



Civil Resolution Tribunal

Date Issued: December 6, 2021

File: CS-2020-008499

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Canuel v. Rainbow Community Estates Association*, 2021 BCCRT 1282

B E T W E E N :

RUSSELL CANUEL

APPLICANT

A N D :

RAINBOW COMMUNITY ESTATES ASSOCIATION, OSCAR
SCHLAMB, CHUCK BROWN, BEVERLY CARMICHAEL, SUSAN
THOMPSON, WENDY LAU, TRACEY SHILE, and ED FRIESEN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This is a summary decision dismissing this claim as it is out of time under the *Limitation Act* (LA).

2. The applicant, Russel Canuel, is a member of the respondent society, Rainbow Community Estates Association (RCEA). The respondents Oscar Schlamb, Chuck Brown, Beverly Carmichael, Susan Thompson, Wendy Lau, Tracey Schile, and Ed Friesen appear to be former or current RCEA directors. Mr. Canuel owns a mobile home in a mobile home park managed by the RCEA.
3. Mr. Canuel says the respondents wrongly attempted to evict him from his mobile home through the Residential Tenancy Branch (RTB). He claims reimbursement of \$4,000 in legal fees he says he paid to defend the eviction attempt as well as his share of RCEA membership fees that funded the RCEA's legal costs for the eviction attempt. Mr. Canuel also claims a further unexplained \$4,000, plus the following orders:
 - a. the directors stop overstepping their powers regarding physical disability and harassment,
 - b. the respondents provide a complete delivery record of the monthly financials,
 - c. the respondents remove a director, and
 - d. the respondents enforce the RCEA's bylaws impartially.
4. The respondents says Mr. Canuel's claim was filed out of time and so must be dismissed. They also say there is no legal basis for Mr. Canuel to recover his legal costs and that the Civil Resolution Tribunal (CRT) has no jurisdiction to resolve Mr. Canuel's dispute against the respondent directors, or to grant many of Mr. Canuel's requested remedies.
5. The respondents are represented by an RCEA director. Mr. Canuel represents himself.

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). 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.

7. Under CRTA section 61, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

ISSUES

8. The issues in this dispute are whether the CRT should:
 - a. Dismiss the dispute because it is out of time under the (LA), or
 - b. Refuse to resolve the dispute because it is outside the CRT's jurisdiction.

REASONS AND ANALYSIS

9. In making this summary decision, I have reviewed the parties' Dispute Notice, Dispute Response, and submissions on the preliminary jurisdiction issues.
10. Section 13 of the *Civil Resolution Tribunal Act (CRTA)* confirms that the LA applies to CRT claims. Section 6 of the LA says that the basic limitation period to file a claim is 2 years after the claim is "discovered". At the end of the 2-year limitation period, the right to bring a claim disappears.
11. Section 8 of the LA says a claim is "discovered" on the first day the person knew, or reasonably ought to have known, that the loss or damage occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceedings would be an appropriate way to remedy the damage.

12. CRTA section 13.1 says the limitation period stops running after a claim is filed with the CRT. Mr. Canuel filed his CRT dispute application on July 26, 2021. For Mr. Canuel to have filed his dispute application in time he must have discovered his claim about legal costs and other damages arising from the eviction attempt no earlier than July 26, 2019. For the below reasons, I find this is not the case.
13. The parties agree that the RCEA gave Mr. Canuel an eviction notice in either December 2018 or January 2019. They also agree that the eviction attempt became the subject of RTB proceedings, where I find that both parties had legal representation. RCEA says the RTB process ended in February 2019. In a February 22, 2019 letter to the RTB, I find that both lawyers agreed that the RTB did not have authority to hear the eviction matter and cancelled an upcoming hearing.
14. Mr. Canuel says the RTB matter did not end until January 4, 2021, with a “stay of proceedings”. The RCEA says that is when the criminal proceedings against Mr. Canuel ended. I find this most likely, given that “stay of proceedings” is a criminal law phrase rather than one used in the RTB and given the February 2019 withdrawal of the RTB matter. Further, Mr. Canuel says in his dispute application that he became aware of the claim in January 2019. So, I find the RTB matter ended in February 2019 and not January 2021.
15. On balance, I find Mr. Canuel knew, or ought to have known, that he paid legal fees for representation at the RTB by February 2019 at the latest. The same reasoning applies to the RCEA’s alleged use of Mr. Canuel’s membership fees to pay for RCEA’s lawyer for the RTB process. It is clear that the RCEA started the eviction process and, to the extent Mr. Canuel has a claim against any of the RCEA directors, I find he would have known who those directors were in early 2019, as a member of the RCEA. Generally, I find Mr. Canuel “discovered” his claim months before July 26, 2019.
16. In his submissions Mr. Canuel says the respondents should have waited for the outcome of the court proceedings before deciding whether to evict him or not. To the extent he argues he only discovered the eviction attempt was wrong when the

criminal proceedings ended without a conviction, I find that argument cannot succeed. This is because the eviction attempt failed in the RTB due to the RTB's lack of jurisdiction over the mobile home park, not because of the reasons behind the eviction attempt. Further, even if the RCEA was obliged to wait for the outcome of the criminal proceedings before attempting to evict Mr. Canuel, I find Mr. Canuel could have discovered that at the time of the eviction attempt.

17. On balance, I find Mr. Canuel discovered his claim about legal fees arising from the RTB process and eviction attempt well before July 26, 2019. So, I find the 2-year limitation period had expired before Mr. Canuel filed his dispute application with the CRT on July 26, 2021. I dismiss his \$4,000 claim for legal fee reimbursement as it is out of time.
18. As noted above, Mr. Canuel also claims a further \$4,000 in damages plus various orders against the RCEA and RCEA directors, as remedies for his wrongful eviction attempt claim. In other words, Mr. Canuel did not claim any alleged wrongdoing by the RCEA or the respondent directors, other than wrongly attempting to evict him using the RTB process. As I found Mr. Canuel's wrongful eviction attempt claim is out of time, I dismiss his requests that the directors be ordered not to overstep their powers, that the RCEA be ordered to remove a director, provide a "complete delivery record" of documents and to enforce its bylaws impartially. I note the last 2 requested remedies do not appear related to Mr. Canuel's attempted eviction claim in any event.
19. I find Mr. Canuel's claim cannot succeed because the limitation period expired before he filed his application for dispute resolution on July 26, 2021. As there are no other substantive claims to consider, I dismiss this dispute.
20. Given my findings above, I need not consider whether Mr. Canuel's claims, or any of his requested resolutions, are outside the CRT's jurisdiction.

CRT FEES and EXPENSES

21. 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 Mr. Canuel was unsuccessful in his appeal, he is not entitled to reimbursement of his CRT fees. The successful respondents paid no CRT fees and claimed no dispute-related expenses.

ORDER

22. I dismiss Mr. Canuel's claim and this dispute.

Sherelle Goodwin, Tribunal Member