



# Civil Resolution Tribunal

Date Issued: March 21, 2023

File: CS-2022-005189

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Del Bianco v. Access Housing Co-operative*, 2023 BCCRT 237

B E T W E E N :

NATASHA DEL BIANCO

**APPLICANT**

A N D :

ACCESS 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 a housing co-operative's decision to turn off the heat.
2. The applicant, Natasha Del Bianco, is a member and resident of the respondent housing co-operative association, Access Housing Co-operative (co-op). She says the co-op turned off the heat in June 2022, without warning or notice. She says the

co-op did not consult the members, hold a vote, or provide any explanation for this decision. She asks that the co-op be ordered to turn her heat back on, give other members the option of keeping their heat on during summer, and to notify members of such “sweeping decisions” in future.

3. The co-op says it generally shuts the heating system off every summer for maintenance, so no notice was required. Further, it says it has now provided Ms. Del Bianco the reasons for the shut down and offered to attempt to accommodate her specific heating needs.
4. Ms. Del Bianco represents herself. 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 society claims under section 129 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 131, 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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Was the co-op required to notify its members, consult them, hold a membership vote, or provide reasons before shutting off the heat?
  - b. If so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one the applicant, Ms. Del Bianco, must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read the parties’ evidence and submissions, but only refer to that necessary to explain and provide context to my decision. I note that the co-op did not provide submissions or evidence, despite being provided an opportunity to do so.
11. The co-op was incorporated in 1980. It filed an amended set of rules with the Registrar of Companies on August 22, 2017 (Rules), which I find apply to this dispute. Rule 1.4 says that the Occupancy Agreement (OA) attached as Schedule A to the Rules is binding on the co-op and its members. I will refer to the relevant Rules and OA sections below.
12. It is undisputed that the co-op is responsible for providing heat to all the housing units. This is set out in section 5.01 of the OA, which says members must pay their own utilities, except for heat and hot water.
13. The co-op turned off the heat to all units on June 23, 2022. It did not provide any advance notice or explanation for the heat shut down to the co-op members, including Ms. Del Bianco. Neither did the co-op ask the members to vote on the decision at a general meeting. None of this is disputed.

14. In its Dispute Response, the co-op says its maintenance committee decided to shut the boilers off for maintenance reasons and to preserve the equipment, and that it does so every year.
15. Based on meeting minutes provided by Ms. Del Bianco, I find the directors discussed Ms. Del Bianco's concern about the heat shut down at their July 20, 2022 meeting. Under "Boilers – summer maintenance and member request" the minutes indicate there was an "issue of inconsistency because it was overlooked last year".
16. Based on these minutes I find the co-op likely did not shut down the boilers and turn off the heat in 2021. However, I find the minutes support the co-ops' statement that it generally shuts the heat off every year between June and September. Ms. Del Bianco does not dispute this is generally the case.
17. Section 5.01 of the OA does not specify how or when the co-op must provide heat to its members, including Ms. Del Bianco. Neither do the co-op's Rules or policies. I find it likely that the co-op made an operational decision, through its directors and maintenance committee, to shut the heat off every summer for maintenance reasons.
18. Section 76(1) of the *Cooperative Association Act* (CAA) and the co-op's Rule 17.1 require directors to manage, or supervise the management of, the co-op's business and to exercise the co-op's powers. Given section 5.01 of the OA, I find part of the co-op's business includes providing heat to the co-op members that reside in the units, including Ms. Del Bianco. So, I find the directors have the authority and power to decide when, and whether, to turn off the heat.
19. Section 76(2) of the CAA and Rule 20.1 allows the directors to delegate any of their powers to committees consisting of one or more directors. As Ms. Del Bianco has provided no contrary evidence or argument, I find it likely that the maintenance committee had the delegated power to decide whether and when to turn off the co-op's heat.
20. The co-op's Rule 17.2(a) says that directors may propose policies with respect to the co-op's operation and maintenance. Rule 17.3 says policies do not take effect until

approved by an ordinary resolution at a general meeting. Given Ms. Del Bianco's submission that the decision was not put to a membership vote, I infer she argues the co-op should have created a maintenance policy about the heat shut down, and asked the members to vote on the policy.

