



Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Moonan v. Lavender Housing Cooperative*, 2023 BCCRT 662

B E T W E E N :

PETER MOONAN

APPLICANT

A N D :

LAVENDER HOUSING COOPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about plumbing repairs. The applicant, Peter Moonan, owns shares and lives in the respondent cooperative association, Lavender Housing Cooperative (Lavender). Mr. Moonan says his unit was essentially unlivable while Lavender conducted the repairs. He says Lavender is liable for loss of quiet enjoyment of his unit for a period of 40 days. He seeks reimbursement of \$1,320 in cooperative

housing charges. He also says that Lavender charged back kitchen cabinet repairs that he is not liable for. He claims reimbursement of \$523.25. His claims total \$1,843.25.

2. Lavender denies liability. It says Mr. Moonan used a vacant unit that Lavender made available during the repairs. It also says it has no legal obligation to reimburse Mr. Moonan for any loss of housing. It also says that Mr. Moonan unreasonably refused Lavender's previous offer to fix and replace his unit's plumbing, causing the issues he claims for now. Finally, Lavender says that Mr. Moonan requested the kitchen cabinet repairs on his own, and they were outside the scope of the required plumbing repairs. So, it says Mr. Moonan should pay for them.
3. Mr. Moonan represents himself. Lavender's director of maintenance represents it.
4. For the reasons that follow, I dismiss Mr. Moonan'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.

ISSUES

9. The issues in this dispute are as follows:
 - a. Must Lavender compensate Mr. Moonan \$1,320 for the 40 days his unit's plumbing and drywall were under repairs?
 - b. Must Lavender reimburse Mr. Moonan \$523.25 for kitchen repairs?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Moonan 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 certification of incorporation shows that Lavender became incorporated under the *Cooperative Association Act* (CAA) on June 6, 1983. Its memorandum of association shows its purposes include providing housing to Lavender's members. It is undisputed that Mr. Moonan is a Lavender member.
12. Section 13 of the CAA says cooperative associations like Lavender 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 Lavender filed the currently applicable rules and an attached Occupancy Agreement (OA) labelled Schedule A with the registrar on June 17, 2005. Lavender also has a

“maintenance policies and procedures” document dated November 30, 2017. I discuss the applicable rules and sections of the OA and policies below.

13. Part of this dispute is about monthly housing charges. Lavender funds itself through the monthly housing charge members must pay under OA section 4.01.
14. I turn to the chronology. Mr. Moonan emailed Lavender on October 4, 2020. He reported the following. The previous day, Mr. Moonan noticed a water stain on the front exterior foundation wall. It grew overnight. He then called a plumber, Brent Jensen Plumbing (BJP). BJP determined that hot water was leaking from the Poly B pipes and draining out the front wall. The pipes were under the kitchen sink cabinet and under the slab. BJP installed a water shutoff valve on the hot water supply line at the time to stop further moisture damage.
15. Lavender’s maintenance coordinator, MDS, exchanged emails with Mr. Moonan from October 5 to 7, 2020. Mr. Moonan says, and I accept, that MDS was not a director, member, or property manager, but worked to coordinate repairs for Lavender.
16. In the emails MDS outlined the anticipated work and provided a rough timeline. I find from these emails and the parties’ submissions that the work was considerable and required coordination with different contractors. MDS said Lavender would hire BJP to replace the Poly B supply lines. However, to access the pipes another contractor, Marquis Contracting (Marquis), would have to remove drywall and the kitchen cabinets. BJP or Marquis would also need to cover the floor and other areas with plastic sheets to control dust. Further, someone would have to clear the kitchen countertops, laundry room, hot water tank area, and most of the living room to provide wall access. After BJP finished its work, Capital City Drywall & Painting (CCDP) would repair and paint the drywall, Marquis would reinstall the kitchen cabinets, and BJP would reinstall the sink.
17. MDS also noted that Mr. Moonan would be without the use of his kitchen for 2 to 3 weeks. Photos show that once work began, Mr. Moonan generally lacked access to his kitchen, laundry facilities, living room, and dining room. Someone moved the appliances into the middle of the various rooms and covered most surfaces in plastic

sheets. Mr. Moonan says that while work progressed his unit was filled with noise, dust, and toxic fumes. I find this was likely the case given that the contractors required plastic sheeting and the nature of the work, which included drywall removal. I note that there is no indication it was unsafe for Mr. Moonan to sleep in his unit, and he did so. Mr. Moonan also says, and I accept, that his privacy was affected by various workers coming and going during this time.

