Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Harding v. Meadow Walk Housing Co-operative*, 2021 BCCRT 1103

B E T W E E N :

SAREEN HARDING and JUAN CARLOS GUZMAN ONTIVEROS

APPLICANTS

A N D :

MEADOW WALK HOUSING CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. The applicants, Sareen Harding and Juan Carlos Guzman Ontiveros, are members of the respondent co-operative association, Meadow Walk Housing Co-operative (co-op).

2. The applicants say the co-op relied on unsubstantiated complaints about them to restrict their rights within the co-op property and to improperly label them "non-compliant" or "not in good standing", without giving them an opportunity to defend themselves. The applicants say the co-op used these arbitrary labels to deny them a transfer from their current 2-bedroom unit to a townhouse unit. The applicants also say the co-op made a baseless allegation that they changed flooring in their unit without the required permission.

3. The applicants seek the following orders:

    a. The co-op enforce its policies and procedures for dispute resolution going forward and retroactively (to which the applicants have attributed a $500 value).

    b. The co-op remove all orders, bans, and labels currently held against the applicants (attributing a $1,000 value).

    c. The co-op hold a special general meeting (SGM) for all members to advise about the criteria for determining whether a member is "not in good standing" and the consequences of that status (attributing a $100 value).

    d. The co-op hold a meeting with the applicants to explain why they are ineligible for an internal transfer and any other restrictions imposed on them (attributing a $200 value), and to resolve the outstanding flooring dispute (attributing a $1,000 value).

4. The co-op says it has complied with its rules, policies, and the Occupancy Agreement (OA), so there is nothing to enforce. It also says the applicants' requested order for an SGM is contrary to the *Cooperative Association Act* (CAA), and the co-op is not obligated to hold a hearing for the applicants' alleged breaches of the co-op's rules and policies. The co-op also says the applicants failed to get the co-op's approval to change the flooring in their unit, as required by the rules and OA, and it is not obligated to retroactively approve the alteration. Finally, the co-op says the applicants have not provided any explanation or evidence for the dollar values they attributed to each of their requested remedies.

5. The co-op also argues that the applicants are claiming the co-op acted in an unfairly prejudicial manner towards the applicants when dealing with their internal transfer application. The co-op says such claims are outside the jurisdiction of the Civil Resolution Tribunal (CRT) under section 126(1)(c)(ii) of the *Civil Resolution Tribunal Act* (CRTA). The co-op says the CRT should refuse to resolve those claims, as they are in the jurisdiction of the BC Supreme Court (BCSC).

6. The applicants are each self-represented. The co-op is represented by a member of its board of directors.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. The CRT has jurisdiction over certain cooperative association claims under section 125 of 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.

8. 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.

9. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.

10. Under section 11(1)(c) of the CRTA, the CRT may refuse to resolve a claim if it would be impractical for the CRT to resolve.

11. 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.

12. 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.

Unfairly prejudicial conduct

13. As noted, the co-op argues the CRT does not have jurisdiction over the applicants' claims about the co-op's decision not to allow the applicants' internal transfer application. Specifically, the co-op says the applicants' requested remedies for orders enforcing the co-op's policy and procedure for dispute resolution, to remove all orders, bans, and labels against the applicants, and to hold a meeting with the applicants to explain why they are ineligible for an internal transfer and any other restrictions placed on them, are all remedies to address alleged unfairly prejudicial decisions in dealing with the applicants' internal transfer application.

14. Section 156 of the CAA allows a member to apply to the BCSC for an order on specific grounds, including that the co-op has acted in a manner unfairly prejudicial to the member. CRTA section 126(1)(c)(ii) specifically excludes from the CRT's jurisdiction those claims that may be dealt with by the BCSC under section 156 of the CAA.

15. However, section 127(2) of the CRTA allows the CRT to make an order in a co-op claim to prevent or remedy an unfairly prejudicial action.

16. In *Pang v. Little Mountain Residential Care & Housing Society*, 2021 BCCRT 947, a tribunal member considered parallel provisions in the *Societies Act* (SA) and the CRTA, which excludes SA Part 8 claims from the CRT's jurisdiction. The tribunal member found that section 131(2) of the CRTA provides the CRT with jurisdiction over allegedly unfairly prejudicial conduct in societies disputes, as a narrow exception to the general rule excluding SA Part 8 claims from the CRT's jurisdiction.

