Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Watson v. Lore Krill Housing Cooperative*, 2022 BCCRT 1167

B E T W E E N :

JOSEPHINE WATSON

APPLICANT

A N D :

LORE KRILL HOUSING COOPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. Josephine Watson is a resident in the Lore Krill Housing Cooperative (co-op). It is undisputed that her previous apartment in the co-op, unit 402, had a mold problem. Ms. Watson says that the co-op failed to properly address the mold while she lived there and failed to give her a new apartment quickly enough.

2. Ms. Watson also argues that the co-op unfairly gave preference to a member of the co-op's board of directors, HM, when 2 apartments became available in December 2020. It is undisputed that the co-op gave HM unit 754 and Ms. Watson unit 301. Ms. Watson considers unit 301 to be a much worse apartment. She asks for an order that the co-op assign her unit 754 by giving HM 60 days' notice to move, plus $7,000 to cover the cost of movers. She also asks for $5,000 in damages for pain and suffering, mostly because she says she suffered adverse health effects from living with mold. Ms. Watson is self-represented.

3. The co-op admits that it was unable to fix unit 402's mold problem. However, the co-op argues that its treatment of Ms. Watson while she lived there was fair and reasonable. The co-op also that it tried to accommodate Ms. Watson's transfer request promptly, but she refused the first 7 apartments that the co-op offered to her. The co-op also says it followed its internal transfer policy when assigning unit 754 to HM and unit 301 to Ms. Watson. The co-op asks me to dismiss Ms. Watson's claims. The co-op is represented by its current board president.

JURISDICTION AND PROCEDURE

4. 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.

5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily

required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

6. 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.

7. 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.

8. Ms. Watson initially claimed against HM and the co-op's manager, JC. In a preliminary decision, another tribunal member refused to resolve those claims because they were outside the CRT's jurisdiction. So, I find that the only claims before me are against the co-op.

9. Also, during facilitation, Ms. Watson withdrew 10 claims from her initial Dispute Notice, mostly to do with the co-op's governance and finances and the co-op's allegedly poor treatment of Ms. Watson's family. I note that the parties both provided evidence and submissions related to those claims. I have reviewed it all, but I find it unnecessary for me to summarize or comment on it in this decision.

10. In the same preliminary decision, the tribunal member addressed the co-op's argument that the CRT does not have jurisdiction under the CRTA to address claims about unfairly prejudicial conduct. The tribunal member concluded that the CRT did have jurisdiction under sections 125 and 127 to make orders directed at the co-op to prevent or remedy an unfairly prejudicial decision. The co-op did not raise the issue of the CRT's jurisdiction in its submissions before me. I infer that the co-op no longer disputes the CRT's jurisdiction. In any event, while the preliminary decision is not binding on me on this issue, I agree with it and other CRT decisions that have drawn the same conclusion, such as *Kalyuk-Klyucharev v. City Edge Housing Co-Operative*, 2022 BCCRT 496.

Evidence Issues

11. When Ms. Watson was making her final reply submissions, the CRT's online portal malfunctioned. By that point, the parties had both uploaded their evidence to the portal, but they were no longer able to access it. To address the issue, CRT staff emailed Ms. Watson all the evidence that had been uploaded to the portal. CRT staff also asked Ms. Watson to complete her reply submissions by email, which she did.

12. In those reply submissions, Ms. Watson said that there were 2 pieces of evidence from the co-op's submissions that were missing. I have reviewed the emails CRT staff sent Ms. Watson and am satisfied that these 2 pieces of evidence were included. Ms. Watson referred to one of the allegedly missing documents as an email, when in fact it is a single line from a redacted spreadsheet. In other words, there is no missing email because there was no email to begin with. The other allegedly missing document was a letter from the co-op to Ms. Watson. The co-op appears to have named the file with an incorrect date and inaccurate description, but I find it was included in the CRT's email to her. I therefore find that Ms. Watson received and had an opportunity to make submissions about all the evidence before me. In any event, I find that both allegedly missing documents had marginal relevance. The first proves only a single relevant fact (the date HM requested a transfer) and the second simply summarizes the co-op's position about Ms. Watson's internal transfer. Overall, I find that there has been no procedural unfairness regarding evidence disclosure arising from the portal's malfunction.

