cooperative Association Act* says that rules, when filed, bind the co-operative association and its members. Rule 1.4 says that the terms of the OA are binding on each member and the Co-op.
12. Rule 17.2 allows the board of directors to set policies with respect to the operation and maintenance of the Co-op and members' conduct about the use and enjoyment

of the Co-op and its property, including the residential premises operated by the Co-op.

13. Ms. Esfandiari purchased a membership share in the Co-op in the summer of 2018. According to a July 9, 2018 letter, she was charged a monthly housing charge of \$2,010 and a utility charge of \$33.60 per month. Ms. Esfandiari moved into a unit in the Co-op on August 1, 2018. On September 1, 2019, the housing charge increased and, when combined with the charge for utilities, her total monthly charge rose to \$2,063.
14. On July 31, 2020, Ms. Esfandiari sent an email to the Co-op's site manager to advise that she wished to move out of her unit on August 31, 2020. An employee responded on August 1, 2020 acknowledging receipt of the notice and asking for clarification of the intended move-out date. After receiving confirmation of the August 31 move-out date, an employee sent Ms. Esfandiari a package of information about the move-out process. This information included the requirement to have the carpets in her unit professionally cleaned.
15. On August 6, in an email from the Co-op's management coordinator, Ms. Esfandiari learned that her notice to vacate the unit would be effective September 30 rather than August 31 due to rule 4.1's requirement for 2 full months of notice to vacate.
16. This created difficulties for Ms. Esfandiari as she had made arrangements for a new home already. Ms. Esfandiari says that the August 1 email acknowledging her notice misled her into thinking that her obligations would end when she moved out of the unit. In an August 13, 2020 email to the board of directors, Ms. Esfandiari explained the situation and the difficulties that a September 30 effective date would cause her. She asked the board of directors to consider allowing her membership to end on August 31.
17. On August 18, 2020, the board of directors replied and stated that, under rule 4.1, a membership withdrawal submitted on July 31 meant that the final date of occupancy was September 30. The board of directors noted that a proposal at the 2019 special general meeting to reduce the notice period had been voted down. The board of

directors stated that it was open to shortening the notice period if a new occupant was found for the unit to pay the housing charges.

18. The Co-op did not find a new occupant for the unit before Ms. Esfandiari moved out on August 31, 2020. The Move Out Inspection Report from that date contains the notation “carpet not clean prof”.
19. Ms. Esfandiari says that, although she had vacated the unit and cancelled her utilities, the Co-op removed \$2,063.60 from her bank account on September 1, 2020. According to the Co-op, it could not find a new occupant for Ms. Esfandiari’s unit until October 1, 2020. A Share/Move-out Reconciliation form shows that the Co-op owed Ms. Esfandiari \$2,000, which was the amount of her share purchase. The Co-op subtracted a charge of \$124.95 for carpet cleaning, and issued a cheque to Ms. Esfandiari for \$1,875.05.
20. Ms. Esfandiari says that the Co-op did not treat her fairly as she “followed the rules and information they provided”. According to Ms. Esfandiari, the Co-op accepted her notice to vacate her unit on August 31 and told her that she did not need to have the carpet in her unit professionally cleaned. So, Ms. Esfandiari asks for orders that the Co-op reimburse her for the associated costs. Ms. Esfandiari also says that the Co-op was slow to respond to her emails, did not allow her to meet anyone in person to discuss the matter, and made no effort to rent the unit.
21. The Co-op says that the amounts charged to Ms. Esfandiari are consistent with its rules and policies, and are her responsibility. With respect to the utilities, the Co-op says it has a bulk service package for utilities that is charged per unit, whether or not the unit is occupied. The Co-op denies that it delayed responses to Ms. Esfandiari. It says that the market conditions, including the impact of the COVID-19 pandemic, made it difficult to find a new occupant right away. The Co-op’s position is that members of the Co-op should not be responsible for the costs associated with a vacant unit.

Effective date of notice & responsibility for housing charges

22. There is no dispute that Ms. Esfandiari gave notice to vacate her unit on July 31 or that she moved out of the unit on August 31, 2020. At issue is whether her responsibility for housing charges ended when she moved out of the unit.
23. The Co-op's rule 4.1 addresses withdrawal from membership, and states that a member may withdraw from Co-op membership by giving the Co-op "at least two full calendar months' written notice, calculated from the last day of the month in which notice is given" or by giving less than two full calendar months' written notice with the written consent of the board of directors. Section 17.01 of the OA also sets out the 2-month notice requirement.
24. Ms. Esfandiari admits that she was aware of the Co-op's rules and the OA (which she refers to as a contract). Specifically, Ms. Esfandiari confirms that she was aware of the 2-month notice period. She says she spoke to the site manager in July of 2020 and he told her that, despite the 2-month notice requirement, moving with only 1 month's notice might not be a problem because there tends to be a high demand for moving in September. She says that the emails accepting her notice to vacate and providing her with the move-out package made her think that the Co-op had accepted her shortened notice period.
25. The Co-op says that the 2-month notice period is intended to allow sufficient time to find a new occupant and conduct any necessary repairs in the unit. According to the Co-op, losses associated with unit vacancies have "a direct impact on the housing charges paid by members". As such, decisions about requests for early withdrawal are guided by the Co-op's need to "fill the unit without incurring a vacancy loss". Although a member is not required to remain in their unit until the end of their notice period, the Co-op says a member is responsible for the housing charges until the end of the notice period or a new occupant starts paying those charges.
26. Rule 6.1 says that possession and occupancy rights terminate upon withdrawal from membership rather than upon a member vacating a unit. I find that this means that a

member's obligations, including fees, run with membership rather than occupancy of their unit.

