



Civil Resolution Tribunal

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File: CS-2023-010793

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Couture v. Okanagan Housing Cooperative Association*, 2024 BCCRT 603

B E T W E E N :

NATAUSHA COUTURE

APPLICANT

A N D :

OKANAGAN HOUSING COOPERATIVE ASSOCIATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. The applicant, Natausha Couture, is a member and resident of the respondent co-operative association, Okanagan Housing Cooperative Association (co-op).

2. Ms. Couture says the co-op unreasonably refused to accommodate her disability, by refusing permission for her to smoke medical marijuana in her unit or on her front or back deck.
3. Ms. Couture asks for orders that the co-op stop threatening her membership, stop violating her medical privacy, and grant permission to smoke in her unit.
4. The co-op says the occupancy agreement (OA) prohibits all smoking in co-op units, common areas, patios, and balconies, but the co-op board has discretion to permit an exemption. The co-op says the board instead informed Ms. Couture that she could smoke outdoors, at the co-op's street entrance. The co-op says this decision was based on the medical information provided by Ms. Couture's nurse practitioner. The co-op says a wholesale exemption from the smoking ban is disproportionate and not medically justified based on the provided medical information.
5. Ms. Couture is self-represented in this dispute. The co-op is represented by a lawyer, Jonathan Ip.
6. For the reasons explained below, I dismiss Ms. Couture's claims.

JURISDICTION AND PROCEDURE

7. The Civil Resolution Tribunal (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.
8. 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.

9. 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.
10. Ms. Couture provided submissions about past events in the co-op, including alleged harassment and threats, a dog bite, her former position on the board, the treatment and removal of her own dog from the co-op, and mould, lead paint, and asbestos in her unit. I find these matters are not to the issues I must decide in this dispute, which are about smoking. So, I have not referred to these other matters in this decision. I acknowledge that Ms. Couture has included them as context for the board's decision not to permit smoking in her unit.
11. It is somewhat unclear from Ms. Couture's dispute application and submissions whether she requests that the CRT to order the co-op to permit smoking both tobacco and marijuana, or just marijuana. The co-op submitted that this CRT dispute is only about Ms. Couture's request to smoke marijuana. Ms. Couture did not refute this submission, and her dispute application specifically mentions marijuana and not tobacco. Also, Ms. Couture provided no medical or other evidence that specifically addresses tobacco use. So, I find this dispute is solely about whether Ms. Couture may smoke marijuana in the co-op.

ISSUES

12. The issues in this dispute are:
 - a. Does the co-op have a duty under the BC *Human Rights Code* (Code) to accommodate Ms. Couture by permitting her to smoke marijuana in or near her unit?
 - b. Has the co-op treated Ms. Couture in an unfairly prejudicial manner by refusing to permit her to smoke marijuana in or near her unit?
 - c. What remedies are appropriate, if any?

BACKGROUND

13. I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

Smoking Prohibition

14. In June 2023, the co-op filed a new OA with the Registrar of Companies. That version of the OA contained a new provision, 8.04, which prohibits all smoking in several places, including in co-op units, interior common areas, patios, balconies, and within 6 meters of a door, window, or air intake. OA section 8.04 also contains the following relevant provisions:

- Section 8.04(b) defines smoking as inhaling, exhaling, burning, or “ordinary use” of any “product whose use generates smoke”.
- Section 8.04(c) – a co-op member may apply to the board in writing for an exemption to the smoking ban, within 30 days of the smoking ban coming into effect.
- Section 8.04(c)[3] – allowing the exemption is within the absolute discretion of the board.
- Section 8.04(c)[4] – if the board grants an exemption, the “declared smokers” may only smoke within the interior of their units.

15. On June 23, 2023, Ms. Couture emailed the co-op. She described some of her medical conditions and symptoms, and asked for permission to smoke inside her unit, or on the front or back decks. She explained that smoking marijuana helps her with pain and emotional symptoms arising from her medical conditions.

16. In support of her request, Ms. Couture provided a brief letter from Pamela Klassen, her nurse practitioner. Pamela Klassen listed Ms. Couture’s medical conditions (which I do not repeat for privacy reasons). Pamela Klassen wrote that Ms. Couture “required marijuana use to help with her pain and anxiety management.”