17. While *Pang* is not binding on me, I find the reasoning persuasive, and I apply it here. I find the CRT has jurisdiction over allegedly unfairly prejudicial actions in co-op disputes, as a narrow exception to the general rule that excludes other CAA section 156 type claims from the CRT's jurisdiction. As the tribunal member found in *Pang* at paragraph 29, I find this interpretation of CRTA section 127(2) is consistent with statutory interpretation principles, the legislature's intention, and the CRT's jurisdiction over significantly unfair conduct in strata property claims under CRTA section 123(2) (which was confirmed by the BCSC in *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164).

18. I agree with the tribunal member's reasoning in *Pang* and find that the similarity in wording between CRTA sections 123(2), 131(2), and 127(2) shows that the legislature intentionally granted the CRT parallel jurisdiction over allegations of unfairly prejudicial conduct in co-op claims. Therefore, I find the CRT has jurisdiction to decide claims about unfairly prejudicial actions or decisions by a co-op or its board of directors.

Flooring claim

19. In the applicants' submissions, they say they no longer seek a meeting with the co-op about their dispute over the flooring in their unit. I find the evidence shows the applicants have since replaced the flooring according to the co-op's request. Instead, the applicants request reimbursement of their $630.95 cost to change the flooring. I find this reimbursement claim is unrelated to the $1,000 monetary value the applicants initially attributed to their flooring claim, which was not explained in the Dispute Notice or the applicants' submissions.

20. The co-op submits that the parties reached a settlement on the flooring claim during the CRT's facilitation process, and the applicants should not be permitted to reopen this claim. CRT rule 1.11 says that parties cannot disclose settlement discussions unless all parties agree. The applicants expressly submit that they do not agree to include settlement discussions in these proceedings. I have therefore not considered the co-op's evidence about what the applicants may have agreed to during settlement discussions.

21. In any event, the applicants did not file an Amended Dispute Notice about the alternate requested remedy. I find it would be procedurally unfair to the co-op to consider this remedy because the co-op did not have an adequate opportunity to respond to it when providing its evidence. So, I decline to consider the applicants' requested remedy for reimbursement of their costs to change the flooring.

22. Further, as the applicants' flooring claim is framed in the Dispute Notice, I find the issues are now moot, given the applicants have already changed the flooring and the applicants say they no longer want a meeting with the co-op about it. I find it would be impractical for the CRT to resolve the applicants' flooring claim given its mootness. Therefore, I refuse to resolve the applicants' flooring claim under section 11(1)(c) of the CRTA.

ISSUES

23. The remaining issues in this dispute are:

    a. Did the co-op fail to follow its member complaints policies and procedures, and if so, what is the appropriate remedy?

    b. Was the co-op's decision to deny the applicants an internal transfer unfairly prejudicial, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

24. In a civil dispute like this one, the applicants bear the burden of proving their claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and submissions, but I only refer to what I find is necessary to provide context for my decision.

Did the co-op fail to follow its policies and procedures?

25. The applicants say they received the following letters from the co-op's board of directors containing unsubstantiated claims or complaints about their behaviour:

a. Letter dated September 18, 2018, alleging Ms. Harding had accessed a private garden area without permission and telling her not to enter it again in the future.

b. Letter dated December 3, 2018, requesting Ms. Harding's resignation as chair of the groundskeeping committee due to "numerous complaints" and resignations of committee members, together with complaints from the general membership about the state of the grounds and parking area fire safety issues.

c. Letter dated July 17, 2019, alleging Ms. Harding's visitor had accessed a private patio and garden area without permission and noting that members are responsible for their visitors' behaviour.

d. Letter dated January 18, 2020, about an ongoing noise complaint involving Ms. Harding and her son in the hallway, and requesting the noisy behaviour cease.

26. The applicants say the co-op failed to follow the Member Relations Committee Policy, when it received the alleged complaints about them, so they did not have an adequate opportunity to defend themselves.

27. The Member Relations Committee Policy (MRCP) is included in the co-op's Internal Policies and Procedures (policies). This policy says any member having a dispute with another co-op member will first try to resolve the matter on their own, and if that does not work, may submit the dispute to the board of directors in writing. All disputes submitted to the board of directors are to be referred to the member relations committee. The member relations committee is then tasked with reviewing the dispute and trying to promptly resolve the dispute as it sees fit. There is no specific process set out for how the committee should attempt to resolve disputes.

