



# Civil Resolution Tribunal

Date Issued: March 30, 2022

File: CS-2021-003941

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Mellor v. River Mist Housing Co-operative*, 2022 BCCRT 356

**B E T W E E N :**

WILLIAM MELLOR

**APPLICANT**

**A N D :**

RIVER MIST HOUSING CO-OPERATIVE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about electrical repair expenses in a housing co-operative.
2. The applicant, William Mellor, is a member of the respondent co-operative association, River Mist Housing Co-operative (co-op). The co-op paid an electrician to fix Mr. Mellor's front hallway light and charged the cost back to Mr. Mellor and his

spouse. Mr. Mellor says the co-op is responsible for electrical repair costs under the co-op's Occupancy Agreement and Rules. He seeks reimbursement of the \$250 his spouse paid to the co-op.

3. The co-op says Mr. Mellor attempted to fix the light himself, causing further damage. The co-op says Mr. Mellor is therefore responsible for the repair costs, under the co-op's Occupancy Agreement and Rules.
4. Mr. Mellor represents himself. The co-op is represented by a director.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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.

## **ISSUE**

9. The issue in this dispute is whether the co-op must reimburse Mr. Mellor \$250 for the electrical repair costs.

## **EVIDENCE AND ANALYSIS**

10. In civil claims like this one the applicant Mr. Mellor has the burden of proving his claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all submissions and weighed all evidence provided but only refer to that necessary to explain and give context to my reasons.
11. The co-op is a multi-unit housing co-operative incorporated in 1986. It is undisputed that Mr. Mellor and his wife have been members of, and resided at, the co-op for several years. They currently reside in unit 33.
12. The co-op filed its June 27, 2005 amended set of rules with the Registrar of Companies on October 18, 2005. I find the co-op’s later amendments do not refer to alterations and repairs and so find the 2005 rules apply in this dispute.
13. Rule 1.4 says the terms and conditions of the attached Occupancy Agreement (OA) are binding on each member and the co-op. Although the co-op filed amended sections of the OA on October 31, 2013, I find those sections do not refer to alterations and repairs, so do not apply to this dispute. I will address the relevant OA sections below.
14. Mr. Meloor says he removed the front hall light fixture from the ceiling of unit 33 on Saturday, March 13, 2021 to paint the hallway ceiling. He says the electrical box and wires fell out of the ceiling when he removed the light but that he could not fix it,

despite his attempts to do so. It is undisputed that Mr. Mellor has worked in the construction industry but is not a licenced electrician.

15. The parties' emails show Mr. Mellor asked the co-op Board to send an electrician on March 15, 2021 and that he put in a similar work order request on March 13, 2021. It is undisputed Peter Bartoszcze, the co-op's electrician, went to Unit 33 and fixed the light around March 17, 2021. On his March 31, 2021 invoice, Mr. Bartoszcze charged the co-op \$235 plus GST to "troubleshoot and repair damaged wiring from ceiling lights installation by the member" in unit 33.
16. It is undisputed that the co-op Board decided to charge the \$250 electrical cost to unit 33 and did so in its April 22, 2021 letter. Although Mr. Mellor denied any wrongdoing or responsibility, his spouse undisputedly paid the \$250 charge around April 28, 2021. Mr. Mellor has undisputedly demanded the co-op reimburse him that amount.
17. The co-op argues Mr. Mellor is responsible for the electrical repair costs. It refers to section 10.02 of the OA, which requires members to pay for all repair and restoration costs resulting from alterations, changes or additions made by the member. Section 10 of the OA is entitled "Alterations to Property". Section 10.01 prohibits a member from making any "structural alterations, changes or additions" to the unit. I find OA section 10 does not apply here because I find removing a light fixture to paint a ceiling or attempting to fix an electrical box is not a "structural alteration, change or addition". Contrary to the co-op's argument, I find nothing turns on whether Mr. Mellor breached section 10.05 by failing to seek the co-op's consent to remove the hall light, because I find that section only applies to structural alterations, changes or additions, which I find do not exist here.
18. I find OA section 11 applies here. It is entitled "Interior Maintenance and Repair of Unit". I find painting a hall ceiling or repairing a broken light fixture or electrical box falls within the category of maintenance and repair, rather than structural alteration or addition.
19. OA section 11.01 requires a member to keep the unit's interior in good condition and repair, at the member's own expense. However, under OA section 22.03, the co-op

is required to maintain and repair certain parts of the residential units, including electrical conduits. So, while Mr. Mellor is responsible for maintaining and repairing the majority of his unit, the co-op is responsible for fixing the broken electrical box and wiring, with some exceptions.

