Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *McNeil v. Avondale Housing Co-operative*, 2022 BCCRT 62

B E T W E E N :

RAMONA MCNEIL, CHERYL DE GRAAF, ARLENE CAREY, JOHN KNOWLES, and LOTTIE CLERKE

APPLICANTS

A N D :

AVONDALE HOUSING CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. This dispute is about maintenance and repair costs and governance in a housing co-operative.

2. The applicants Ramona McNeil, Cheryl De Graaf, Arlene Carey, John Knowles and Lottie Clerke are all members of the respondent co-operative association, Avondale

Housing Co-operative (co-op). The applicants say the language in the co-op's registered rules and member leases is inconsistent and so the co-op incorrectly requires members to pay their own repair and maintenance costs when it should be the co-op's responsibility. The applicants claim reimbursement of $2,476.67 in various repair costs they paid. They also seek orders that the co-op apply its rules and leases according to the *Co-Operative Associations Act* (CAA) and the co-op's Memorandum of Association and to update the co-op's rules and leases with consistent language.

3. The applicants also say the co-op's property manager incorrectly manages the co-op as a strata and seek an order that the co-op terminate its property management company. The applicants also seek an order that the co-op "apply the Share Purchase Values as registered".

4. The co-op says the applicants were required to pay for the identified repairs and improvements under the terms of their signed leases and so they are not entitled to reimbursement. The co-op says it has complied with its rules and leases at all times and has relied on legal advice received. It denies any wrongdoing by the manager and says it was entitled to increase the share purchase values per unit for new members. The co-op asks that this dispute be dismissed.

5. The applicants are represented by Ms. McNeil. The co-op is represented by a director.

6. As explained below, I find the co-op must reimburse the applicants repair costs for clogged pipes and patio repairs, but not for the costs of patio improvements. I dismiss the remainder of the applicants' claims.

JURISDICTION AND PROCEDURE

7. 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.

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. 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.

10. 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.

PRELIMINARY ISSUES

Late Evidence

11. The co-op submitted evidence after the deadline including signature pages of the parties' lease agreements as well as meeting minutes and legal correspondence about the co-op's rules. As the applicants had the opportunity to review and respond to that evidence in their submissions, I find they were not prejudiced by the lateness. Further, I find that evidence relevant to this dispute, so I accept it, keeping in mind the CRT's mandate of flexibility.

12. The co-op submitted further late evidence in the way of copies of the applicants' arguments with notes made on them and documents embedded in them. As the applicants say they could not open these documents, I find they were not provided

with notice of the co-op's late evidence and further argument. So, I find it would be procedurally unfair to consider those documents in this dispute and I have not done so. In any event, I find the co-op's arguments contained in those documents mirror the submissions it made and which the applicants responded to, so I find the co-op has had the opportunity to have its arguments heard.

Limitation Act

13. The *Limitation Act* (LA) applies to the CRT. Section 6 of the LA sets out a basic 2-year limitation period to file a claim after the claim is "discovered". After that date, the claimant's right to bring a claim disappears, subject to a few specific exceptions which I find do not apply here. Applying section 8 of the LA to this dispute, the applicants' claims were "discovered" when they first knew, or should have known, that the loss or damage occurred, that it was partly or wholly caused by the co-op, and that a court or tribunal proceeding would be an appropriate way to remedy the damage.

14. Although the co-op argued that some, or all, of the applicants' claims are out of time under the LA, the applicants provided no response despite the opportunity to do so.

15. The applicants claim $201 for alleged improvement costs the co-op charged to Ms. Carey for toilet and bathroom floor replacement in 2018. I find Ms. Carey discovered her claim by February 2018 at the latest as that is when she wrote to the co-op to dispute the charges. The applicants filed their dispute resolution application more than 2 years later, on March 19, 2021. So, I find their $201 claim for repair costs is out of time and I dismiss it.

16. The applicants ask for an order that the co-op "apply the share purchase values as registered". They say the co-op's decision to increase the value of its units, which increased the number of shares and overall cost for new members to join the co-op, is contrary to the co-op's Memorandum of Association, registered rules, and the CAA. Based on May 9, 2017 directors' meeting minutes, I find the directors likely voted to increase the units' share values at their January 2017 meeting. The co-op says it distributes director meeting minutes to all members, which the applicants do not dispute. Further, it is undisputed that Ms. McNeil is a former co-op director. So, I find

the applicants likely discovered their claim about increased "share values" around the time of the directors' January 2017, which is significantly more than 2 years before the applicants applied for dispute resolution. So, I find their claim about increased share values is out of time and I dismiss it.

ISSUES

17. The remaining issues in this dispute are:

    a. Whether the co-op is responsible for the applicants' various repair costs and, if so, what is the appropriate remedy, and

    b. Whether I should order the co-op to dismiss its property manager.

