



Civil Resolution Tribunal

Date Issued: November 12, 2021

File: CS-2020-008652

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Deyneko v. Avalon Housing Co-operative*, 2021 BCCRT 1196

B E T W E E N :

Alexander Deyneko

APPLICANT

A N D :

Avalon Housing Co-operative

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about requested video surveillance recordings in a housing cooperative.
2. The applicant, Alexander Deyneko, is a member and occupant of the respondent housing cooperative, Avalon Housing Co-operative (co-op).

3. On October 9, 2020, Mr. Deyneko emailed the co-op stating that on the evening of October 8, an unknown person had tried to look through his windows with a flashlight and, after being discovered, left in the direction of the co-op's storage sheds. Mr. Deyneko asked the co-op if there was video surveillance footage from that time period. He says the co-op never responded.
4. In his dispute application, Mr. Deyneko requests an order that the co-op answer his October 9, 2020 request, and explain why it did not respond previously.
5. The co-op admits it received Mr. Deyneko's request. The co-op says its property manager replied on October 20, 2020, upon her return from vacation. The co-op says that after Mr. Deyneko filed this dispute, its board members later reviewed the video recordings, and confirmed there was no footage of Mr. Deyneko's unit from October 8, 2020. I infer the co-op asks that the dispute be dismissed.
6. Mr. Deyneko is self-represented in this dispute. The co-op is represented by a board member.
7. For the reasons set out below, I dismiss this dispute.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.

10. 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.
11. 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.

Preliminary Issue – Additional Remedies

12. In his submissions to the CRT, Mr. Deyneko ask for the following remedies that were not included in the Dispute Notice:
 - Orders for the co-op to provide CCTV camera access log lists for the past year with directors' signatures, access logins for the video recorder for the past year, and copies of all emails between the co-op board and its property manager related to the "accident".
 - Order for an independent audit of the co-op's camera policy, at the co-op's expense.
 - Order that the co-op update its camera access policy and procedures.
 - Order that the co-op change its communication policy.
 - Monetary compensation for loss of sense of secure accommodation.
13. I find that it would be procedurally unfair to decide these claims for additional remedies. The CRTA and CRT rules permit an applicant to request to amend the Dispute Notice to add new claims or remedies. Although this process was available to Mr. Deyneko, the Dispute Notice was not amended. I find the purpose of a Dispute Notice is to define the issues and provide notice to the respondents of the claims against them and the remedies sought. CRT rule 1.19 says that the Dispute Notice will not be amended after the dispute has entered the CRT decision process except

where exceptional circumstances apply. I find no exceptional circumstances here that would allow adding new remedies at this late stage in the CRT proceeding, after the facilitation process has ended. Therefore, I have not considered Mr. Deyneko's additional remedy requests in this decision.

ISSUE

14. Should the CRT order the co-op to respond to Mr. Deyneko's request about video surveillance, or provide an explanation for not responding?

EVIDENCE AND REASONS

15. I have read all the evidence and submissions provided but refer only to that which I find relevant to provide context for my decision. In a civil proceeding like this one, Mr. Deyneko, as applicant, must prove his claims on a balance of probabilities.
16. The co-op admits receiving Mr. Deyneko's October 9, 2020 email. The copy of the email provided in evidence shows that Mr. Deyneko sent it to both the co-op's email address, and to the co-op's property manager, GC.
17. The co-op submits that its failure to respond immediately was a "simple oversight", with no intention or malice toward Mr. Deyneko.
18. The evidence before me confirms that GC replied to Mr. Deyneko's email on October 20, 2020. GC apologized for the delay in replying, and said she was "just back from vacation". GC also wrote "The Board can help on this as they have all recordings."
19. There is no evidence that Mr. Deyneko responded to GC's email or followed up with the property manager or co-op board before filing this CRT dispute, and Mr. Deyneko does not assert otherwise. Rather, Mr. Deyneko submits that the property management company does not have access to video recording devices and is not mentioned in any way in the co-op video surveillance policy, so the management company should not have been involved, as the board members could have accessed

the video footage. Mr. Deyneko's position is that the board should have responded to him directly, and that GC's email does not count as a response.

20. I find that position is unreasonable, since Mr. Deyneko sent his request email to both GC and the co-op's email address. Since Mr. Deyneko submits in this dispute that the board had access to the surveillance footage, I find it would have been reasonable to follow GC's October 20, 2020 suggestion and inquire with the board about obtaining the surveillance. If he was unsure about how to do this, he could have asked GC for further directions.
21. In a letter dated December 21, 2020, GC wrote that the board members reviewed the surveillance footage and confirmed that any video from October 8, 2020 had been overwritten. The email correspondence in evidence from the co-op's security firm states that the video recording hardware has enough memory to store security footage for about 3 weeks. So, if Mr. Deyneko had acted on GC's advice shortly after receiving her October 20, 2020 email, he could have obtained the footage he sought, if it existed. Instead, Mr. Deyneko filed this CRT dispute on November 8, 2020, without following up with GC, or contacting any board members.
22. In any event, I find that Mr. Deyneko's claims are moot. Courts have explained mootness as follows:

... if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot...

See *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), at para. 353.

23. In *Borowski*, the court explained that determining mootness involves a 2-step analysis. First, whether the live issue has disappeared, and any issues are theoretical or academic. Second, if there is no live issue, should the court or tribunal exercise its discretion to hear the case anyway.

24. Following *Borowski*, which is a binding precedent, I find that Mr. Deyneko's requests that the co-op respond to his October 8, 2020 request, and explain its delay are moot, since the co-op has now provided the response and explanation. Since the Dispute Notice sets out no other claim, I find there is nothing further to decide in this dispute.

25. For these reasons, I dismiss Mr. Deyneko's claims, and this dispute.

CRT FEES AND EXPENSES

26. Under CRTA section 49 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 see no reason in this case not to follow that general rule.

27. The co-op is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.

ORDER

28. I dismiss Mr. Deyneko's claims and this dispute.

Kate Campbell, Vice Chair