20. OA section 11.03 says a member is liable for any damage to the unit caused by the member's "wilful negligent act or omission". The co-op says Mr. Mellor should have contacted the co-op, rather than attempt to fix the light and electrical box which fell from the ceiling.
21. OA section 11.05 requires a member to immediately report to the co-op any electrical failure or defect in the unit. I find OA section 11.05 sets out the standard of care expected of a co-op member. I find Mr. Mellor failed to meet that standard of care because he did not report to the co-op as soon as the electrical box and wires fell out of the ceiling, which I find would have been "immediate". I find Mr. Mellor was negligent in undisputedly attempting to fix the fallen electrical box and wires himself.
22. In order to charge the repair costs to Mr. Mellor, the co-op must show the damage was caused by Mr. Mellor's repair attempts. The co-op relies on Mr. Barotszcze's March 31, 2021 invoice. I find Mr. Barotszcze, as a licenced electrician, is qualified under the CRT rules to give an expert opinion on the cause of the wire damage. I accept Mr. Barotszcze's invoiced opinion that the wiring was damaged from Mr. Mellor's attempt to fix the ceiling light. I say this because Mr. Barotszcze undisputedly saw the electrical situation and repaired the damaged wiring.
23. Mr. Mellor disputes Mr. Barotszcze's invoice. He says he called Mr. Barotszcze to complain about the "damaged wire" note and that Mr. Barotszcze told Mr. Mellor that he contacted the co-op to "clear it up". However, in emails between the co-op and Mr. Barotszcze, the electrician only notified the co-op that Mr. Mellor had attempted to contact him, and Mr. Barotszcze left the matter with the co-op. So, I find Mr. Barotszcze did not change his opinion about damaged wires.
24. Mr. Mellor disputes that he damaged any wiring. He says the wires were already damaged when they fell out of the ceiling, because the light fixture had previously

leaked, was hanging away from the ceiling, and had likely been rewired many times previously. I find Mr. Mellor is not qualified to provide an opinion on the cause of the wire damage, as he is not a licenced electrician. Further, Mr. Mellor is a party to this dispute so any expert opinion he could provide would have little weight, given his interest in the outcome of the dispute.

25. Mr. Mellor submitted a photo showing a slight gap between the light fixture and the ceiling, as well as photos of small pieces of wire on a piece of wood. He also submitted a written statement from his spouse, which says the hall light flickered on occasion, since water flooded out of the light fixture previously. I find that evidence does not prove the light fixture's electrical box or wiring was damaged prior to Mr. Mellor's attempts to fix it on April 13, 2021. By contrast, Mr. Barotszcze says the wire was damaged by Mr. Mellor. Further, Mr. Mellor specifically says in his April 24, 2021 email to the co-op that when he attempted to fix the light's electrical box "it shorted" which, I find supports a finding that he caused damage.
26. I acknowledge that Mr. Mellor did not damage the light's electrical box on purpose. I accept that he was attempting to repair it on behalf of the co-op. However, under OA section 11.05, I find Mr. Mellor is responsible for repair costs for any damage done by his negligent attempt at repair, despite his good intentions.
27. To the extent Mr. Mellor argues that the co-op did not provide him a fair hearing before deciding to charge him with the repair costs, I find that argument cannot succeed. This is because there is no hearing requirement in the *Co-Operative Associations Act*, or the co-op's rules. Further, based on the parties' communications, I find Mr. Mellor disputed the co-op's April 22, 2021 decision more than once, explained what happened, and why he thought he was not responsible for the electrical repair costs. The co-op responded to Mr. Mellor's disputes on April 28, 2021. So, I find Mr. Mellor had the opportunity to be heard, despite his argument to the contrary.
28. On balance, I find Mr. Mellor is responsible to pay the \$250 electrical repair costs. So, I dismiss his claim for reimbursement of that cost.

29. Generally, a successful party is entitled to reimbursement of their paid CRT fees. In this case, neither party paid any CRT fees nor claimed any dispute-related expenses. So, I make no order about fees or expenses.

## **DECISION and ORDER**

30. I dismiss Mr. Mellor's claims and this dispute.

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Sherelle Goodwin, Tribunal Member