21. The difficulty is that Rule 17.2(a) does not require the co-op to propose operation and maintenance policies for members to vote on, given the use of the word "may". So, I find the co-op was not required to propose policy, and have members vote on, its decision to shut the co-op's heating down in the summer to maintain and preserve the heating equipment. Rather, I find the co-op was entitled to make an operational decision about the heat shut down.
22. Overall, I find the co-op has the authority to shut the heat off in the summer, without obtaining a member vote, or consulting with members.
23. Section 129(a) of the CAA and Rule 19.8 require the co-op to keep minutes of directors' meetings, including committee meetings. However, there is no requirement for the co-op to distribute those meetings to members, unless the member specifically requests the minutes. Further, neither the CAA nor the co-op's Rules and policies require the co-op to distribute meeting minutes or otherwise inform members about operational decisions. So, contrary to Ms. Del Bianco's argument, I find the co-op is not required to inform the members about turning the heat off in the summer months.
24. The July 20, 2022 directors meeting minutes indicate that the co-op produces a newsletter for members where it could communicate things like the heat shut down to members. Keeping in mind the CRT's mandate to recognize ongoing relationships between parties, I encourage the co-op to communicate the annual heat shut down to its members in the future, even though I find the co-op is not required to do so under its Rules, policies, or the CAA.
25. To the extent Ms. Del Bianco argues the heat should stay on all year, because the cost is included in the members' monthly housing charge, I find such an argument cannot succeed.

26. Under section 4 of the OA, the directors recommend the housing charge, taking into account anticipated expenses for the upcoming year, any deficit from the preceding fiscal year, and any statutory or contractual minimum. The recommended housing charge is then voted on by co-op members at a general meeting. Given this, and in the absence of any evidence to the contrary, I find it likely that the fixed monthly housing charge is set for the year based on the yearly anticipated heating cost (among other things) averaged out at a monthly cost. In other words, I find the winter months' heating costs are averaged out over all months, including the summer. As noted, Ms. Del Bianco has provided no contrary evidence, such as a monthly housing charge statement or general meeting minutes.
27. Finally, Ms. Del Bianco argues that the directors failed to meet their fiduciary duty to the co-op members by turning off the heat without consultation or warning. I find the directors' duties are set out in section 84(1) of the CAA. It says that directors must act honestly and in good faith with a view to the best interests of the co-op, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.
28. In *Peterson v. Barta*, 2022 BCCRT 861, a CRT vice chair found the directors' duties are owed to the co-op and not to individual co-op members, like Ms. Del Bianco. I agree with, and adopt, her reasoning that co-op director duties are similar to strata council member duties as set out in section 31 of the *Strata Property Act*. Our courts have found strata council member duties are owed to the strata corporation itself, rather than individual owners, and so an owner cannot successfully claim against a strata corporation for duties owed by its strata council members (see, for example, *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32). Applying the same reasoning here, I find Ms. Del Bianco has no standing (legal right) to bring a claim against the co-op for a director's alleged breach of fiduciary duty, because I find only the co-op has the standing to bring such a claim.
29. I acknowledge Ms. Del Bianco's arguments that the lack of heat in her unit affects her mobility, due to her underlying health condition. However, in its August 4, 2022 email response to Ms. Del Bianco's expressed concern about the heating situation, the co-

op did offer to discuss, and attempt to find a way to accommodate, Ms. Del Bianco's health concerns. Without making any order, I encourage the parties to attempt to find a workable compromise.

30. In summary, I find the co-op, through either its directors, or its maintenance committee, made an operational decision to turn the heat off for the summer months. As such a decision was not governed by policy, I find the co-op was not required to put the decision to a member vote, consult the members, explain its reasons to the members or notify the members of the decision. Finally, I find Ms. Del Bianco has no standing to make a claim against the co-op for the directors' alleged breach of their fiduciary duty. So, I dismiss Ms. Del Bianco's claims.
31. 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 Ms. Del Bianco was not successful in this dispute, I find she is not entitled to reimbursement of her paid CRT fees. As the successful respondent, the co-op paid no fees and claimed no dispute-related expenses.

## **ORDER**

32. I dismiss Ms. Del Bianco's claims and this dispute.

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Sherelle Goodwin, Tribunal Member