EVIDENCE AND ANALYSIS

18. In civil claims like this one the applicants have the burden of proving their claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all submissions and weighed all evidence provided except that noted above. In my decision I refer only to that evidence necessary to explain and give context to my reasons.

Background

19. The co-op is a multi-unit housing co-operative incorporated in 1987. According to its filed Memorandum of Association, its purpose is to promote continuing housing associates and improved housing conditions and to provide housing for co-op members who have subscribed for shares equivalent to the capital value of the unit they intend to occupy. Contrary to the applicants' arguments, the co-op's stated purpose is not to provide housing to low-income seniors.

20. The co-op filed an amended set of rules with the BC Registrar of Companies on June 2, 2004 (Rules), which I find apply in this dispute. Rule 17 allows the co-op to establish policies about the co-op's maintenance and operation, and about members' conduct.

It is undisputed that the co-op members approved a set of co-op policies at a 2011 general meeting (Policies), which I find also apply to this dispute.

21. The applicants submitted a copy of a lease agreement between the co-op and Ms. McNeil. The strata says the lease agreement is the same for each member and submitted copies of the first and last pages of each of those additional leases. As the applicants do not dispute this, I find that each applicant is bound by the terms of their identical lease agreements (Lease), as is the co-op.

Repair Costs – Unit 67 Clogged Pipe

22. The applicants say that Ms. Clerke in unit 67 contacted a director on February 22, 2021 about her clogged kitchen sink drain and the director told her to contact a plumber. On February 22, 2021 a plumbing company cleared the kitchen sink drain in unit 67. Ms. Clerke asked the co-op to reimburse her $236.25 for the plumbing costs. At their March 9, 2021 meeting, the directors acknowledged Ms. Clerke's request and said they would respond. None of this is disputed.

23. Although the directors' response to Ms. Clerke is not before me in evidence, the co-op says in its submissions that it will not reimburse the plumbing costs because they are Ms. Clerke's responsibility under the Lease. It says that the co-op's maintenance team will attempt interior repairs, but if they cannot fix the issue then the member must pay for an outside contractor to do so. As explained below, I find this approach is inconsistent with the parties' Lease.

24. As argued by the co-op, I find section 3(g) of the Lease requires members to repair and maintain the interior of their units, at their own expense. However, section 9(d) of the Lease requires the co-op to repair and maintain pipes, foundations, walls, supports, roof, gutters, beams, pipes, electrical conduits and other equipment required for the proper operation of the development. I find section 9(d) qualifies and creates exceptions to the member's general responsibility over their unit's interior set out in section 3(g). So, contrary to the co-op's argument, I find the co-op is responsible to maintain and repair pipes, under the Lease terms.

25. I find the co-op must reimburse Ms. Clerke $236.25 in repair costs and order it to do so.

Repair Costs – Unit 17 Clogged Pipe

26. In November 2020 a co-op maintenance member attempted to unclog the kitchen sink in unit 17, where Mr. Knowles lives with GK. On November 7, 2020 another plumbing company snaked the pipe and cleared the clog for the cost of $342.30. Mr. Knowles and GK asked the co-op to reimburse the costs, which it declined to do at its January 11, 2021 directors' meeting. The meeting minutes include a reminder for members with garburators to be extra cautious and to dispose of food scraps in their organic bins. None of this is disputed.

27. As explained above, I find the co-op is responsible to maintain and repair the co-op's pipes, which includes unclogging kitchen sink drains.

28. The co-op argues that the clog was caused by unit 17's garburator, so the co-op is not responsible for fixing the resulting clog. While the plumbing Rooter invoice has a handwritten note "garburators can contribute to plugged hoses", I find that is not sufficient evidence that unit 17's clogged pipe was caused by the garburator. Even if it were a clear statement about the clog's cause, the invoice does not identify the writer or explain how they are qualified to provide such an opinion, so I find it does not meet the CRT's rules for expert evidence. As the co-op has provided no other supporting evidence, I do not find Mr. Knowles' garburator caused the clogged pipe. So, there is no basis for the co-op not to pay the repair costs.

29. However, I find Mr. Knowles has failed to prove his damages.

30. Although the invoice shows a charge of $342.30, it names GK as the client, not Mr. Knowles. Further, the evidence shows that GK, and not Mr. Knowles, signed the credit card slip to pay for the charge. GK is not a party to this dispute. There is no evidence before me that the credit card used for payment is a joint card between GK and Mr. Knowles, or that Mr. Knowles is otherwise responsible for the paid $342.30.

So, I find Mr. Knowles has not proven he paid the $342.30 repair cost and I dismiss this claim for unproven damages.