18. It is undisputed that the work took longer than expected. Lavender says that the reason was a tradesperson shortage in connection with the COVID-19 pandemic. I accept this contributed at least in part to the delay given the dates in this dispute. PJB restored water on October 26, 2020. From then to November 6, 2020, CCDP repaired the drywall and applied paint and texture to match other areas. The work finished on November 13, 2020.
19. During the work, Mr. Moonan stayed and slept in his unit. However, he took showers and cooked dinner in another vacant unit numbered 29. I find from the October 2020 emails that he did so with Lavender's permission until around November 1, 2020, when another member moved in as anticipated. Mr. Moonan then cooked meals in the common kitchen facilities until the work ended.

The Applicable Law

20. CRTA sections 125 and 127 allow the CRT to make orders to prevent or remedy an unfairly prejudicial action or decision by a cooperative association like Lavender. This mirrors the language in CAA section 156(1)(b), which gives the BC Supreme Court the power to make orders to remedy actions or threatened actions that are unfairly prejudicial to a member. Although the parties did not use this term, I find Mr. Moonan's claims are about alleged unfairly prejudicial conduct by Lavender.
21. To prove his claim, Mr. Moonan must show that Lavender failed to meet his reasonable expectations and that the failure to meet those expectations had unfairly prejudicial consequences. See *Watson v. Lore Krill Housing Cooperative*, 2022 BCCRT 1167 at paragraph 20. While CRT decisions are not binding, I agree with the reasoning in this decision.

22. Unfairly prejudicial conduct is inequitable or unjust. The member does not need to establish that the cooperative 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. See *Watson* citing *Scipio v. False Creek Housing Co-operative Housing Association*, 2012 BCSC 1339, at paragraph 21.

Issue #1. Must Lavender compensate Mr. Moonan \$1,320 for the 40 days his unit's plumbing and drywall were under repairs?

23. In an October 8, 2020 email, Mr. Moonan asked Lavender to compensate him for the time his water would be off. In a November 12, 2020 letter, Lavender denied Mr. Moonan's request. I find that Mr. Moonan claims he reasonably expected Lavender to pay for accommodations elsewhere while BJP and CCDP repaired his unit's plumbing and drywall. Alternatively, he expected Lavender to reimburse his monthly housing charges for this period of time.
24. Overall, I find Mr. Moonan's expectation was unreasonable for several reasons.
25. First, Mr. Moonan did cite any rule, OA section, or policy that says he is entitled to reimbursement of any housing charges from Lavender. Having reviewed these documents, I find there is no document that requires this. Consistent with this, Mr. Moonan says that Lavender never offered to house him outside of Lavender's facilities or to pay for such housing.
26. Second, it is undisputed that Lavender agreed to provide Mr. Moonan vacant unit 29 as a temporary place to stay. Mr. Moonan's emails show he showered and cooked in unit 29 while the plumbing and drywall work was underway, but he explicitly told Lavender it was unnecessary for him to move furniture into or sleep in unit 29. I find this was not a situation where Mr. Moonan's housing security was at stake.
27. Mr. Moonan says that he is nonetheless entitled to compensation because unit 29 was unfurnished, in a separate building 50 meters from his unit, and ultimately not his own unit. I accept that using his own unit, unit 29, and later the common facilities would have been less comfortable than using his own unit alone. However, I find Lavender's substitution falls short of inequitable or unjust conduct. I reach this

conclusion in part because Mr. Moonan decided to continue sleeping in and otherwise residing in his own unit.

28. Mr. Moonan says Lavender treated him unfairly because members for units 17, 28, and 36 each received compensation in similar circumstances, but he did not. Mr. Moonan also says that by failing to compensate him, Lavender breached OA section 7.03. That provision that all rules and policies shall apply to all of Lavender's members uniformly and without preference or discrimination.
29. Emails show that in 2019 units 28 and 36 received a refund of one months' worth of housing charges, and unit 17 received reimbursement of 5 days' worth of housing charges.
30. Ultimately, I do not find these examples persuasive. Lavender's undisputed submission is that the unit 28 and 36 members had to outside Lavender's facilities and the members paid for these alternative accommodations on their own. The unit 17 member stayed in their unit and was compensated for only 5 days' worth of housing charges. As noted above, Mr. Moonan had the option to use or stay in unit 29 at no cost until around November 1, 2020. He ultimately decided to stay in his own unit and use some of the facilities in unit 29 until it became occupied, then use the common kitchen facilities. So, I find their situations are different.
31. The emails also indicate that Lavender's decisions about units 28, 36, and 17 were a matter of discretion rather than the application of a specific written rule, OA term, or policy. So, I find OA section 7.03 does not apply or was otherwise not breached.
32. Mr. Moonan also alleges that Lavender unnecessarily prolonged the work because it was unwilling to prioritize repairs on his unit over a planned renovation in unit 1, and it was unable to get trades on a timely basis.
33. I find it unproven that Lavender should have further prioritized Mr. Moonan's unit. Mr. Moonan's October 4, 2020 email shows that by then, BJP has stopped the leak and stabilized the situation. Mr. Moonan also had the temporary use of unit 29 at no

additional charge. So, I find it unclear why Mr. Moonan's repairs required workers from unit 1 to be redirected to work on his unit.

