



Civil Resolution Tribunal

Date Issued: March 8, 2023

File: CS-2022-002828

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Patrick v. Terra Nova Housing Co-operative*, 2023 BCCRT 191

B E T W E E N :

ALASTAIR NIAL PATRICK

APPLICANT

A N D :

TERRA NOVA HOUSING CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about water leak damage in a housing co-operative.
2. The applicant, Alastair Niall Patrick, is a member and resident of the respondent co-operative association, Terra Nova Housing Co-operative (co-op). The applicant did not indicate pronouns or title, so I will use the neutral pronoun “them” in this decision.

3. The applicant is self-represented in this dispute, and the co-op is represented by a board member.
4. The applicant says there was a water leak in the unit above theirs in June 2021, which damaged their kitchen. The applicant says the co-op agreed to pay for the repairs, but has not done so. The applicant claims reimbursement of \$506.78 for a new over-the-range (OTR) microwave with hood fan, and \$656.25 for a new cabinet and labour to install the cabinet and microwave.
5. The co-op denies the applicant's claims. It says the applicant did not follow the proper procedures for reporting the leak or submitting a work order. The co-op says it took every available step to repair the issue once notified, including fixing the leak and repairing the drywall. The co-op says that there is insufficient clearance above the stove to install an OTR microwave, so it is a fire hazard. The co-op also says its contractor said the wiring for the applicant's original OTR microwave did not meet Building Code requirements. The co-op says the applicant's original OTR microwave was an unapproved alteration, prohibited under the occupancy agreement. The co-op says it instead approved a "co-op standard" cabinet, and offered to install a standard hood fan supplied by the applicant, but the applicant rejected that solution and refused entry to its contractor.
6. For the reasons set out below, I find in favour of the co-op in this dispute. I dismiss the applicant's 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.

ISSUE

11. Must the co-op reimburse the applicant for the microwave and cabinet, and if so, how much?

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, the applicant must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
13. The applicant says that in June 2021, their kitchen was damaged by a water leak from the upstairs unit's bathroom shower valve. There is limited evidence before me about what caused the leak, and in some handwritten notes, the co-op denies that the shower valve could have failed. However, the photos in evidence confirm that water entered the applicant's unit from above. Nothing ultimately turns on the leak's precise cause.

14. After observing the leak, the applicant contacted their neighbour MR, who at that time was the Chair of the co-op's maintenance committee. In a June 16, 2021 email to the co-op, MR wrote that the applicant had called and said there was water in the cabinet above the stove, which was coming through the OTR microwave. MR wrote that they removed the microwave, cabinets and some drywall to identify the leak and let the ceiling cavity air out.
15. The co-op says the applicant should not have contacted MR, and instead should have called the co-op's emergency services line. The co-op says that MR should not have removed the drywall, cabinet and microwave without authorization, and deprived the co-op of the ability to assess whether damage had occurred and what repair work was necessary.
16. I find this defence by the co-op is not proven. The co-op provided one page of a memorandum on "Work Orders and Emergency Procedure", but that page does not say when or if it was circulated to members, and does not say how to report an emergency. Rather, it just says what constitutes an emergency, mentions emergency shut-offs, and says to contact an Emergency Volunteer if one needs help with shut-offs.
17. In its final submission to the CRT, the co-op admitted that it hired the plumber who fixed the leak. I therefore accept that there was a water leak that damaged the applicant's kitchen cabinet and microwave.
18. However, for the following reasons, I find the co-op is not liable to pay for the repairs.
19. The evidence before me that shows that after some disagreements between the parties, the co-op offered to have its tradesperson install a new cabinet and a non-microwave range hood, if the applicant paid for the range hood. As explained below, I find this was a reasonable offer in the circumstances, and met the co-op's repair obligations.
20. Section 13 of the *Cooperative Association Act* (CAA) says every co-operative association must have rules. In this case, the occupancy agreement is set out in

Schedule A of the co-op's rules. The occupancy agreement says it is binding on members who occupy co-op premises, which the applicant does not dispute. I summarize the occupancy agreement provisions I find relevant to this dispute as follows:

9.01 – A member may not make or permit any structural alterations, changes, or additions in or to the unit without prior written consent of the Directors.

9.02 – A member must pay all costs of repair and restoration to the unit which result from the member's unapproved alterations, changes or additions.

9.03 – All alterations, changes and additions made by a member must comply with applicable municipal bylaws and regulations and provincial and federal building codes and requirements.