Repair Costs – Unit 12 Patio

31. According to their lease, Ms. De Graaf and RD have occupied unit 12 since 2015. It is undisputed that the former occupant installed concrete pavers to create a back patio, and that this patio remained when Ms. De Graaf and RD took possession of the unit.

32. The applicants' 2020 photos show various cracks in the pavers and a sunken paver next to what is undisputedly access to a sump pump. As a result, the pavers are obviously uneven, which the applicants say caused Ms. De Graaf and other family members to trip on the patio. Based on the photos, I find it obvious that the concrete patio needed repair.

33. Correspondence between the De Graafs and the co-op show that the De Graafs asked the co-op to fix the pavers in early June 2020, that the co-op inspected the patio, and it received a repair quote on July 23, 2020 from a concrete company.

34. The applicants say the co-op told "the member" it would not repair the patio because the De Graafs accepted the unit "as is" with the patio addition. This is inconsistent with a July 23, 2020 email from director LJ documenting a conversation he had with RD. LJ wrote that RD had asked whether the co-op had received the quote, how much the quote was, and whether the co-op would pay for it. LJ wrote that he told RD that the co-op would decide at the next directors' meeting in August. Contrary to the applicants' argument, I find LJ's email was not written in 2021 from another person's email, but rather that person forwarded LJ's original July 23, 2020 email. In the absence of any evidence from the applicants about the conversation, I accept LJ's written account and find the co-op did not initially refuse to repair unit 12's patio, but rather had not yet made a decision about responsibility for the repair costs.

35. It is undisputed that Ms. De Graaf hired a different paving company to complete the patio repairs, and do other work, rather than wait for the co-op's decision. Based on

the paving company's July 27, 2020 invoice, I find the company sealed the cracks in the concrete pavers, built up a 12 square foot area with rubber, prepared the surface then applied a graphite hybrid compound to the entire patio area.

36. It is undisputed that Ms. De Graaf asked the co-op to reimburse her half the $3,396.75 cost after the work was completed, but the co-op declined.

37. To the extent the co-op argues it need not repair and maintain the patio because it was an improvement added to the unit by another member, I disagree.

38. The Rules do not address improvements, maintenance, or repairs, but the Policies do. Policy 1.1 says the co-op is not responsible for any alterations or improvements. Policy 1.5 says a permanently attached improvement becomes part of the unit and the member is responsible for the improvement's maintenance and repair. Policy 1.6 says that if an incoming member does not accept the additions or alterations as is, then the incoming member can wait for the next available unit. There is no requirement for an outgoing member to remove any additions or improvements, unless they were not authorized by the co-op.

39. I do not interpret this combination of policies to mean that the incoming member becomes responsible for any improvements or additions a former occupant may have added to the unit, because that is not specifically stated. I find that cannot have been the intention of the 2011 Policies, nor would it be practical for a development that was created in 1987 and likely has had several additions and improvements over the years. This is particularly so, given the Lease and Policies both say that any authorized additions or improvements to a unit remain when the member leaves.

40. Further, I find such an interpretation is inconsistent with the terms of the Lease which require the co-op to maintain and repair the development, the surrounding grounds, roads, sidewalks and common grounds (section 9(c)), and certain parts of the units (section 3(g) described above). Although section 1.1 of the Lease states that the Lease is subject to the co-op's Rules and Memorandum, there is no similar provision about the Policies. In other words, I find the Policies do not form part of the Lease and therefore do not modify the repair requirements established in the Lease.

Although section 18 of the CAA makes registered Rules binding on co-op members, there is no such similar provision for policies. So, I find the members and the co-op are bound by the repair and maintenance terms of the Lease, which override the non-binding repair and improvement Policies relating to additions and improvements.

41. I find unit 12's patio is part of the development and surrounding grounds and so the co-op must maintain and repair it under section 9(c) of the Lease, despite that it was an improvement installed by a former member.

42. However, I find the co-op is not required to improve upon any unit or the development generally, under its repair and maintenance requirements. The Lease does not include provisions for who is responsible for paying for improvements. The courts have not considered the concept of improvements in a housing co-operative. In the context of a lease the courts have held that the term "maintain" does not include improvements or betterments (see *Trenchard v. Westsea Construction Ltd.,* 2019 BCSC 1675, affirmed at 2020 BCCA 152). I find that logic applies to this dispute and apply it here.

43. Based on the paving company's invoice, and the applicants' photos, I find the rubber coating applied to unit 12's patio is an obvious, and permanently affixed, improvement over the prior pavers. So, I find the co-op must reimburse Ms. De Graaf the equivalent cost of repairing the pavers, but not the increased cost of the rubber coating improvement.

44. The applicants do not explain why they claim half their patio improvement costs, although I infer that is because the patio work goes beyond necessary repairs. The July 23, 2020 patio repair estimate to the co-op quotes $1,262.50 to fix unit 12's patio. So, I find that is the best estimate of the repair costs Ms. De Graaf is entitled to and order the co-op to reimburse her that amount.