ISSUES

13. The remaining issues in this dispute are:

    a. Did the co-op treat Ms. Watson in an unfairly prejudicial manner?

    b. If so, what remedy is appropriate?

BACKGROUND

14. The co-op was incorporated in 1999. It consists of 2 separate buildings. The building Ms. Watson resides in has 2 8-storey towers connected by a podium. It is in downtown Vancouver. This is relevant because the north-facing units on the 7th and 8th floor (like unit 754) face an alley and have unobstructed mountain views. I will refer to these collectively as the "view units". The south-facing units (like unit 301) face a busy street and have views of neighbouring apartment buildings.

15. The co-op's current rules were filed with the Registrar on December 11, 2014. There are no rules about members transferring units within the co-op. There is also nothing in the co-op's occupancy agreement about transfers.

16. According to the co-op, the members adopted the current internal unit transfer policy at the 2006 annual general meeting. The policy requires a member to fulfill their financial obligations to the co-op and to have an "active, demonstrated volunteer history" with the co-op. The policy requires members to be in their unit for at least a year before requesting a transfer unless they have a medical reason for moving. The policy also says that if a member turns down 3 internal move opportunities, they will be put at the bottom of the waitlist.

17. Ms. Watson says that she received a different transfer policy when she moved into the co-op in 2015. She provided no evidence to support this assertion, such as a copy of the policy she says she received. In the absence of evidence to the contrary, I find that the transfer policy the co-op provided was in effect at the relevant times to this dispute.

18. The co-op says that since 2018, while its managers have coordinated internal transfers, the board of directors has made the final transfer decisions. I accept this evidence because it is consistent with JC's signed statement.

EVIDENCE AND ANALYSIS

The Applicable Law

19. I will first set out the applicable law. As mentioned above, sections 125 and 127 of the CRTA give the CRT the authority to make orders to prevent or remedy an unfairly prejudicial action or decision by a co-op. This mirrors the language in section 156(1)(b) of the *Cooperative Association Act* (CAA), which gives the BC Supreme Court the power to make orders to remedy actions or threatened actions that are unfairly prejudicial to a member. Neither party uses the term "unfairly prejudicial", but I find that this is ultimately what Ms. Watson's claim is about.

20. In *Harding v. Meadow Walk Housing Co-operative*, 2021 BCCRT 1103, another tribunal member concluded that the term "unfairly prejudicial" is analogous to the use of the same term in the *Societies Act*. The tribunal member concluded that a similar test should apply to claims under the CAA. While other CRT decisions are not binding on me, I agree with that approach. I find that Ms. Watson must establish that the co-op failed to meet her reasonable expectations and that the failure to meet those expectations had unfairly prejudicial consequences.

21. In *Scipio v. False Creek Housing Co-operative Housing Association*, 2012 BCSC 1339, the court said that unfairly prejudicial conduct is inequitable or unjust. The member does not need to establish that the co-op acted in bad faith. Rather, when determining whether an action or decision was prejudicial, the focus is on the impact on the member's interests.

22. Broadly speaking, Ms. Watson makes 2 allegations about unfairly prejudicial conduct. The first is that the co-op did not move her into unit 743 when it became available, instead giving it to HM. The second is that the co-op did not adequately address the mold issue in unit 402 while she lived there, either by repairing it or moving her sooner.

23. With that background in mind, I turn to the evidence.

Did the co-op treat Ms. Watson in an unfairly prejudicial manner when it did not offer her unit 754?

24. When Ms. Watson first moved into the co-op, she lived with her son in a 2-bedroom unit. In November 2017, she moved into her own 1-bedroom apartment, unit 402. The parties dispute who initiated this move, but I find nothing turns on this detail.

25. The co-op admits that there had been leak issues in unit 402 before Ms. Watson moved in. The co-op says that it believed the leak issues were resolved. Ms. Watson disputes this, but I find there is no evidence the co-op knowingly gave Ms. Watson a unit with ongoing moisture and mold issues.

26. Ms. Watson requested a transfer by filling out the required form on February 21, 2018. In the request, she asked for a view unit because she needed more natural light. There was no mention of mold on the form. Ms. Watson says that there was already mold in unit 402 at the time, but she gave another reason to "be helpful". While Ms. Watson does not describe why omitting the mold issue would be helpful, the co-op admits that the mold issue arose sometime around February 2018. The co-op later determined that the mold's cause was related to the building envelope and could not be fixed until it received BC Housing funding to repair the roof.