34. Similarly, there is no indication that Lavendar did anything to delay repairs. The emails show that MDS acted relatively quickly to hire BJP and others. I find any delay was due to the contractors' lack of availability. Consistent with my conclusion, Mr. Moonan says that 1 serious delay occurred when CCDP advised him on November 4 that it could not return until November 16, 2020, to resume work. There is no indication Lavender was responsible for that delay. In any event, Mr. Moonan says the work was done on November 13, 2020, before this date.
35. Given the above, I find it unnecessary to address Lavender's claim that Mr. Moonan caused the plumbing issues or that Mr. Moonan was required to obtain personal insurance to pay for alternative accommodation under OA section 12.02.
36. I dismiss Mr. Moonan's claim.

Issue #2. Must Lavender reimburse Mr. Moonan \$523.25 for kitchen repairs?

37. MDS's October 9, 2020 email shows that Lavender hired Marquis to attend Mr. Moonan's unit on October 19, 2020. As discussed above, Lavender hired Marquis to take out all the cabinets.
38. A June 11, 2020 invoice shows that Marquis took the cabinet parts to The Kitchen Technician (TKC) on October 14, 2020. In a November 2, 2020 invoice, TKC charged Lavendar for replacing 1 cabinet and 2 cabinet bases. TKC marked the November 2020 invoice to Mr. Moonan's attention. The June 2020 invoice shows that Marquis then took the cabinet parts to Mr. Moonan's unit on November 2, 2020.
39. TKC invoiced Lavender for \$392 and Marquis invoiced Lavender \$131.25. These invoices equal \$523.25, which is Mr. Moonan's second claim amount.
40. In the November 12, 2020 letter mentioned above, Lavender alleged that Mr. Moonan asked TKC and Marquis, without Lavender's authorization, to do the work and charge

Lavender. It asked for a cheque for \$523.25. The correspondence shows that Mr. Moonan paid this amount under protest.

41. The parties dispute how these invoices came to be. Mr. Moonan says the following. A Marquis employee, D, attended on October 9, 2020. D arranged for Marquis and TKC to do the work on Lavender's behalf. Mr. Moonan says he is not liable for this reason.
42. Lavender disagrees and says Mr. Moonan told TKC and Marquis to do the work and charge Lavender without its permission.
43. MDS wrote in a November 12, 2020 email to Mr. Moonan that they had spoken with D. According to MDS, D said that Mr. Moonan had already "lined up" with TKC to have the cabinets taken away, that Mr. Moonan had "already arranged everything", and that Mr. Moonan had dropped off the vanity base and some other doors by himself. MDS reiterated that they had not authorized this work, nor had Lavender.
44. I find that the best evidence on the matter would come from D. However, neither party provided a statement or other evidence from D. I find this is a key evidentiary gap that negatively affects Mr. Moonan's claim. This is because he bears the burden to prove his claim, as noted above. There is no indication that Mr. Moonan could not have contacted D for such evidence. It is undisputed that he was formerly a director of Lavender and knew D.
45. I am therefore left with the November 12, 2020 email as the best evidence before me on the matter. I acknowledge this email is hearsay. However, under CRTA section 42 I am allowed to consider hearsay and place some weight on it here, given the lack of other evidence. So, I find Mr. Moonan's allegation unproven that D or Marquis arranged for the work to be done. I find Lavender's version of events is likely accurate.
46. With that in mind, I turn to the legal test. I find that Mr. Moonan expected that Lavender would pay for these repairs because D arranged for the repairs on Lavender's behalf. I find this expectation was not reasonable because D did not, in fact, arrange for the repairs.

47. Mr. Moonan says that, in any event, Lavender should have paid for the cabinet repairs. Pictures show that some of the particle board cabinet parts had mould growing on them. He says that the repairs were necessary.

48. I find this expectation is unreasonable because Lavender's rules and policies do not allow members to arrange for repairs at their discretion and require Lavender to pay for them after the fact. In particular, maintenance policy 3.01 says that members are not authorized to call trades contractors directly. Further, the policy says that members will be held financially responsible if they call a trades contractor or if the co-op does so for a member-reported non-emergency. I find that by October 9, 2020, it was no longer an emergency situation. I find that if Mr. Moonan wanted the particle board parts to be replaced at Lavender's expense, he should have asked Lavender first. I find Mr. Moonan's expectations are not objectively reasonable in these circumstances.

49. I dismiss this claim.

CRT FEES AND EXPENSES

50. 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 dismiss Mr. Moonan's claim for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

ORDERS

51. I dismiss Mr. Moonan's claims and this dispute.

David Jiang, Tribunal Member