17. Later on June 23, the co-op board president replied to Ms. Couture's email, stating that the board had voted to deny her request. The email said that Ms. Couture's medical note did not specify that it was necessary for her to smoke marijuana, and that vaping and edible marijuana were both permitted in the co-op.
18. Ms. Couture sent the co-op another letter from Pamela Klassen, dated July 5, 2023. In that letter, Pamela Klassen wrote:
- Pamela Klassen had been Ms. Couture's primary health care provider since 2015.
 - At times, Ms. Couture is unable to ambulate and requires a wheelchair.
 - Ms. Couture requires inhaled marijuana to "manage" her medical conditions.
 - Ms. Couture had tried vaping and edibles, "but these have been intolerable."
 - "We have attempted a trial with prescription medical THC named nabilone without affect." [Reproduced as written]
19. In an addendum dated July 13, 2023, Pamela Klassen wrote that Ms. Couture must consume marijuana in her bedroom, or on her front or back deck. Pamela Klassen said it was "prohibitive" for Ms. Couture to travel over 200 meters to consume marijuana away from co-op property.
20. In an October 6, 2023 letter from its lawyer, the co-op repeated its decision to deny Ms. Couture's smoking ban exemption request. The lawyer's letter repeated that the co-op denied Ms. Couture's accommodation request because the provided medical documentation was not sufficiently reliable or comprehensive to determine the nature and extent of her medical conditions, and her need for accommodation.

REASONS AND ANALYSIS

21. In a civil claim like this one, Ms. Couture, as the applicant, must prove her claims on a balance of probabilities (meaning "more likely than not").

Human Rights Code

22. As explained above, Ms. Couture requests a CRT order that the co-op grant her permission to smoke marijuana in her unit. She says she requires this exemption for medical reasons. So, although she has not specifically argued it, I find Ms. Couture requests that the co-op accommodate a disability, as required under the Code.
23. Code section 8 says, in part, that unless there is a *bona fide* (genuine) and reasonable justification, a person must not, because of a physical or mental disability, discriminate against another person regarding any accommodation, service, or facility customarily available to the public.
24. The BC Human Rights Tribunal (HRT) has confirmed that section 8 applies to housing cooperatives: see *Armstrong v. Craigflower Housing Cooperative*, 2021 BCHRT 12. HRT decisions are not binding on the CRT, but I find the reasoning in that case persuasive and rely on it.
25. While Ms. Couture did not specifically raise the Code in her submissions, the co-op gave submissions about the duty to accommodate under Code section 8. The co-op also cited prior cases about section 8, including *St Pierre v. The Owners, Strata Plan BCS1586*, 2022 BCCRT 1284 and *The Owners, Strata Plan LMS 2900 v. Mathew Hardy*, 2016 BCCRT 1. The co-op provided copies of these cases, which Ms. Couture had access to. So, I find Ms. Couture had a full opportunity to respond to these legal arguments and the case law. So, I find it is procedurally fair for me to decide whether the co-op met its duties under Code section 8.
26. Also, CRTA section 11(1)(d) says the CRT may refuse to resolve a claim or dispute within its jurisdiction that involves the Code. I find this means the CRT also has authority to decide issues arising under the Code.
27. For Ms. Couture's Code section 8 claim to succeed, she must first prove she has a disability, which triggers a duty to accommodate under the Code. Then, she must also prove she was adversely impacted by the co-op's refusal to permit her to smoke marijuana in or near her unit, and that her disability was a factor in the adverse impact.

After that, the burden shifts to the co-op to establish a genuine, reasonable justification for its refusal to grant Ms. Couture a smoking ban exemption.

28. I accept that the medical evidence before me shows that Ms. Couture has multiple disabilities. The co-op does not dispute this. So, I accept that Ms. Couture has disabilities for the purposes of Code section 8.
29. However, for the reasons set out below, I find Ms. Couture has not proved that her disabilities were adversely affected by the co-op's refusal to permit her to smoke marijuana in or near her unit. Specifically, I find Ms. Couture has not proved that for medical reasons, she must smoke marijuana, rather than vaping it or ingesting it in an edible format.

Necessity of Smoking

30. In *The Owners, Strata Plan LMS 2900 v. Mathew Hardy*, 2016 BCCRT 1, the CRT considered a similar dispute where a strata lot owner was fined because his marijuana smoking breached strata bylaws. The owner argued that the strata had a duty to accommodate his marijuana smoking because he had a disability. The then-CRT chair found that while the owner provided medical evidence proving a disability, he had not provided persuasive evidence that smoking marijuana, rather than ingesting it in another form, was necessary to accommodate his disability (see paragraph 49). The chair therefore concluded that the owner had not proven that the strata's decision to prohibit the marijuana smoking caused the owner to be adversely affected or treated differentially because of his disability.
31. Prior CRT decisions are not binding on me. However, I find the reasoning in *Hardy* persuasive, and I rely on it here.
32. As in *Hardy*, I find that in this dispute, Ms. Couture has not provided persuasive medical evidence that establishes that she must smoke marijuana, rather than vape it or eat it.
33. Ms. Couture says that edibles are "ineffective", and that she cannot vape due to asthma. I accept that this is Ms. Couture's opinion. However, she is not a medical

expert, so I place limited weight on this opinion. Also, there is no evidence before me confirming that she has asthma, or explaining why she cannot vape due to asthma, but can smoke marijuana, which are also inhaled into the lungs.

