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IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

BETWEEN:

Beverly Brown

COMPLAINANT

AND:

The Maples Housing Co-operative and Spice Management Group Inc.

RESPONDENTS

REASONS FOR DECISION
APPLICATION TO DISMISS A COMPLAINT
Section 27(1)(c)

Tribunal Member:

Edward Takayanagi

Counsel for the Complainant:

Law Student's Legal Advice Program

Counsel for the Respondent, The Maple
Housing Co-operative:

Andrew Breen

Counsel for the Respondent, Spice
Management Group Inc.:

Lori Leung

I INTRODUCTION

[1] This is a complaint alleging discrimination in the context of a housing cooperative. Beverly Brown alleges discrimination on the basis of her race, ancestry, place of origin, physical and mental disability, sex and family status in services and tenancy contrary to s. 8 and 10 of the *Human Rights Code*. She says that during renovation work on her unit in 2019, contractors hired by The Maples Housing Co-operative and its management company, Spice Management Group Inc., acted in an aggressive and discriminatory manner, provided substandard work, and engaged in hostile, threatening behaviour towards her. She says the Co-op subsequently terminated her membership.

[2] The Respondents deny discriminating. They say they treated Ms. Brown no differently than other members of the Co-op and the termination of her membership was due to non-discriminatory factors, specifically her conduct towards the contractors during the renovations and violations of the Co-op rules. The Respondents each apply to dismiss the complaint under s.27(1)(c) of the *Code* on the basis that the complaint has no reasonable prospect of success, and under s.27(1)(d)(ii) on the basis that it would not further the purposes of the *Code* to proceed with the complaint.

[3] While I do not refer to it all in my decision, I have considered all the information filed by the parties in relation to the applications. This is not a complete recitation of the parties' submissions, but only those necessary to come to my decision.

[4] For the following reasons, I deny the applications. I am not persuaded that there is no reasonable prospect Ms. Brown's complaint will succeed because, in my view, the parties offer divergent perspectives on key events and interactions which raise foundational issues of credibility that I cannot resolve on this application. I am similarly not persuaded that proceeding with this complaint would not further the purposes of the *Code*.

II BACKGROUND

[5] The following background is taken from the parties' materials. I make no findings of fact.

[6] The Co-op consists of 31 housing units. Spice has been contracted to provide property management services for the Co-op since 2018.

[7] Ms. Brown and her spouse are Indigenous. They have been residents of the Co-op since 2009.

[8] In or about 2017, Ms. Brown undertook renovations to her unit including installation of hardwood floors and replacing kitchen cabinets. Ms. Brown says she completed the renovations with the knowledge and approval of the Co-op. The Respondents deny that Ms. Brown notified the Co-op or had permission to perform the renovations.

[9] In 2019, the Respondents decided to perform renovations on all the units in the Co-op. As part of the renovation work the Respondents had their contractors enter Ms. Brown's unit on multiple occasions in October 2019.

[10] The parties agree there were several verbal altercations between Ms. Brown and her spouse and the Respondents' contractors. The Respondents characterize Ms. Brown and her spouse as the aggressors who engaged in threatening and aggressive behaviour towards the contractors and interfered with their ability to perform renovations. Ms. Brown disagrees with the characterization and says that it was the Respondents' contractors who were aggressive, authoritative, and argumentative.

[11] The parties agree that the Respondents' contractors did not enter Ms. Brown's unit after October 22, 2019. The Respondents say this was because there was an interaction that day where Ms. Brown's spouse was verbally abusive and threatened the contractors. Ms. Brown disagrees and says that it was the contractors who yelled and swore at Ms. Brown's spouse.

[12] The Co-op decided to terminate Ms. Brown’s membership. Their lawyer sent Ms. Brown a letter on their behalf on May 28, 2020, advising her that they would be holding a meeting to consider a resolution to expel her from membership in the Co-op. In the letter they cited Ms. Brown and her spouse’s threatening and aggressive behaviour towards the contractors, interfering with the renovation work, and performing unauthorized renovations to the unit in 2017 as the basis for the proposed resolution. They informed Ms. Brown she was in violation of several of the Co-op’s rules including their Good Neighbor provision which prohibits obstructing or interfering with the rights of others.

[13] The Co-op held a special meeting on June 9, 2020, which Ms. Brown attended. The Co-op decided to terminate Ms. Brown’s membership.