28. The co-op says the complaints procedure in its policies is optional, and it is only used if a member wants to initiate dispute resolution with another co-op member, which is not the case here. The co-op also says the applicants never responded to any of the letters and did not request to initiate any dispute resolution procedures themselves, either under the policies or under co-op Rule 25.

29. Rule 25 also deals with member disputes. Under Rule 25.1, a member may submit a dispute in writing to the co-op for resolution, and under Rule 25.2, the co-op must try to promptly resolve the dispute by asking the parties to participate in meetings, conflict resolution or mediation or an arbitration.

30. Neither the MRCP, nor co-op Rule 25 defines "dispute". However, I agree with the co-op's submission that the MRCP and Rule 25 are meant to provide voluntary processes for members who wish to engage in a dispute resolution process with other members. I find they do not necessarily apply in every circumstance where a member complains about another member's behaviour or alleges another member has breached a co-op rule, the OA, or policies.

31. Here, except for the December 3, 2018 letter, I find the allegations in the letters generally involved complaints that the applicants breached the good neighbour provision, which is set out in section 7.02 of the OA.

32. Section 7.02 of the OA says, in part, that members and their visitors shall not engage in conduct that interferes with or disturbs other members' quiet or peaceful enjoyment of the development, or unreasonably annoys or interferes with the other members of the co-op by sound, conduct or other activity, or obstructs or interferes with the rights of other persons.

33. As for the December 3, 2018 letter requesting Ms. Harding's committee resignation, I find it is likely Ms. Harding was aware of the nature of the alleged complaints from her committee members. In any event, I note that co-op Rule 20.3 says that committees report to and serve at the pleasure of the board of directors. I find this means the directors can remove committee members at their pleasure, without providing reasons for doing so.

34. I also agree with the co-op that if the applicants disagreed with any of the allegations made against them, they had the opportunity to initiate a dispute resolution process, either through the MRCP or through co-op Rule 25. I find these processes likely would have provided the applicants with the opportunity to defend themselves against

allegedly false claims. However, there is no evidence before me that the applicants made any attempt to respond to the allegations in the directors' letters.

35. Further, I find there is nothing in the co-op's rules, OA, or policies that prohibits the board of directors from issuing notices to members that they are alleged to have breached the rules, OA, or policies, without the allegation having first gone through one of the complaints procedures set out above.

36. The co-op also argues that section 35(3)(b)(ii) of the CAA and co-op Rule 5 explicitly permitted the directors to send the above letters to the applicants.

37. Section 35(3)(b)(ii) of the CAA permits housing co-op directors to terminate a membership for a breach of a material term of the OA, if the member has not rectified the breach after being given written notice of the breach and a reasonable time in which to correct it. Co-op Rule 5.1 says the directors can also terminate a membership if the member has engaged in conduct detrimental to the co-op.

38. Co-op Rule 5.2 defines conduct detrimental to the co-op as including failure to comply with the rules, the OA, or any policy. Section 15.02 of the OA defines its material conditions as including sections 3 to 14 and section 22 of the OA.

39. Further, Rule 25.3 specifically provides that nothing within Rule 25 prevents the co-op from exercising its rights or remedies under Rule 5. Therefore, I find the co-op and its board of directors were not obligated to engage in the dispute resolution process set out in Rule 25 before providing written notice to the applicants about reported breaches of material conditions of the OA, which includes the good neighbour provision in section 7.02 of the OA.

40. For all the reasons above, I find the applicants have not proven the co-op failed to follow its complaints policies and procedures.

41. I note that even if I had found the co-op failed to follow its policies, I would not have granted the applicants' requested order for the co-op to follow its dispute resolution policies "going forward and retroactively". The co-op and its board of directors are always required to follow the co-op's rules and policies. I find making an order for the

co-op to do what it is already required to do is redundant and likely unenforceable. For that reason, I would have declined to make the requested order.

Unfairly prejudicial

42. The applicants say that the co-op relied on the false accusations made against them, as set out in the above letters, to unfairly label them as "non-compliant" and "not in good standing". They say the co-op used these labels to improperly deny them an internal transfer to a larger townhouse unit in the co-op. I agree with the co-op that this allegation amounts to a claim that the co-op treated the applicants in an unfairly prejudicial manner.