45. The applicants also seek an order for the co-op to update its Rules and Lease(s) with "congruent language". I find the Lease is not inconsistent with the Rules about responsibility for maintenance, repairs, and improvements because, as noted, the Rules do not address those issues. While the co-op may wish to update its documents

to be more consistent with its adopted Policies, I find it is not required to do so to remedy the applicants' claims for reimbursement of their repair costs. So, I decline to grant the applicants' requested order.

Property Manager

46. Section 76(1) of the CAA says the directors must manage or supervise the management of the co-op and may exercise all the powers of the co-op. Rule 17.1 says that in managing or supervising the management of the co-op, the directors must act in accordance with the CAA, the Memorandum and the Rules. I find these provisions give the directors have the power to hire, or fire, a property management company.

47. The applicants say the co-op's former and current property managers have incorrectly run the co-op like a strata and asks the CRT to order the co-op to fire the current manager. The only supporting evidence the applicants provided was a June 2020 pre-authorized debit form referring to strata fees and strata lot number which, I find, has now been corrected to reflect co-op housing charges and unit numbers. In any event, I find paperwork errors are not contrary to the CAA, the Memorandum, or the Rules.

48. The applicants also refer to several alleged errors noted in the directors' meeting minutes, including committees operating with only 1 member, the Board operating with less than 9 directors, and the co-op holding the 2021 annual general meeting by written resolution. The applicants argue that all of these things are contrary to the CAA and/or the Rules. The applicants also rely on directors' meeting minutes to allege the property manager was not aware of various co-op processes, such as how to replace a director, address a Home Owners Grant shortfall, or whether to contact the co-op's insurer in response to the applicants' dispute application. They say these examples show the property manager should be dismissed. For the reasons below, I disagree.

49. First, I find the applicants' claim that the property manager is incorrectly "directing" the co-op is incorrect. While the property manager may advise the co-op, they are

directed by the co-op and work for the co-op. So, if the co-op has not complied with the CAA about how many directors it has, or how an AGM is conducted, it is up to the co-op to correct that or instruct the property manager to do so. Notably, the applicants do not ask the co-op to correct the alleged errors.

50. Second, the minutes show that where the manager was unsure about processes, on each occasion the manager committed to determining the proper process for before acting which I find is a reasonable approach. I find it unreasonable to expect anyone to know how the CAA, the Rules and the Policies apply to any possible situation at any given time, without looking some things up.

51. Overall, I find the applicants have not shown any justification to interfere with the directors' decision to retain the property manager. Further, the strata property manager is not a party to this dispute, so I find it would be procedurally unfair to make any findings about their qualifications or performance without their participation. I dismiss the applicants' claims about the property manager.

52. Finally, the applicants seek an order that the co-op apply the Rules and Lease correctly and according to the CAA and Memorandum of Association. To the extent the applicants refer to the co-op's maintenance and repair obligations, I find such an order is unnecessary to remedy the applicants' claims about repair cost reimbursement. To the extent the applicants refer to the co-op's retention of the property manager, I find the co-op is entitled to make that business decision through its directors, under the CAA. To the extent the applicants seek a general order that the co-op comply with the CAA and its own Rules, I find it is already required to do so and such an order would be unhelpful. I also find the order requested is very vague and would be unenforceable so would have no value. For these reasons I decline to grant this requested order.

CRT FEES, EXPENSES AND INTEREST

53. The *Court Order Interest Act* applies to the CRT. I find Ms. Clerke is entitled to prejudgment interest on the $236.25 repair costs from February 22, 2021 to the date

of this decision. This equals $0.95. I find Ms. De Graaf is entitled to prejudgment interest on the $1,262.50 patio repair costs from July 27, 2020 to the date of this decision. This equals $8.36.

54. 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. In this case, only Ms. Clerke and Ms. De Graaf were partially successful in their claims. So, I find they are entitled to reimbursement of $112.50, which is half their CRT fees. The partially successful co-op paid no CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

55. Within 30 days of this decision, I order the co-op to pay:

    a. $237.20 to Ms. Clerke, broken down as:

        i. $236.25 as damages for repair costs, and

        ii. $0.95 as pre-judgment interest.

    b. $1,270.86 to Ms. De Graaf, broken down as:

        i. $1,262.50 as damages for patio repair costs, and

        ii. $8.36 as pre-judgment interest.

    c. $112.50 to Ms. Clerke and Ms. De Graaf, as partial reimbursement of their CRT fees.

56. Ms. Clerke and Ms. De Graaf are entitled to post-judgment interest, as applicable.

57. I dismiss the applicants' remaining claims.

58. 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.

Sherelle Goodwin, Tribunal Member