



Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Thomas v. Westwood Housing Co-operative*, 2024 BCCRT 502

B E T W E E N :

KIMBERLY THOMAS and MARK THOMAS

APPLICANTS

A N D :

WESTWOOD HOUSING CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. Kimberly Thomas and Mark Thomas (applicants) are residents and members of the Westwood Housing Co-operative (co-op). They say the co-op plans to install an unnecessary fence, which will cause them to lose more than half their yard, and cut off an emergency exit from their home. The applicants request an order that the co-op may not install the fence.

2. The co-op says the area in question is not the applicants' yard, but is a common area, not for the applicants' exclusive use. It says installing the fence will fix ongoing problems with mess and access to utility meters.
3. The co-op also says it is not appropriate for the Civil Resolution Tribunal (CRT) to resolve this dispute, because the co-op's rules contain different dispute resolution procedures.
4. The applicants are self-represented in this dispute. The co-op is represented by its board president.
5. For the reasons set out below, I find in favour of the applicants in this dispute.

JURISDICTION AND PROCEDURE

6. The CRT has jurisdiction (authority) over certain cooperative association claims under section 125 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
7. 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 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 an oral hearing is not necessary in the interests of justice.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUES

9. The issues in this dispute are:

- a. Does the CRT have authority to resolve this dispute?
- b. If so, should the CRT order the co-op not to install the fence?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicants 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.
11. The co-op was established in 1999, and operates under the *Cooperative Association Act* (CAA). The applicants have lived in the co-op since 2010.
12. The parties provided extensive evidence and submissions about the history of interactions and alleged conflicts between the applicants and the co-op. These include allegations about Ms. Thomas' board membership, actions of the applicants' family member who previously lived in the applicants' home, and about the applicants' pets. I acknowledge the history between the parties. However, I have only addressed these allegations in my reasons below to the extent they are relevant to the issues before me to decide in this dispute.

Does the CRT have authority to resolve this dispute?

13. The co-op says the applicants should have used the internal dispute resolution procedures set out in the co-op's rules. So, the co-op says it is not appropriate for the CRT to resolve this dispute.
14. Paragraph 6.01 of the occupancy agreement says that members must comply with the co-op's rules. Rule 25 addresses dispute resolution, and says that a member wishing to initiate resolution of a dispute with another member may submit the dispute in writing to the co-op. I find this provision does not apply to this dispute about the fence, since the applicants' dispute is not with another co-op member. Rather, the dispute is against a decision by the co-op board, which acts for the co-op itself. There is no rule about member-board dispute resolution.

15. Also, CRTA section 125(1)(b) specifically says the CRT has jurisdiction over a claim in respect of the CAA, in relation to a housing cooperative, concerning an action or threatened action by the co-op or its directions in relation to a member.
16. The CAA takes precedence over any co-op rule. So, based on CRTA section 125(1)(b), I find the CRT has jurisdiction to resolve the dispute about the co-op's decision to install the fence, regardless of any co-op rule.
17. I also note that it was open to the co-op to propose an alternative form of dispute resolution to the applicants, or settle the matter during the CRT's facilitation phase. But this did not occur.
18. For these reasons, I find the CRT has authority to decide this dispute.

Should the CRT order the co-op not to install the fence?

19. The applicants say the fence will reduce the size of their yard, and cut off an emergency exit from their home. They also say the co-op decided to install the fence as retaliation after the applicants send a complaint letter about overgrown blackberry vines coming from another member's yard.
20. The co-op says the fence will ensure that utility company employees have clean and safe access to meters, and will provide a clean common area for co-op members. In making these arguments, the co-op says the applicants have not kept the area clean in the past. The co-op says there have been problems with pet waste, unrestrained pets, weeds, and unsightly stored objects.
21. CRTA section 127(2) allows the CRT to make an order to prevent or remedy an unfairly prejudicial action by a co-op. (See *Harding v. Meadow Walk Housing Co-operative*, 2021 BCCRT 1103.) Although they did use this language, I find the applicants essentially argue that the co-op's decision to install the fence is unfairly prejudicial.
22. To succeed in an unfair prejudice claim, an applicant must establish that the co-op failed to meet the applicant's reasonable expectations and that, on an objective basis,

that failure involved prejudicial consequences. (See *Dalpadado v. North Bend Land Society*, 2018 BCSC 835, as cited in *Pang v. Little Mountain Residential Care & Housing Society*, 2021 BCCRT 947).