27. Ms. Esfandiari's emails with the site manager and management coordinator did not address the rules, the OA, or Ms. Esfandiari's status as a Co-op member. Further, they did not mention the 2-month notice period or give any indication that this would be shortened. Whatever conversations Ms. Esfandiari may have had with the site manager about the notice period, rule 4.1 is clear that the requirement for the full 2-month notice period can only be waived by the board of directors. While they agreed to her requested move-out date, I find that Ms. Esfandiari's communication with the site manager and management coordinator did not amount to a waiver of the requirements set out in the rules and the OA.
28. I find that, based on her July 31, 2020 email, Ms. Esfandiari's withdrawal from the Co-op's membership did not take effect until September 30, 2020. Therefore, her responsibilities as a member continued until that date.
29. Given this finding, Ms. Esfandiari was responsible for the September housing charges. I find that this includes the portion of the housing charges for utilities.
30. I dismiss Ms. Esfandiari's claim for reimbursement of \$2,063 in housing charges.

Carpet Cleaning Costs

31. Ms. Esfandiari disputes the \$124.94 the Co-op charged her for carpet cleaning as she says the site manager told her she did not have to have the carpets professionally cleaned.
32. As noted above, the move-out information package the site manager sent to Ms. Esfandiari clearly stated that the carpet needed to be professionally cleaned. In an August 4, 2020 email exchange, Ms. Esfandiari asked the site manager if she could rent a carpet cleaner herself as she had no pets and cleaned her home frequently. He responded "We need prof – receipt that carpet cleaning was done by professional" (reproduced as written). Ms. Esfandiari replied that her unit did not need professional cleaning and stated that this requirement was not in her contract.

33. There was no written response to this message. However, Ms. Esfandiari says that the site manager verbally told her that if her unit was clean “he may waive the professional carpet cleaning”. She says that, on August 25, 2021, the site manager viewed her unit and told her that he would waive the requirement for professional caret cleaning. According to Ms. Esfandiari, the site manager refused to put this waiver in writing.
34. The Co-op says that it requires all outgoing members to have the carpets in their units professionally cleaned. The Co-op points out that all of the site manager’s written communications set out the requirement for carpet cleaning and submits that there is no evidence to support Ms. Esfandiari’s position that the requirement was waived.
35. Section 10.07 of the OA says that, upon withdrawal or termination of membership, the directors will have the unit inspected and provide the member with a written list of cleaning, repairs, changes, alterations and restorations that must be performed at the member’s expense. Section 10.08 says that the Co-op may deduct the cost of repairs and cleaning from the amount paid from the member’s shares.
36. Ms. Esfandiari is correct that the requirement for carpet cleaning is not set out specifically in the OA. However, section 6.01 of the OA says that members must comply not only with the terms of the OA, but also the Co-op’s policies.
37. The Co-op has created policies as permitted by rule 17.2 to govern a variety of things, including the procedure for moving in and out of units. Section 1(a) of the Outgoing Member Cleaning Procedure: Responsibilities by Area sets out that “[a]ll carpets shall be professionally steam-cleaned. Carpets are to be professionally deodorized and treated for fleas if the member had pets”.
38. This policy does not say that the carpets must be cleaned only in particular circumstances, which is consistent with the Co-op’s submission that professional cleaning is required whenever a member vacates a unit. Further, the policy does not state that the site manager or board of directors may waive the requirement for carpet cleaning. I find that the policy is not discretionary, and applies to all moves.

39. It is not clear why, if he had waived the requirement for cleaning, the site manager would have noted the failure to have the carpets professionally cleaned on the August 31, 2020 Move Out Inspection Report. In any event, I find that Ms. Esfandiari agreed to pay the carpet cleaning charges when she signed this report. Ms. Esfandiari signed the document under the notation “I/We, having inspected the above premises, agree that they are in such condition as recorded on this form and agree to pay the total charges as indicated herein”. I find that this indicates Ms. Esfandiari’s agreement to pay the charges associated with the carpet cleaning.

40. I find that Ms. Esfandiari was responsible for the carpet cleaning charge, and that section 10.8 of the OA permitted the Co-op to deduct this cost from Ms. Esfandiari’s share refund. I dismiss Ms. Esfandiari’s claim for reimbursement of the \$124.95 carpet cleaning charge.

CRT FEES AND EXPENSES

41. 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 Ms. Esfandiari was not successful, I dismiss her claim for reimbursement of CRT fees. The Co-op was successful, but it did not pay any CRT fees or claim any dispute-related expenses, so I make no order for reimbursement.

ORDER

42. I dismiss Ms. Esfandiari’s claims and this dispute.

Lynn Scrivener, Tribunal Member