



Civil Resolution Tribunal

Date Issued: March 13, 2024

File: CS-2022-005916

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Marshman v. Lavender Housing Cooperative*, 2024 BCCRT 257

BETWEEN:

ROBERTA LYNN MARSHMAN

APPLICANT

AND:

LAVENDER HOUSING COOPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. The applicant, Roberta Lynn Marshman, is a member of the respondent housing cooperative, Lavender Housing Cooperative. The applicant says the co-op failed to enrol her for a federal rent subsidy when a new program began in September 2020. She did not receive the subsidy until March 1, 2023. She asks for an order that she be reimbursed in full for the subsidy she should have received between September

2020 and March 2023. At the time she started this Civil Resolution Tribunal (CRT) dispute, she said she had lost \$21,006.31 in subsidies, but amended this amount to \$17,560.69 in submissions. The applicant is self-represented.

2. The co-op denies any wrongdoing and asks me to dismiss the applicant's claims. The co-op is represented by its president.

JURISDICTION AND PROCEDURE

3. These are the CRT's formal written reasons. 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.
4. 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. In some respects, both parties of this dispute question the credibility, or truthfulness, of the other. However, oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I am properly able to assess and weigh the evidence and submissions before me and make the necessary credibility findings, which are not central to this dispute. There is no other compelling reason for an oral hearing. I therefore decided to hear this dispute through written submissions.¹
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court. The CRT may also ask questions of the parties.

¹ See *Yas v. Pope*, 2018 BCSC 282.

6. Under CRTA section 127 and the CRT rules, in resolving this dispute I 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

7. The issues in this dispute are:
 - a. Did the co-op treat the applicant in an unfairly prejudicial manner?
 - b. If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

8. The co-op was established in 1983. The applicant has been a member since 1984.
9. As noted above, the applicant claims compensation from the co-op because she did not receive a housing subsidy from September 2020 to March 2023. She did not specify a legal basis for her claim, which is common for CRT participants who do not have a lawyer.
10. Under CRTA section 127(2), the CRT can make orders to remedy an unfairly prejudicial action. I find this is the essence of the applicant's claim. To succeed, the applicant must prove that the co-op failed to meet her reasonable expectations, which had an unfairly prejudicial effect. The applicant does not have to prove that the co-op acted in bad faith or had an improper motive, but the co-op's conduct must be inequitable or unjust.²
11. The parties agree that the only way the applicant could receive a federal housing subsidy is through the co-op. Simply put, the co-op applies for subsidies on its members' behalf and allocates those subsidies by reducing the eligible members' monthly housing charges. In that way, subsidies are revenue neutral for co-ops. The

² See *Harding v. Meadow Walk Housing Co-operative*, 2021 BCCRT 1103, and *Watson v. Lore Krill Housing Cooperative*, 2022 BCCRT 1167.

Canadian Mortgage and Housing Corporation (CMHC) administers the subsidies at issue in this dispute.

12. The applicant received a subsidy for many years, which stopped in late 2017 because the applicant had another person living with her. The applicant still does not agree with how the co-op handled that situation and provided a fair amount of evidence about it. She says it shows a pattern of behaviour where the co-op actively prevents her from receiving a subsidy. That said, the applicant's claim is only about the new subsidy program that started in September 2020, so I have reviewed what happened in 2017 only for context.
13. On February 4, 2021, the co-op sent all members, including the applicant, an information package about the new subsidy program. The applicant says that the co-op had sent a similar package out in the summer of 2020 that she did not receive. She provided no evidence of this other than asserting that another co-op member told her so. Notably, she did not provide a statement from any other co-op member who received a subsidy package before February 2021. Given this lack of supporting evidence, I accept the co-op's evidence that the February 4, 2021, letter was the first time it invited members to apply for the new subsidy program.
14. The letter was one page long and included, in bold writing, the following statement:

If you are applying for subsidy, you must submit a copy of Revenue Canada's Notice of Assessment, most recent bank statements, and proof of current income (3 paystubs, pension statement etc.) If the required documentation is not submitted by all adults residing in your unit, your application for subsidy will be denied.
15. The letter also included an attachment that outlined what was acceptable proof of income for different income sources. At the time, the applicant's income included government and private pensions. The attachment said that applicants needed to provide written confirmation of government pensions, and provided instructions on how to get a copy of a benefits letter. For private pensions, applicants needed to provide a statement of entitlement from the pension provider.

16. The applicant sent the co-op an application on February 26. She listed her sole source of income as “pensions”. Like the February 4 letter, the application form instructed the applicant to “attach all proof of declared incomes”. The applicant provided a notice of assessment, but no proof of income as required.
17. On March 18, the co-op wrote to the applicant that CMHC had not increased the number of subsidized units in the co-op, so she would have to keep paying market rates. The co-op did not say that it was because the applicant failed to give proof of income.
18. On May 14, the applicant wrote the co-op suggesting that the co-op had not included her in its application. She also asked whether the co-op had requested additional units. On May 27, the co-op wrote back that it had requested additional subsidies, but CMHC had denied the request. Again, it did not say why.
19. The co-op says that in 2023, the federal government invited co-ops to apply for additional funds if needed. The co-op did so, and this time obtained a subsidy for the applicant. It started March 1, 2023.
20. The applicant argues that when CMHC created a new subsidy program that launched in September 2020, the co-op failed to include her unit in its subsidy application. She says the co-op’s explanation of why she did not get a subsidy has changed over time. She says the co-op first told her she was too late, then that CMHC had not increased the subsidy, and then in this dispute that her application was incomplete. She also points out that the co-op did not provide evidence that would support its assertion that it promptly applied on her behalf.
21. The co-op’s submissions about the 2021 subsidy application are brief and unclear. It does not say why it waited until February 2021 to apply for the new subsidy program. The co-op provided email evidence between its manager and a CMHC employee that the co-op says confirms it had asked for additional subsidies. However, this exchange was from January 2020 and it does not mention the applicant. The co-op also provided a copy of an application form, presumably sent to CMHC, that shows that the applicant required a subsidy. This, too, is undated.