23. For the following reasons, I find the co-op's decision to install the fence was unfairly prejudicial to the applicants.
24. On July 4, 2022, Ms. Thomas wrote to the co-op to say that blackberry vines from another unit had been coming into their yard and another yard. The co-op responded in a letter dated September 28, 2022. The letter said:
- After investigation, "we noticed that the co-op's common property to the side of your unit has been an on and off issue for the past 11 years."
 - With this in mind, the co-op sent 4 board members to view the area, "to investigate the blackberry bushes, accessibility to the meters, along with your use of this piece of property."
 - Based on this viewing, in order to "move forward and not have this same issue arise", the board decided to erect a fence between the applicants' kitchen window and living room window, straight across the yard area to connect with the current fence along the driveway.
 - In December 2022, the maintenance committee would "attend the side of your unit to ensure all personal belongings have been removed." Any remaining items would be removed at the applicants' expense.
25. Although the September 28, 2022 letter refers to issues with side yard maintenance over the previous 11 years, the co-op provided no evidence of this, such as copies of correspondence, minutes, or witness statements.
26. Similarly, in its CRT submissions, the co-op referred to many past events involving the applicants, including allegations that Ms. Thomas was asked to clean the area in April 2017 to allow for fire department inspection. The co-op's submission also

described alleged past violations of the co-op's pet policy, rules, and occupancy agreement.

27. The co-op provided no evidence to confirm these allegations about past conduct. So, I find these allegations are unproven. The co-op also provided no evidence of the steps it has taken, if any, to resolve ongoing problems with the applicants.
28. The co-op submits that the common area in question has been neglected and "abused with pet excrement." The co-op provided photos showing that the area is messy. The photos show that the applicants have items stored in the area, and there are dog feces on the gravel. However, it appears that the photos were taken on a single day. While the co-op asserts that this mess and neglect is an ongoing or recurrent problem, I find there is no evidence to confirm this. Also, the co-op did not provide correspondence or other evidence to show what steps it has taken to remedy the situation or correct the applicants' alleged neglect, and breaches of rules and the occupancy agreement, before deciding to install the fence.
29. Essentially, the September 26, 2022 letter indicates that the co-op's decision to install the fence was a punitive measure, based on allegations of past misconduct. However, even if building a fence was a reasonable response to rule or occupancy agreement breaches, I find the co-op has not proved that those breaches occurred over a long period, as the co-op alleges.
30. The co-op submits in this dispute that installing the fence will provide a clean common area for co-op members. However, the photos in evidence show that the area in question is a gravel area right next to the applicants' unit, under their windows. There is no evidence that this is an area that other co-op members would use on a regular basis.
31. The co-op also submits that gas and hydro meter readers had difficulties accessing the meters. However, I find the co-op provided no evidence to confirm this. A copy of a text chat between the applicants and BC Hydro indicates that the hydro meters are "smart meters" that are read remotely. A text chat with Fortis BC indicates that Fortis had difficulty accessing the meter due to bushes or shrubs in June 2020, and because

of a dog in July 2021. However, there is no evidence before me showing that the co-op was aware of these events, or took steps to address them at the time. Also, from the photos of the area in evidence, I see no reason why the gas meters would not be generally accessible. They are not blocked by visible vines or plants. While there are dog feces on the ground, which is unsightly, it would still be possible to reach the meters without touching those areas.

32. Finally, the applicants provided photos of the exterior of some other members' units, which have overgrown brush, stored items, and other unsightly areas. The co-op does not deny that these areas exist, and does not say it is doing anything about them. Rather, the co-op says these areas are different from the exterior of the applicants' unit because "there is no other unit...that has been abused with pet excrements and neglected as the common area here in dispute." Again, I find the co-op has not proved the history of neglect that it asserts.
33. Also, I find that the co-op's decision to install a fence directly under the applicants' windows, and revoke the use of an area that the applicants used as part of their yard for many years, was a punitive disciplinary measure. There is nothing in the CAA, the co-op rules, or the occupancy agreement that permits the co-op to install a fence as a disciplinary response to breaches.
34. I find the applicants had a reasonable expectation that they would be treated the same as co-op members, and that they would be given written warning of disciplinary action against them, and a reasonable opportunity to change their conduct. I find the co-op has not proven that it met these expectations. While the burden is on the applicants to prove their claims in this dispute, I find the co-op must prove its defence, which is that the applicants' historical conduct justifies the fence. I find the co-op has not done so.
35. For these reasons, I find the co-op's decision to install the fence was unfairly prejudicial to the applicants. I order the co-op not to install the fence.

CRT FEES AND EXPENSES

36. As the applicants were successful in this dispute, under the CRTA and the CRT's rules I find they are entitled to reimbursement of \$225 in CRT fees. The applicants requested reimbursement of dispute-related expenses, but provided no evidence that they incurred any. So, I order no reimbursement.
37. The co-op also requested reimbursement of dispute-related expenses. Since the co-op was not successful in this dispute, I order no reimbursement. I would not have ordered reimbursement in any event, since the co-op provided no evidence of its expenses.

ORDERS

38. I order the following:
- a. The co-op may not install the fence described in the September 26, 2022 letter, or any similar fence in that location.
 - b. Within 30 days of this decision, the co-op must reimburse the applicants \$225 for CRT fees.
39. I dismiss all parties' claims for other dispute-related expenses.
40. The applicants are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

41. This is a validated decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Kate Campbell, Vice Chair