

Date Issued: May 14, 2024

File: CS-003267

Indexed as: Woo v. Morgan, 2024 BCHRT 148

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:

Soo Hi Woo

**COMPLAINANT**

AND:

Tahara Mae Morgan

**RESPONDENT**

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

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Tribunal Member:

Edward Takayanagi

Advocate for the Complainant:

Aleena Sharma  
Desirée Deza

On their own behalf:

Tahara Mae Morgan

## I INTRODUCTION

[1] This is a complaint of discrimination arising from a tenancy relationship. Soo Hi Woo alleges that her former landlord, Tahara Mae Morgan, made derogatory and discriminatory comments about her connected to her race and place of origin. She also alleges that after she filed her human rights complaint, Ms. Morgan retaliated with harassing social media messages and phone calls.

[2] Ms. Morgan denies discriminating and applies to dismiss the complaint under s.27(1)(c) of the *Code*. She says the complaint has no reasonable prospect of success because Ms. Woo's allegations are meritless and false. Ms. Morgan denies she made any comments related to Ms. Woo's protected characteristics or that she retaliated.

[3] For the following reasons, I deny the application. Because the parties provide contradictory evidence about what comments were made and in what context, in my view, the credibility of the parties is the foundational issue in this complaint. Based on the materials before me, I am not satisfied that there is no reasonable prospect Ms. Woo could prove at a hearing that Ms. Morgan made discriminatory comments connected to her race and place of origin or engaged in retaliatory conduct in response to the human rights complaint.

[4] To make this decision, I have considered all the information filed by the parties. In these reasons, I only refer to what is necessary to explain my decision. I make no findings of fact.

## II BACKGROUND

[5] The following facts are taken from the parties' materials.

[6] Ms. Woo is from South Korea. English is her second language. She was a tenant in a condo unit owned by Ms. Morgan from 2013 to July 12, 2020.

[7] Ms. Woo alleges that between February 27, 2020, to July 12, 2020, Ms. Morgan made derogatory remarks about her including calling her a rat and a liar, and referring to her as dumb, unable to understand plain English, and poor. Ms. Woo says these comments were made

in reference to her living conditions and understood them to be insults connected to her race and place of origin. Ms. Morgan denies making the alleged comments.

[8] The tenancy ended on July 12, 2020. The parties disagreed on the condition of the rental unit, monetary losses each said they incurred due to the tenancy, and who was entitled to the security deposit. Both parties filed a claim through the Residential Tenancy Branch (RTB). Ms. Woo made a claim for damages arising from “verbal abuse, discrimination, racial comments, physical abuse” by Ms. Morgan.

[9] The RTB claims were decided in a decision of August 11, 2021. The RTB found that there was no specific section of the *Residential Tenancy Act* that Ms. Morgan breached that would give rise to an award of damages for discrimination. Ms. Woo’s claim for an award for damages arising from discrimination was dismissed.

[10] Ms. Woo filed a complaint with the Tribunal on February 11, 2021.

[11] Ms. Woo alleges that since filing her complaint, Ms. Morgan has engaged in retaliatory harassment contrary to s.43 of the *Code*. Specifically, she says Ms. Morgan left negative reviews of Ms. Woo’s business on social media forcing her to close her account. She says on March 15, 2021, Ms. Morgan phoned and said “I got you bitch! I shut you down.”

### **III DECISION**

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

[13] 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.

[14] 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.

[15] 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.

[16] 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.

[17] Although, Ms. Woo does not need to prove her complaint on this application, to succeed at a hearing she would have to prove that she has a characteristic protected by the *Code*, she was adversely impacted in tenancy, and her protected characteristic was a factor in the adverse impact: *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33.

[18] As I understand the submissions Ms. Morgan does not dispute that Ms. Woo has the protected characteristics of race and place of origin. Ms. Morgan denies she discriminated and says she did not make most of the alleged comments Ms. Woo says are discriminatory or retaliatory. Of the comments she concedes she made, such as calling Ms. Woo a packrat, Ms. Morgan says those comments related to her displeasure with how Ms. Woo treated the rental property and was unrelated to Ms. Woo’s race or place of origin.

[19] Therefore, Ms. Morgan appears to be arguing that Ms. Woo has no reasonable prospect of proving at a hearing that she suffered an adverse impact in tenancy because Ms. Morgan did

not make discriminatory comments or that there is a nexus between Ms. Woo's race and place of origin and the comments made by Ms. Morgan.

[20] I am not persuaded by Ms. Morgan's arguments that Ms. Woo's allegation of discrimination has no reasonable prospect of success at a hearing.

[21] First, the documentary materials before me contradicts much of Ms. Morgan's submissions. For example, Ms. Morgan denies that she called Ms. Woo a rat. The evidence shows Ms. Morgan texted Ms. Woo on March 21, 2020, stating "you live like a rat." Ms. Morgan denies mocking Ms. Woo's English skills. The evidence shows Ms. Morgan told Ms. Woo "It's super plain English" and "Your [sic] such a dumb dumb." I cannot say that there is no reasonable prospect that Ms. Woo will prove at a hearing that these comments were made, in light of the documentary evidence that contradicts Ms. Morgan's assertion that she did not make these comments.