27. The co-op says that it determined at that time that she was not eligible for a transfer because she had not lived in her unit long enough. The co-op says it also determined that Ms. Watson had not volunteered other than attending a single gardening committee meeting in 2015. Ms. Watson admits this but says that she was unable to help the gardening committee because it required demanding physical labour that she could not do.

28. In September 2018, Ms. Watson wrote to the co-op's manager that she was concerned about her health because of the mold in unit 402. The co-op says that although Ms. Watson still did not "qualify" for a transfer, it agreed that the conditions in unit 402 were unacceptable. The co-op says that it immediately began offering her new units.

29. Between November 2018 and June 2019, the co-op showed or offered to show Ms. Watson 5 1-bedroom units and a bachelor unit. This is apparent from emails exchanged between Ms. Watson and JC at the time. For these units, Ms. Watson informed the co-op by email that they were all unsuitable because the bedrooms were too small. Ms. Watson says that the units offered were not just slightly smaller but had bedrooms so small her queen bed would not even fit inside. The co-op provided floorplans, but they do not include room dimensions, so it is impossible to verify this claim. However, according to the co-op, unit 402 was 570 square feet and the 1-bedroom units offered to Ms. Watson were all between 495 and 558 square feet.

30. Ms. Watson says that she was justified in turning these units down because her initial request was for a view unit. She says that JC had told her that she would only be allowed to move once, so she did not want to waste her one move on somewhere temporary. Instead, she wanted to wait for the view unit she had initially requested, where she could stay long-term.

31. I do not accept Ms. Watson's evidence that JC said that she would only be allowed to move once. Ms. Watson does not mention this belief in any of her emails or texts with JC about the rejected units. She also did not mention it in this dispute until her reply submissions. I find that limiting members to a single lifetime move would be obviously impractical, and contrary to Ms. Watson's own experience in the co-op. I find that if JC had told her that she would not be allowed to move once she accepted a new unit, she likely would have mentioned it in at least one of her emails to JC rejecting a unit the co-op had offered.

32. Ms. Watson also alleges that she had a "deal" with JC that she would be first on the list for a view unit because of the mold in her unit. She says that JC showed her other units in the meantime, and she agreed to view them without thinking that it jeopardized her place "in line" for a view unit. In their statement, JC denied any such deal, noting that it was beyond his authority to promise a member anything about a transfer. I accept JC's evidence on this point. There is nothing in the correspondence between JC and Ms. Watson to suggest an agreement or promise that Ms. Watson would get the next view unit.

33. In July 2019, the co-op offered Ms. Watson unit 755, a view unit. Ms. Watson accepted it. However, it is undisputed that the unit 755 resident had died, and their body had not been discovered for at least several weeks. The co-op says that unit 755 required "extensive remediation" before it would be habitable. Unit 755 is 537 square feet. I find that this shows Ms. Watson was willing to live in a smaller unit if it had a view.

34. On May 15, 2020, Ms. Watson emailed JC that she had visited unit 755, and it still had an unbearable "odour of death". The co-op later replaced the flooring. A July 13, 2020 inspection report filled out by an employee of the co-op's manager said that there was a "slight smell of cigarette smoke" but noted no other odour. However, on August 11, 2020, Ms. Watson formally turned down unit 755. Ms. Watson says that different people have different odour tolerances, and she found the smell in unit 755 to be intolerable. While I accept this is true, I find that the fact that a neutral party did not detect an unpleasant smell shows that it was not the co-op's fault that Ms. Watson was unable to move into unit 755.

35. There is no suggestion that the co-op offered or showed Ms. Watson any other units between July 2019 and August 2020. Ms. Watson did not ask to see any. I infer that everyone involved assumed Ms. Watson would move into unit 755 when it was ready. In her email turning down unit 755. In her email rejecting unit 755, Ms. Watson asked to be moved to the next available unit. There is no evidence that the parties discussed the move further until December 2020.

36. On December 14, 2020, JC texted Ms. Watson that they could show her unit 754 the next day. However, on December 16, 2020, JC texted that they had "spoken too soon" about unit 754, and that the co-op was managing several moves at the same time. JC mentioned that the board wanted to approve the "internal move list" before going forward and needed to fit Ms. Watson's move within "a larger framework".