22. Given the lack of evidence from the co-op about the subsidy applications, I asked the co-op to provide copies of all correspondence between it, its manager, and any government agency about the subsidy. I also invited the co-op to provide further submissions along with its new evidence. In response, the co-op provided three documents. Two were identical to other evidence the co-op had already provided. The third was the applicant's February 26, 2021, application for a subsidy. The applicant had already provided this document, although the original version was missing pages. Those pages contain no relevant information. The co-op provided no additional submissions. In short, the co-op failed to provide any relevant new evidence even though I find it likely has corresponded with CMHC about the subsidy applications.
23. The lack of evidence makes it impossible to know what happened with the co-op's subsidy application. When a party fails to provide relevant evidence, the CRT may draw an adverse inference. An adverse inference is when the CRT assumes that the party did not provide the evidence because it would not help their case. I find that an adverse inference is appropriate here. This means that I do not accept the co-op's unsupported evidence about what happened with the February 2021 subsidy application.
24. Instead, I find that the co-op failed to apply for the new federal subsidy that launched on September 1, 2020, on the applicant's behalf. I find that the applicant had a reasonable expectation that the co-op would pursue a subsidy on her behalf with reasonable diligence. This includes applying for the subsidy when it started, not five months later. Members like the applicant have no choice but to rely on the co-op to apply for subsidies. I find that the co-op's failure to apply for the subsidy promptly on her behalf was unfairly prejudicial for these reasons. I also find that the co-op's communications with the applicant about the subsidy were evasive and inconsistent, which compounded the unfairness.
25. The difficulty for the applicant is her requested remedy. As described above, the co-op clearly communicated what documents were required and that failing to provide them would result in an unsuccessful application. The applicant did not provide the

required proof of income documents. The co-op says its compliance with the subsidy program is audited so it has no discretion to vary from the CMHC's requirements.

26. The applicant argues that if the co-op needed more information, it could have easily requested it from her. This would have been a simple and courteous step. However, I do not agree that the co-op had a legal obligation to do so. In other words, I cannot conclude that the co-op's unfair treatment of the applicant resulted in her losing the subsidy. Based on the application materials before me, she would not have got it anyway.
27. So, what remedy is appropriate? The CRT's jurisdiction over unfairly prejudicial conduct by cooperative associations is similar to its jurisdiction over significantly unfair actions and decisions by strata corporations. In both contexts, the CRT can make whatever order it considers necessary to remedy an unfair action. In the strata context, the CRT has ordered compensation for significantly unfair actions even when there has been no monetary loss.³ I find that approach appropriate here.
28. I find that the co-op's unfairly prejudicial treatment of the applicant caused unnecessary stress and impacted her ability to use and enjoy her home. I find that \$1,000 is necessary to remedy the impact of the co-op's actions. I order the co-op to pay this amount.
29. The applicant also raises that the co-op has a fund specifically to help members who need a subsidy but are not receiving one. She provided a copy of the co-op's March 31, 2020, statement of financial position, which shows \$8,106 in a "subsidy surplus fund". She also provided a copy of the co-op's 2003 financial statement, which shows the fund had over \$66,000 at the time. The applicant says this proves the co-op had used the fund to help other members over the years, but never helped her. In fact, it ignored her correspondence where she raised this issue.
30. The co-op's rules do not mention the fund, and the co-op did not explain why it did not use it to help the applicant. Notably, the co-op has never denied that the applicant

³ See, for example, *Lozjanin v. The Owners, Strata Plan BCS 3577*, 2019 BCCRT 481, and *Der v. The Owners, Strata Plan EPS2809*, 2022 BCCRT 182.

needed a subsidy. Absent an explanation from the co-op, I find its decision not to use the subsidy reserve fund to help the applicant was also unfairly prejudicial, as it appears that the co-op treated the applicant differently from other members.

31. There is no evidence about how the co-op allocated those funds in the past. I find that the applicant had a reasonable expectation to some help from the fund. However, given that the fund had shrunk considerably over the years, she could not have reasonably expected the co-op to fully deplete it. On a judgment basis, I find that the co-op must pay the applicant \$4,000 for its failure to use the subsidy reserve fund to assist the applicant.
32. In summary, I order the co-op to pay a total of \$5,000 in compensation for its unfairly prejudicial actions.

CRT FEES AND EXPENSES

33. 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. The applicant was partially successful, so I order the co-op to reimburse her half of her \$250 in CRT fees, which is \$125. Neither party claimed any dispute-related expenses.
34. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$5,000 from February 14, 2021, to the date of this decision. This equals \$360.90.

ORDER

35. Within 30 days of this decision, I order the co-op to pay the applicant a total of \$5,485.90, broken down as follows:
 - a. \$5,000 in damages,
 - b. \$360.90 in prejudgment interest, and

c. \$125 in CRT fees.

36. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*.

37. This is a validated decision and order. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in

Eric Regehr, Vice Chair