[22] Second, in my view, calling an East Asian person a rat may be sufficient to prove a nexus between the comment and Ms. Woo's race and place of origin because it is a racial slur historically used to dehumanize and discriminate against a group of people. This is especially so when the term is used in the context of a person's living space. Ms. Woo says she understood comments about how she lives to be derogatory remarks about how she is less capable due to her race and place of origin.

[23] Finally, the parties provide contradictory accounts of what comments were made by Ms. Morgan and the context in which she made those comments. Ms. Woo says Ms. Morgan made derogatory comments related to her race and place of origin. Much of Ms. Morgan's submissions are about the ongoing acrimonious relationship she had with Ms. Woo. She submits that Ms. Woo was a problematic tenant who made multiple requests for repairs to the rental unit and lied about causing damage to the property. From this, I understand Ms. Morgan is arguing that any alleged comments and her treatment of Ms. Woo were not related to Ms. Woo's race or place of origin but their ongoing animosity.

[24] Based on the complaint and the response to the complaint, the comments that are alleged to have been made by Ms. Morgan and the context of those comments are foundational to this complaint.

[25] On Ms. Morgan's version of events, the alleged comments or conduct did not happen or were not related to Ms. Woo's race or place of origin. Ms. Morgan says Ms. Woo is "twisting her words." Ms. Morgan says Ms. Woo has been dishonest throughout the tenancy, the RTB proceedings and the present human rights complaint process. Where Ms. Morgan concedes that she made some critical comments about Ms. Woo, she says they were spoken in frustration about Ms. Woo's treatment of the rental property.

[26] Ms. Woo says the comments were derogatory remarks about her race and place of origin. She says comments about her English skills and living conditions are connected to her protected characteristics.

[27] I am presented with two vastly different versions of events by each party. I find the conflicting evidence before me, on key issues raised in Ms. Woo's complaint, cannot be resolved on a s. 27(1)(c) application where I cannot make findings of fact. That can only be done through a hearing where conflicting evidence can be fully explored and tested through cross-examination. For this reason, I am not persuaded that Ms. Woo has no reasonable prospect of proving at a hearing that Ms. Morgan discriminated or retaliated.

[28] Ms. Morgan also argues that the RTB has dismissed Ms. Woo's claim for damages related to Ms. Morgan making "threats, racist remarks, gaslighting, and various emotional and physical abuse." I infer that Ms. Morgan is arguing that Ms. Woo's human rights complaint has no reasonable prospect of succeeding because, she says, it was unsuccessful before the RTB.

[29] I am not persuaded that Ms. Morgan has shown the complaint has no reasonable prospect of success. The issue before the RTB was whether Ms. Morgan failed to comply with the *Residential Tenancy Act* resulting in damage or loss to Ms. Woo. While the RTB considered if Ms. Woo's evidence supported her claim that Ms. Morgan engaged in the alleged conduct, it was in the context of a claim for breach of the *Residential Tenancy Act* and did not deal with

Ms. Woo's allegation of discrimination. The RTB decision did not consider whether Ms. Morgan breached the *Code*, which is an issue for the Tribunal.

[30] I next consider if Ms. Woo's retaliation complaint has no reasonable prospect of succeeding at a hearing.

[31] Section 43 of the *Code* protects people from retaliatory conduct for participating in a human rights complaint process:

43 A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, might complain or be named in a complaint, gives evidence, might give evidence or otherwise assists or might assist in a complaint or other proceeding under this Code.

[32] To succeed on her retaliation complaint at a hearing Ms. Woo would have to show: (1) Ms. Morgan was aware of the original complaint or that Ms. Woo might complain; (2) Ms. Morgan engaged in or threatened to engage in discriminatory conduct described in s. 43 of the *Code*; and (3) there is sufficient connection between the impugned conduct and the human rights complaint: *Gichuru v. Pallai*, 2018 BCCA 78, at para. 58.

[33] Ms. Morgan says her conduct was not retaliatory because she became aware of the original complain in September 2021 and did not know Ms. Woo might complain. Ms. Morgan does not specifically address the retaliation allegations but says that the relationship with Ms. Woo was contentious. From this I infer that Ms. Morgan is arguing her alleged conduct is unrelated to the original complaint but simply part of ongoing animosity between the parties.

[34] In my view, whether Ms. Morgan was aware that Ms. Woo might complain, when she became aware of the original complaint, what actions were taken by Ms. Morgan, and the reason for those actions is the foundational element of the retaliation complaint. Ms. Woo says she informed Ms. Morgan of her discrimination complaint which resulted in Ms. Morgan harassing her by making phone calls and posting on social media. Ms. Morgan denies she was

aware of Ms. Woo's complaint and denies she phoned Ms. Woo or posted on social media and says any action she took was not connected to the human rights complaint.

[35] I am again presented with two different versions of events which I cannot resolve on the basis of the materials before me at this stage. In my view, a hearing is necessary so that the credibility of the witnesses can be tested through cross-examination and findings of fact can be made. Therefore, I cannot say, on the materials before me, that Ms. Woo's retaliation complaint has no reasonable prospect of success at a hearing.

[36] I am not persuaded on the materials that there is no reasonable prospect that Ms. Woo could succeed in showing either that Ms. Morgan made derogatory comments related to her race or place or origin, or that Ms. Morgan harassed Ms. Woo in retaliation for filing the human rights complaint.

#### **IV CONCLUSION**

[37] I deny the application to dismiss under s. 27(1)(c).

Edward Takayanagi  
Tribunal Member