34. As noted above, nurse practitioner Pamela Klassen provided 2 letters in support of Ms. Couture's request to smoke marijuana in the co-op. The first letter, which was undated, simply listed Ms. Couture's medical conditions, and said Ms. Couture "required marijuana use to help with her pain and anxiety management." The second letter, dated July 5, 2023, said Ms. Couture requires inhaled marijuana to "manage" her medical conditions. Pamela Klassen said Ms. Couture had tried vaping and edibles, but those were "intolerable".
35. I find Pamela Klassen's evidence does not provide a reasoned medical opinion about why Ms. Couture requires smoked marijuana due to her medical conditions, rather than edibles or vaped marijuana. Specifically, Pamela Klassen does not explain how or why vaping and edibles were "intolerable", or provide any details about this. Also, Pamela Klassen did not confirm Ms. Couture's assertion that she has asthma, or explain why Ms. Couture can inhale smoked marijuana but cannot tolerate vaping, which also involves inhaling.
36. I note that one version of Pamela's Klassen's July 5, 2023 letter includes a signature from a doctor, Dr. Dennis Neufeld, dated November 23, 2023. According to Ms. Couture, Dr. Neufeld is Pamela Klassen's supervising physician. I accept this, but I find Dr. Neufeld's signature provides no further information about why Ms. Couture must smoke marijuana for medical reasons, and cannot vape or use edibles.
37. The only other medical evidence Ms. Couture provided is some pages from a 2016 functional capacity evaluation. Since it is 8 years old, this report provides limited evidence about Ms. Couture's current health conditions, and no information about treatment and symptom management. Most importantly, the report does not mention marijuana use.
38. For these reasons, I find the medical evidence before me does not establish that smoked marijuana, rather than marijuana in another form, is necessary to

accommodate Ms. Couture's disabilities. So, I find she has not proved that her disabilities were a factor in the adverse impact from the co-op's refusal to permit her to smoke marijuana in or near her unit.

39. I dismiss Ms. Couture's Code section 8 claim, and find she has not proved the co-op had a duty to accommodate her disabilities by permitting smoked marijuana.

Unfair Prejudice

40. Ms. Couture says the co-op has treated her unfairly in relation to her smoking request.

41. CRTA section 127(2) allows the CRT to make an order to prevent or remedy an unfairly prejudicial action by a co-op. Although she did not use this language, I find Ms. Couture essentially argues that the co-op's decision to deny her requested exemption from the smoking ban was unfairly prejudicial.

42. To succeed in an unfair prejudice claim, Ms. Couture must prove that the co-op failed to meet her reasonable expectations, which had an unfairly prejudicial effect. Ms. Couture 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. See: *Harding v. Meadow Walk Housing Co-operative*, 2021 BCCRT 1103, and *Watson v. Lore Krill Housing Cooperative*, 2022 BCCRT 1167

43. As explained above, I have found that in the circumstances of this case, the co-op did not have a duty to accommodate Ms. Couture by permitting her to smoke marijuana in the co-op. So, I find Ms. Couture did not have a reasonable expectation that the co-op would grant her requested smoking ban exemption. This means the co-op did not treat Ms. Couture with unfair prejudice in refusing the exemption.

44. Ms. Couture also argues that the co-op acted unfairly, and violated her privacy, by repeatedly requesting detailed medical information to support her smoking ban exemption request. I disagree. When requesting an accommodation like a smoking ban exemption due to disability, a person must provide medical information to support the request: see *Braden v. Howe Sound Pulp and Paper and others*, 2023 BCHRT 225 and *Thorburn v. Vancouver Coastal Health Authority*, 2013 BCHRT 260.

45. Based on this, I find it was reasonable for the co-op to seek further medical information. I also find it was reasonable for the co-op to give Ms. Couture detailed information about the type of medical information that could support her accommodation request, as the co-op did in its correspondence. So, I find the co-op did not treat Ms. Couture with unfair prejudice in its requests for medical information.
46. Under CRTA section 49 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. Ms. Couture was unsuccessful in this dispute, and did not pay CRT fees. The co-op is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I order no reimbursement.

ORDER

47. I dismiss Ms. Couture's claims.

Kate Campbell, Vice Chair