[14] Ms. Brown appealed the Co-op’s decision, and her membership was subsequently reinstated in or about October 2020.

III DECISION

A. Section 27(1)(c) – Is there no reasonable prospect the complaint will succeed?

[15] The Respondents apply to dismiss Ms. Brown’s complaint on the basis that it has no reasonable prospect of success: *Code*, s. 27(1)(c) The onus is on the Respondents to establish the basis for dismissal.

[16] Section 27(1)(c) is part of the Tribunal’s gate-keeping function. It allows the Tribunal to remove complaints which do not warrant the time and expense of a hearing.

[17] The Tribunal does not make findings of fact under s. 27(1)(c). Instead, the Tribunal looks at the evidence to decide whether “there is no reasonable prospect that findings of fact that would support the complaint could be made on a balance of probabilities after a full hearing of the evidence”: *Berezoutskaia v. British Columbia (Human Rights Tribunal)*, 2006 BCCA 95 at para. 22, leave to appeal ref’d [2006] SCCA No. 171. The Tribunal must base its decision on the

materials filed by the parties, and not on speculation about what evidence may be filed at the hearing: *University of British Columbia v. Chan*, 2013 BCSC 942 at para. 77.

[18] A dismissal application is not the same as a hearing: *Lord v. Fraser Health Authority*, 2021 BCSC 2176 at para. 20; *SEPQA v. Canadian Human Rights Commission*, [1989] 2 SCR 879 at 899. The threshold to advance a complaint to a hearing is low. In a dismissal application, a complainant does not have to prove their complaint or show the Tribunal all the evidence they may introduce at a hearing. They only have to show that the evidence takes their complaint out of the realm of conjecture: *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 at para. 27.

[19] To prove her complaint at a hearing, Ms. Brown will have to prove that she has a characteristic protected by the *Code*, she was adversely impacted in tenancy or services, and her protected characteristic was a factor in the adverse impact: *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33.

[20] As I understand their submissions, for the purposes of this application the Respondents do not dispute that Ms. Brown has the protected characteristics of race, ancestry, place of origin, physical and mental disability, sex, and family status. Therefore, the first part of the *Moore* test is not at issue on this application.

[21] The Respondents dispute that Ms. Brown suffered any adverse impact. The central point of their submission appears to be that Ms. Brown was treated in the same manner as other members of the Co-op including by having contractors enter her unit to perform renovations and being held to the Rules governing the Co-op. On this basis, it appears that the Respondents are disputing both that Ms. Brown experienced any adverse impact, and that there was any connection between any adverse impact and Ms. Brown's protected characteristics.

[22] I am not persuaded by the Respondents' submissions. Ending a tenancy is an adverse impact expressly codified in s. 10(1)(a) of the *Code*, which provides that a person must not "deny to a person ... the right to occupy, as a tenancy, space that is represented as being available for occupancy by a tenant" because of characteristics protected by the *Code*.

[23] In my view, because the undisputed evidence is that the Respondents terminated Ms. Brown's membership in the Co-op and informed her that she needed to vacate her unit, Ms. Brown's allegation that she suffered an adverse impact in tenancy has been taken out of the realm of mere conjecture. Even though Ms. Brown ultimately appealed the Co-op's decision, and her membership was reinstated, I am persuaded that the initial termination of membership is an adverse impact under the *Code*. As such, I cannot say that Ms. Brown has no reasonable prospect of establishing that she suffered an adverse impact at a hearing.

[24] Similarly, as I understand the complaint, Ms. Brown is alleging that the contractors hired by the Co-op and the management company treated her differently because of her protected characteristics. She alleges they were disrespectful, condescending, and confrontational, which I understand to be Ms. Brown alleging she was mistreated by the contractors. In my view, Ms. Brown's allegations of her treatment by the contractors alleges an adverse impact under the *Code*.

[25] Many human rights complaints raise issues of credibility. This is not, by itself, a sufficient reason to deny an application to dismiss: *Evans v. University of British Columbia*, 2008 BCSC 1026 at para. 34. However, if there are foundational or key issues of credibility, the complaint must go to a hearing: *Francescutti v. Vancouver (City)*, 2017 BCCA 242 at para 67.