43. It is undisputed that the applicants were on the internal waitlist for a transfer to a townhouse unit and that 2 townhouses became available in December 2019. It is also undisputed that the co-op decided to deny the applicants' transfer.

44. In a January 4, 2020 email, the co-op advised the applicants that the board of directors had rejected their internal move application because they were "not in good standing with the co-op as a result of numerous and repeated issues of non-compliance with co-op policies, rules and the occupancy agreement". The email also stated that the decision may be revisited so long as the applicants are in compliance for 18 months.

45. The co-op says that internal transfers are discretionary decisions, as set out in the Membership Committee Policy's "Move in/Move out Policy" (move policy). Paragraph 2 of the move policy says co-op members must apply for an internal transfer in writing, and the internal transfer list will be processed by date of application, which will take precedence over new applicants. Paragraph 3 of the move policy says if a member is selected from the internal waiting list, they must be approved by the finance committee and the board of directors.

46. The co-op says that in addition to the above letters, the applicants had also breached the co-op's pet policy (which requires members to get approval before getting a pet) and section 9 of the OA (which requires members to get written permission before

altering a unit's flooring). So, the co-op says the board of directors appropriately exercised its discretion to deny the applicants' internal transfer request.

47. As set out above, the term "unfairly prejudicial" as it is used in the CAA, is analogous to the use of the same term in the SA, and the term "significant unfairness" as used in the *Strata Property Act* (SPA). So, I find the test to prove the co-op acted in an unfairly prejudicial manner, is the same as the test for unfairly prejudicial conduct under the SA and for significant unfairness under the SPA.

48. To be successful in this claim, I find the applicants must establish that the co-op failed to meet their reasonable expectations and that, on an objective basis, that failure involved prejudicial consequences (see *Dalpadado v. North Bend Land Society*, 2018 BCSC 835 and *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44).

49. The focus of the test for whether conduct is unfairly prejudicial is on the effect of the allegedly unfairly prejudicial conduct on the co-op member, rather than on the intention of the co-op in its conduct (see *Surrey Knights Junior Hockey v. The Pacific Junior Hockey League,* 2018 BCSC 1748, citing *Nystad v. Harcrest Apt. Ltd.,* 1986 CanLII 999 (BCSC)). As noted in *Dalpadado*, there must also be an element of inequity or unfairness to the conduct's effect.

50. The applicants say they expected the co-op would approve their application to transfer into a townhouse when the next townhouse became available. I find this expectation was reasonable, based in part on the applicants' undisputed evidence that the co-op previously told them they were at the top of the list for a transfer. I also rely on the fact that none of the letters to the applicants in evidence (including the co-op's communications about the pet policy and the flooring dispute) state that the allegations against them had resulted in the applicants being considered "not in good standing" with the co-op. Further, the letters did not specifically suggest that any of the alleged violations of co-op rules, the OA, or the policies could impact whether their internal transfer would be approved.

51. Even though the co-op may have discretion in approving transfers, I find the co-op violated the applicants' reasonably held expectation because it denied their transfer

without any prior notice that their application might be in jeopardy. The effect of this conduct was that the applicants were unable to move into a larger townhouse unit when it was available, and they remained ineligible for a transfer for at least a further 18 months. There is no evidence before me about how often townhouse units become available in the co-op, but I find it is likely they are not routinely available, given the applicants' undisputed evidence that they had been on the waitlist for some time.

52. On balance, I find the co-op's conduct was unfairly prejudicial to the applicants.

Remedy

53. As noted, the applicants request several orders relating to the "non-compliant" and "not in good standing" labels they say the co-op improperly relied on to deny their internal transfer. One of the requested orders is that the labels be removed. While the co-op used these terms in the email denying the applicants' request for a transfer, I do not find they represent a formal "label" or status that I can order be removed.

54. I find the reference to non-compliance simply reflected the directors' view that the applicants had breached the co-op's rules, OA, and policies, as stated in their various letters. I note that what constitutes "good standing" is not defined in the co-op's rules, OA, or policies. However, in these circumstances, I find the directors likely referred to the applicants as "not in good standing" due to the cumulative effect of the applicants' various alleged breaches.

55. While the applicants generally say the allegations against them are false, I find there is insufficient evidence before me to make any findings about whether the allegations are true or false. So, I find I cannot conclude that the co-op or its directors improperly characterized the applicants as "non-compliant" or "not in good standing". I find this reasoning also applies to the applicants' request to remove other "bans" and "orders" the co-op imposed as a result of the allegations.