37. On December 17, 2021, Ms. Watson texted JC back, questioning the board of director's authority to review internal transfers.

38. Ultimately, the co-op decided to give unit 754 to HM, a board member, and offered Ms. Watson unit 301, a south-facing unit. The co-op says that HM had applied for an internal transfer in August 2020. The co-op says that HM had lived in her unit for over a year, had a demonstrated history of co-op participation, had a medical condition (which the co-op does not describe), and had a serious member conflict that was not her fault. The co-op says that it could not move HM to unit 301 because it was in the same tower as her existing unit, so would not fully solve the member conflict. The co-op says that HM recused herself when the board made the decision about her transfer request, which is undisputed.

39. On January 8, 2021, Ms. Watson emailed JC and the co-op's board that she was open to viewing unit 301 but expected that she would be next in line for a view unit. On February 6, 2021, Ms. Watson accepted a move to unit 301, because of the "desperate" state of unit 402. However, she questioned the fairness of the process. She also told the co-op that unit 301 was not a feasible long-term fit for her because she was sensitive to the direct sunlight.

40. Ms. Watson alleges that the co-op fabricated reasons to give HM unit 754. As Ms. Watson points out, the co-op provided no documentary evidence to corroborate how it decided who would get unit 754. There are no board meeting minutes and no correspondence between the co-op or JC and HM. However, I note that the co-op's representative in this dispute, its president, was a director at the relevant times. So, I accept that they have first-hand knowledge of what happened.

41. While Ms. Watson does not use these words, I find that she is asking me to draw an adverse inference against the co-op. An adverse inference is when the CRT assumes that a party did not provide evidence because it would not have helped their case. Applied to this dispute, an adverse inference would mean that I would assume that the documentary evidence about the internal transfer process would be inconsistent with the co-op's current explanation.

42. For Ms. Watson to rely on an adverse inference, she must establish a "*prima facie* case", which means that she must provide some evidence to support her account of

what happened (see *Lucas v. Canniff*, 2021 BCSC 1014, at paragraph 69). The only evidence Ms. Watson provides in support of her allegation that the co-op fabricated reasons to prefer HM over her is that another co-op member overheard 2 board members promising HM unit 754. Ms. Watson says that this member was unwilling to provide a statement.

43. Hearsay evidence is a statement made outside the CRT proceeding that a party (here, Ms. Watson) wants to rely on to prove the statement's truth. Tribunals like the CRT may rely on hearsay evidence where relevant but must weigh the evidence based on its reliability. Here, the board member's alleged statements to HM are "double hearsay" because Ms. Watson is giving evidence about what someone told her someone else said. I find that such double hearsay evidence is inherently unreliable, so I put no weight on it.

44. Ultimately, I find that Ms. Watson has provided no reliable evidence to support her allegation that the co-op fabricated reasons for HM to get unit 754. I decline to draw an adverse inference against the co-op. I note that even though JC's written statement does not mention HM explicitly, JC does say that Ms. Watson's transfer request was "no different from anyone else's". JC said that the co-op had to manage the "puzzle of availability" to match units to member needs. I find that this corroborates the co-op's position.

45. So, did the co-op treat Ms. Watson in an unfairly prejudicial manner by assigning her unit 301 instead of unit 754? I accept that the co-op was in a difficult situation. There were 2 residents wishing to move, and 2 units available. Based on the photos in evidence, I find that unit 754 was the more desirable unit. With that, either HM or Ms. Watson was going to be disappointed with the co-op's decision. To prove that the co-op's decision was unfairly prejudicial, Ms. Watson must first establish that she had a reasonable expectation that she would be given unit 754 over HM. For the reasons that follow, I find that this was not a reasonable expectation.

46. First, I find it likely that most residents would prefer a view if given the choice. I find no evidence to support Ms. Watson's implicit contention that she has a better claim

on a view than anyone else, either because of the mold in unit 402 or her stated preferences. In particular, I find that Ms. Watson's preference for a view was unrelated to the medical reasons she needed to move, which were related to mold.

