



Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Kalyuk-Klyucharev v. City Edge Housing Co-Operative*, 2023 BCCRT 266

B E T W E E N :

ALEKSEY KALYUK-KLYUCHAREV

APPLICANT

A N D :

CITY EDGE HOUSING CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about the proper amount to pay for share redemption. The applicant, Aleksey Kalyuk-Klyucharev, formerly owned shares and lived in unit 3610 in the respondent cooperative association, City Edge Housing Co-Operative (City). Mr. Kalyuk-Klyucharev says that when he moved out and redeemed his shares, City wrongfully withheld \$500. He seeks an order for the return of the money.

2. City disagrees. It says that Mr. Kalyuk-Klyucharev damaged and poorly repainted some of the walls. City says it reasonably spent \$500 to repair and repaint the walls. It says it is entitled to keep this sum under its rules and the parties' occupancy agreement (OA).
3. Mr. Kalyuk-Klyucharev represents himself. A director represents City.
4. For the reasons that follow, I dismiss Mr. Kalyuk-Klyucharev's claims.

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 is whether Mr. Kalyuk-Klyucharev is entitled to the return of \$500.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Kalyuk-Klyucharev must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. A BC Registries search shows that City became incorporated in March 1990. City's documents show its purpose is to provide its members housing at cost on a cooperative basis.
12. Section 13 of the *Cooperative Association Act* (CAA) says cooperative associations like City must have rules. CAA section 18 says that rules generally bind the cooperative association, each member, and each investment shareholder. A special resolution shows that City filed the currently applicable rules and an attached OA, labelled Schedule A, with the registrar on November 14, 2002.
13. City relies on rule 12, which is about share redemption. Rule 12.2 says that City must redeem the shares of a person whose membership is withdrawn, terminated, or ceases for any reason. Rule 12.3 says a member is entitled to the amount paid for the share on redemption by City. Rule 12.4 says that City has a lien on a member's shares for any amount due to City. Rule 12.6 says that upon the redemption of shares, City's directors must apply the proceeds of the redemption in satisfaction of City's lien, and any surplus or excess from the proceeds will be paid to the member.
14. Rule 1.4 says the OA is binding on each City member. City relies on OA section 10.02. It says that a member shall pay all costs to repair and restore a unit which result from alterations, changes, or additions made by the member if the alterations, changes or additions have not been approved by the directors. The directors may send a written notice to the member to repair and restore the unit to its original

condition. If, after 10 days, the member continues to refuse or neglect repairs and restoration, the directors may repair and restore the unit and charge to costs to the member upon written notice to the member.

15. I find OA section 11.06 is also relevant to this dispute. It says that upon vacating the unit, the member must leave the unit in the same condition and state of repair as the date of the execution of the occupancy agreement, save for exceptions that include reasonable wear and tear. City is also authorized to make repairs or restorations in its sole discretion to put the unit in the “required condition and state of repair”. Upon demand, the member must pay City all costs and expenses for such repairs and restorations, which are payable and due immediately on notice in writing to the member.
16. I find OS section 11.06 applicable because this dispute is about changes to 3610 beyond reasonable wear and tear. I will further discuss this below.
17. A February 3, 2022 share and move-out reconciliation document shows the following background facts. Mr. Kalyuk-Klyucharev first moved into unit 3610 on June 1, 2016. He paid \$2,500 at the time to purchase some of City’s shares and to become a member. He moved out on November 30, 2021. City returned the \$2,500 paid, less \$1,381 for “member arrears” and \$500 for “paint”. In total, City refunded \$619. Mr. Kalyuk-Klyucharev makes no claims about the arrears. As noted above, he seeks the return of the \$500 retained for paint. So, I find Mr. Kalyuk-Klyucharev is currently no longer a member of City.

Is Mr. Kalyuk-Klyucharev entitled to the return of \$500?

18. The parties disagree on whether Mr. Kalyuk-Klyucharev repainted unit 3610. I will first give City’s version of events. When Mr. Kalyuk-Klyucharev moved in, he said he wanted to repaint the interior bright green. City said he could do so, provided that he repainted the interior back to its off-white colour when he moved out. I infer the parties said this verbally as City did not specify otherwise. Mr. Kalyuk-Klyucharev painted some of the walls bright green. Before moving out, he repainted the walls off-white.

However, he insufficiently covered some of the walls so some of the underlying green paint remained visible.

19. Mr. Kalyuk-Klyucharev disagrees that he ever painted the walls green. He also denies ever owning any green paint. He says that when he moved in, unit 3610 was in poor condition. He says he made various repairs and received no compensation for this. He also says City's contractor damaged the walls.
20. Overall, I find the evidence support's City's version of events. First, a November 2022 invoice shows City paid a painter \$500 to paint and "mud" unit 3610. I find the mud likely refers to using spackle to fill holes or cracks in the unit walls. The invoice is dated around the time Mr. Kalyuk-Klyucharev moved out.
21. Second, City also provided 6 photos of unit 3610 which it says it took after Kalyuk-Klyucharev moved out. I accept this is the case as it is consistent with video evidence discussed below. Some photos show walls with off-white paint insufficiently covering a darker colour underneath. I find this is likely the green paint discussed above. Other photos show cracks and fissures on 2 sides of a wall near the stairs. I find it likely the painter charged to repair these cracks under the "mud" entry.
22. Third, Mr. Kalyuk-Klyucharev provided multiple videos of unit 3610's interior. In the videos the unit lacks furniture, so I find they depict the unit shortly after Mr. Kalyuk-Klyucharev removed his possessions. The videos show some walls with the same, incomplete paint coverage shown in City's photos. These areas are close to a hot water tank and inside a closet. Mr. Kalyuk-Klyucharev did not film the area with the cracks. I find the cracks likely exist as the video evidence does not contradict the photos discussed above.
23. Finally, I find OA section 11.06 is consistent with City's version of events. Its wording allows Mr. Kalyuk-Klyucharev to repaint the unit provided he restore it to its original condition. I find this lends some support to my conclusion that City gave Mr. Kalyuk-Klyucharev conditional permission to repaint the walls green. Section 11.06 is also consistent with City's submission that the walls were undamaged when Mr. Kalyuk-

Klyucharev moved in. This is because City can repair the walls and charge back the cost to a leaving member.

24. Mr. Kalyuk-Klyucharev says that the cracks were pre-existing but there is no evidence to support his submission. Likewise, there is no evidence that the walls appeared poorly painted before Mr. Kalyuk-Klyucharev moved in. For example, there are no photos of the unit from June 2016. So, I find it unlikely that these were pre-existing problems.
25. I also find that, under OA section 11.06, the cracks shown in the evidence are beyond reasonable wear and tear. This is because they are large and show pieces of the wall missing. They are not hairline cracks. I also find that repainting the walls is outside what is normally meant by reasonable wear and tear.
26. Mr. Kalyuk-Klyucharev says \$500 is excessive for the repairs and repainting. However, he did not provide any quote, estimate, or expert evidence to show this is the case. On its face, I find the sum is reasonable.
27. Given the above, I find that City was entitled under OA section 11.06 to make repairs and restorations to the poorly painted areas and the wall cracks in unit 3610. I find that City also appropriately made a demand and provided written notice under that section. It did so through the share and move-out reconciliation document, referred to above. So, I dismiss Mr. Kalyuk-Klyucharev's claim.

CRT FEES AND EXPENSES

28. 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. I see no reason in this case not to follow that general rule. I therefore order dismiss Mr. Kalyuk-Klyucharev's claim for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

ORDER

29. I dismiss Mr. Kalyuk-Klyucharev's claims and this dispute.

David Jiang, Tribunal Member