56. The applicants also seek an order that the co-op hold an SGM to explicitly set out the criteria used to determine if members are "not in good standing", the consequences of such a determination, and the process to have such labels removed. The co-op

argues that the CAA provides for how members can requisition an SGM, but the applicants have not taken advantage of that process. The co-op submits that the applicants have not shown their request meets the threshold to requisition an SGM.

57. Section 150(2) of the CAA says the board of directors must call an SGM when it receives a written requisition signed by the appropriate number of members, depending on the co-op's size. Section 151(2)(b) says the directors must refuse to call the requisitioned SGM if it meets specified grounds. Section 152(2) provides for an appeal process if the directors refuse to call a requisitioned SGM under section 151(2). These CAA provisions are incorporated into co-op Rule 14.5.

58. The applicants argue that an SGM is appropriate because the members should be made aware of and be given the opportunity to discuss the board of directors' discretionary powers when it comes to finding members are not in good standing. I find it is premature to make an order that the co-op hold an SGM. I find the CAA provides a process for the applicants to requisition an SGM, should enough members agree and sign the applicants' requisition. So, I decline to order the requested SGM.

59. The applicants also seek an order that the co-op hold a meeting with the applicants, the board of directors, the Policy and Membership Committees, and a Member Relations representative, to further explain why the applicants are ineligible for a transfer and to provide them with an opportunity to clear the record of any unfair labels or restrictions against them.

60. The co-op says that such a meeting is not available under the CAA or the co-op's rules, OA, or policies, unless the co-op is initiating membership termination proceedings under co-op Rule 5, in accordance with CAA section 35, which is not the case here. The co-op also says it provided the applicants with sufficient reasons for denying their internal transfer, and the appropriate course for the applicants to discuss or resolve the allegations made against them was to pursue the dispute resolution processes in the MRCP and Rule 25.

61. I find that holding the requested meeting is a process not contemplated by the CAA or the co-op's rules, policies, or OA, and it is unlikely to be of any benefit. I agree that

the co-op provided the applicants with a sufficient explanation for denying their transfer. While the applicants may disagree with the allegations made against them, they did not make any effort to dispute them or clear up any misunderstandings at the time. I find the board of directors was entitled to take the applicants' silence as acceptance of the alleged breaches. Should the applicants wish to "clear the record", the applicants still may initiate the MRCP or Rule 25 dispute resolution processes. So, I decline to order the requested meeting.

62. Notably the applicants did not request an order that they be put at the top of the internal waiting list or be offered the next available townhouse, so I find it would be unfair to order the co-op to do so. In any event, I note that 18 months has now passed since the co-op's decision to deny the applicants' transfer, and the co-op submits that the applicants are again eligible for a transfer. So, I decline to make this order.

63. Finally, I turn to the applicants' claimed monetary damages. I find the applicants did not provide any explanation for the amounts they attributed to each of their claims in the Dispute Notice or their initial submissions.

64. In their reply submissions, the applicants submit they claim $1,500 for hotel expenses incurred because they did not have the expected townhouse to accommodate Mr. Guzman Ontiveros' mother when she came to visit. However, they did not provide any evidence supporting these expenses, and because the applicants only provided notice of this claim in their reply submissions, the co-op had no opportunity to respond to it. Therefore, I find it would be procedurally unfair to consider it, but in any event, I find it is unproven.

65. I find the applicants' other monetary claims also unproven, and I dismiss them.

66. So, while I find the co-op acted in an unfairly prejudicial manner in denying the applicants' internal transfer application, I find no order is required to remedy the conduct.

CRT FEES AND EXPENSES

67. 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. I find the applicants were partially successful. I therefore order the co-op to reimburse the applicants $112.50, which is half their CRT fees. The applicants did not claim any dispute-related expenses.

ORDERS

68. I order the co-op to pay the applicants $112.50 as reimbursement for CRT fees within 30 days of the date of this decision.

69. The applicants are also entitled to post-judgment interest under the *Court Order Interest Act*.

70. I refuse to resolve the applicants' flooring claim under section 11(1)(c)(ii) of the CRTA.

71. I dismiss the remainder of the applicants' claims.

72. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under $35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Kristin Gardner, Tribunal Member