47. I find that all Ms. Watson could reasonably expect was that the co-op would fairly weigh her request against HM's. Ms. Watson identified several preferences beyond wanting a view in her initial request form and her correspondence with JC. First, she wanted a similar sized unit to unit 402. Unit 754 is smaller than unit 402, but unit 301 is slightly larger than unit 402. Second, she wanted to get out of her moldy unit. Units 754 and 301 were both mold-free. Third, she wanted more natural light. I find that unit 301 receives considerable natural light, since Ms. Watson says that the amount of sunlight in 301 is oppressive at times. So, I find that unit 301 met Ms. Watson's stated preferences at the time, other than the view.

48. Ms. Watson also relies on the fact that unit 754 is quieter than unit 301. The co-op dose not deny that unit 301 can be noisy, but says that unit 754 can also be noisy, such as when there are garbage trucks in the alley. That may be true at times, but I find as a matter of common experience that a low apartment next to a busy street will consistently be louder than a high apartment over an alley. There is no evidence that Ms. Watson was more sensitive to noise than HM, or, if she was, that she ever told the co-op. So, I find that the co-op did not need to put particular weight on how noisy unit 301 was compared to unit 754 when deciding between Ms. Watson and HM.

49. Based on its policy, I also find that the co-op was entitled to consider HM's volunteer history. Ms. Watson suggests that this is unfair because her schedule and overall health prevented her from volunteering. She notes that most co-op members do not volunteer. While that all may be true, I find that it is only one factor and service to the community is a reasonable thing for the co-op to weigh.

50. The co-op also relies on Ms. Watson's refusal of several alternative units. Ms. Watson argues that because her request was always for a view unit, the fact that the co-op kept offering her units that did not fit her criteria should not be used against her. I find that her request for a view was just a request, and given the state of unit 402, it was

reasonable for the co-op to offer every available unit. I also find that this is a reasonable policy because it encourages members to be flexible when transferring units, which in turn increases mobility within the co-op to the community's overall benefit.

51. I accept the co-op's uncontradicted evidence that HM had a conflict with a neighbour, even though the co-op's evidence is light on the details. With that, I find that it was reasonable for the co-op to want HM in a different tower from the other member to avoid confrontations in common areas.

52. I place no weight on the co-op's reliance on HM's medical condition because the co-op did not explain the medical condition or why unit 754 was better suited to accommodate the medical issue than unit 301.

53. Still, while I accept that it was prejudicial to Ms. Watson to be transferred to unit 301 instead of unit 754, I find on balance that the co-op used a fair process and came to a fair outcome.

54. I turn then to the question of whether the co-op acted in an unfairly prejudicial manner with respect to the mold in unit 402. There are 2 separate components of this claim.

55. First, Ms. Watson alleges that the co-op should have done more to get her a new unit faster. However, I find it difficult to reconcile Ms. Watson's repeated assertions that unit 402 was severely impacting her health with her rejection of multiple alternative units (including one that was apparently larger than unit 402). There is no suggestion there were any view units available before unit 755. There is no suggestion that there were any units as big as unit 402 available before unit 301. Ms. Watson does not suggest that the co-op should have forced someone else to move to accommodate her. Ms. Watson does say that the co-op should have found her somewhere to live in a different co-op, but the co-op says it has no power or authority over other housing co-ops, which I accept. It is unclear what else Ms. Watson expected the co-op to have done differently to transfer her before December 2020. I find that the co-op offered Ms. Watson each potentially suitable available unit, which was fair.

56. Second, Ms. Watson alleges that the co-op should have done more to unit 402 itself while she lived there. According to the co-op's records, it scraped and repainted the ceiling twice in 2018. It is undisputed that this work was only a temporary fix. The co-op asked to do further repairs in July 2019, but Ms. Watson emailed the co-op asking to delay repairs until after she moved to unit 755 because they were disruptive. There is no evidence Ms. Watson raised the mold issue again until April 2020, when she began to suspect that the co-op would not remediate unit 755 to her satisfaction. Notably, when she finally turned unit 755 down, she did not ask for repairs to unit 402. Instead, she asked for the next available unit. Given that history, I find that the co-op did not act unfairly prejudicially towards Ms. Watson.

57. Given these conclusions, it is unnecessary for me to consider Ms. Watson's claimed remedies. I dismiss Ms. Watson's claims.

CRT FEES AND EXPENSES

58. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Watson was unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses. The co-op did not claim any dispute-related expenses or pay any CRT fees.

ORDER

59. I dismiss Ms. Watson's claims, and this dispute.

Eric Regehr, Tribunal Member