21. The applicant admits to installing a OTR microwave in their unit before the June 2021 leak. The co-op says its records show no approval for this microwave, and the applicant has not provided evidence showing that approval was granted at any time before July 2021. The applicant suggests permission was not required. Specifically, the applicant says it was not an alteration, since the wiring already existed.
22. I find the evidence does not support the applicant's position. The photos in evidence show that a new electrical outlet was created above the stove, in order to plug in the microwave. This is confirmed by the September 8, 2021 site report from the co-op's electrician, Precision Restorations (Precision). That report says Precision's project manger visited the applicant's unit, and states in part as follows:

The electrical wiring that supplies the original range hood was connected to a receptacle, but was not installed in a proper junction box as is required by code... The electrical connections on the receptacle itself appear to have been wrapped with electrical tape. Range hood units are normally wired directly into the integrated electrical junction box that is inside of the range hood itself and the wiring is cut long to accommodate this, however in this case it appears that the wiring may have been shortened and a receptacle was installed without a

proper junction box, presumably to accommodate a different appliance/fan unit.

23. This report does not meet the CRT's requirements for expert evidence, as the author's qualifications were not provided. However, along with the accompanying photos, I accept it as a non-expert description of what Precision's employee observed in the applicant's unit. I also note that the applicant does not specifically disagree with the description, and admitted to installing the OTR microwave. Also, in a July 7, 2021 letter to the co-op requesting permission to re-install the OTR microwave, the applicant wrote that installing an OTR microwave requires installing a receptacle above the range, in order to plug in the microwave. I find this is inconsistent with the applicant's evidence that no wiring was changed when the first OTR microwave was installed.
24. For these reasons, I find the applicant breached section 9.01 of the occupancy agreement by installing an electrical outlet without the co-op's prior written permission. As noted above, section 9.01 requires written consent for any structural alterations, changes, or additions in or to the unit. The applicant argues that the electrical outlet and OTR microwave were not "alterations". I find it is not necessary to determine that issue, since I find they were additions to the unit, which also require written permission. Specifically, I find the outlet and microwave were additions because they did not exist in the unit when the applicant moved in.
25. Section 9.02 of the occupancy agreement says a member must pay all repair and restoration costs to the unit which result from the member's unapproved alterations, changes or additions. There is no suggestion in this case that the applicant's unapproved alterations caused the water leak, or made the damage worse. However, I find the co-op was not obligated to pay to repair or replace the electrical outlet or OTR microwave, since these items were unapproved changes, contrary to section 9.01 of the occupancy agreement.
26. In an August 24, 2021 email to the applicant, the co-op said it would pay to replace the cabinet to "co-op standard", and would also pay to install a new non-microwave

range hood if the applicant supplied one. In submissions, the co-op explained that the applicant was responsible to pay for the range hood, since the applicant removed and disposed of the original one that came with the unit.

27. In the August 24, 2021 email, the co-op effectively offered to return the applicant's unit to the condition it was in when the applicant took occupancy. I find this offer was reasonable in the circumstances, and met the co-op's repair obligations under the occupancy agreement. I find the co-op was not required to replace the applicant's unapproved changes, including the OTR microwave, since the changes were made contrary to the occupancy agreement. Arguably, the co-op was liable to pay for a new range hood, since the original one likely would have been destroyed by the water leak if it had remained. But, I find nothing turns on this, since as I discuss below, the applicant installed a new OTR microwave anyway, and did not request installation or reimbursement for a regular range hood.
28. I note that in a July 23, 2021 letter, the co-op said it approved the applicant's request to have a qualified professional install an OTR microwave, "pending approval of an electrical permit". However, the co-op never said it would pay for the microwave, or the installation. Also, the letter instructed the applicant to provide a copy of the electrical permit, once obtained. The applicant never provided a permit. In this dispute, the applicant argues that it is the responsibility of the co-op or the electrician to obtain the permit, or that no permit is required. However, the applicant did not provide evidence to prove these assertions, so I am not persuaded by them.
29. In any event, the photos and invoice in evidence shows that around March 2022, the applicant hired his own contractor to install a new OTR microwave and cabinet. The co-op argued that the chosen contractor was unacceptable, and the changes were unapproved. However, the co-op did not file a counterclaim seeking an order that the applicant remove these items. So, I make no findings about them.
30. In conclusion, I find the applicant has not proved that the co-op was required to pay to replace the OTR microwave, and the applicant refused the co-op's offer to replace the cabinet. So, I dismiss the applicant's claims.

CRT FEES AND EXPENSES

31. 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. The co-op is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

ORDER

32. I dismiss the applicant's claims and this dispute.

Kate Campbell, Vice Chair