[26] This principle is important in the present case because the parties provide conflicting evidence on what, in my view, is a foundational issue of what occurred between Ms. Brown and her spouse and the contractors during the renovation work to her unit in October 2019. The parties disagree on what happened when the contractors entered Ms. Brown's unit, which party was the aggressor during their interactions, and what was said by whom.

[27] While the Respondents have provided some information by way of notes from the contractors made days after they interacted with Ms. Brown's spouse, I am not persuaded that I can resolve the foundational issues on the basis of the materials before me. This is because Ms. Brown's allegations span a period of several weeks during which the parties agree there were several interactions, and the documentary material only deals with one specific instance. I

find the parties' divergent versions of events raise fundamental issues of credibility on key issues in the complaint. A hearing is required to resolve these issues.

[28] Furthermore, I understand from Ms. Brown's complaint that she is asking the Tribunal to draw an inference of discrimination from multiple incidents of "slights, indignities, put downs and insults" she experienced during her interactions with the Respondents. She says that the Respondents' characterization of she and her spouse as "angry and aggressive" is a stereotype based on their race and ancestry as Indigenous people.

[29] The Respondents have not specifically addressed this aspect of Ms. Brown's complaint in their submissions. Other than arguing that Ms. Brown was held to the rules of the Co-op (which Ms. Brown says are not universally applied as other members are granted relief from their enforcement), the Respondents have not put forward any other reason for their actions. In my view, the Respondents' arguments do not address Ms. Brown's argument that it is possible to draw an inference that the Respondents' treatment of Ms. Brown and her spouse was influenced by their perception that they were threatening and aggressive based on the Respondents' perception of her protected characteristics.

[30] Based on the materials before me, I am not persuaded that Ms. Brown has no reasonable prospect of succeeding in her complaint. Accordingly, I dismiss the applications under s. 27(1)(c).

[31] I next move on to consider the Respondents' argument that proceeding with Ms. Brown's complaint would not further the purposes of the *Code*.

B. Section 27(1)(d)(ii) – Proceeding would not further the purposes of the Code

[32] Section 27(1)(d)(ii) allows the Tribunal to dismiss a complaint where proceeding with it would not further the purposes of the *Code*. These purposes include both private and public interests: s. 3. Deciding whether a complaint furthers those purposes is not only about the interests in the individual complaint. It may also be about broad public policy issues, like the

efficiency and responsiveness of the human rights system, and the expense and time involved in a hearing: *Dar Santos v. UBC*, 2003 BCHRT 73, at para. 59, *Tillis v. Pacific Western Brewing and Komatsu*, 2005 BCHRT 433 at para. 15, *Gichuru v. Pallai (No. 2)*, 2010 BCHRT 125, at paras. 113-118.

[33] The Respondents argue that the subject of Ms. Brown's complaint is her dissatisfaction with the renovations that occurred to her unit. The Respondents say that it would not further the purposes of the *Code* to proceed with a complaint where there has been no discriminatory conduct on the part of the Respondents. They also say there is no basis for any of the remedies Ms. Brown is seeking.

[34] I am not persuaded by the Respondents' submissions. Ms. Brown disputes the Respondents' characterization of her complaint. She says that the substance of her complaint is the discrimination she experienced from the Respondents during and after the renovations in 2019. Her allegations are that the Respondents and their contractors acted in an aggressive and discriminatory manner and her Co-op membership was terminated for discriminatory reasons. I cannot say that it would not further the purposes of the *Code* to proceed in this circumstance because, in my view, the complaint alleges an arguable contravention of the *Code*.

[35] In my view the Respondents' submission that it would not further the purposes of the *Code* to proceed is predicated on the Tribunal making a finding that there has been no contravention of the *Code*. The Respondents dispute that Ms. Brown has any basis for a remedy as sought or that her complaint has any reasonable prospect of succeeding.

[36] I have dismissed the application under s. 27(1)(c), because I cannot find that there is no reasonable prospect that Ms. Brown could prove her complaint. Similarly, I cannot say that proceeding with the complaint would not further the purposes of the *Code* because I cannot say the complaint has no reasonable prospect of success. The Respondents present no other basis for a conclusion that it would not further the purposes of the *Code* to proceed with the complaint.

[37] For these reasons, I dismiss the Respondents' application under s. 27(1)(d)(ii).

IV CONCLUSION

[38] I deny the applications to dismiss the complaint.

Edward Takayanagi
Tribunal Member