

the fact that she was a women.

For these reasons, I would have allowed the complaint made by Billie Linton.

The board also confirmed that complainants have the right to choose whether to make a complaint under the Human Rights Code or under procedures provided in a collective agreement, where they are covered by such an

agreement.

Finally, counsel for the respondent asserted a claim for costs against the Human Rights Branch. The board determined that the claim was without merit and stated that the decision to dismiss the complaint was one which occasioned a great deal of difficulty for the board.

OCT. 1978

**HUMAN RIGHTS CODE:  
BOARD OF INQUIRY DECISION**

Alex and Nella Nelson  
(Complainants)

v.

Mr. and Mrs. Gubbins and  
Byron Price Associates Ltd.  
(Respondents)

**Board:**

Leon Getz

**For Complainants and the  
Human Rights Branch:**

S. Gudmundseth

**For Respondents:**

R.A. Price

A board of inquiry upheld a complaint by Alex Nelson and Nella Nelson alleging that they were denied tenancy, contrary to section 5 of the Human Rights Code, because they are native Indians.

Mr. and Mrs. Nelson had inquired about an advertised vacancy in a townhouse complex owned by Belvedere Estates Ltd. Byron Price and Associates Ltd., acting as rental agent, provided instructions to the resident managers.

On two separate occasions, Mr. and Mrs. Nelson were told in person by Mrs. Gubbins, the wife of the resident manager, that there was no vacancy in the complex, although on the day of the first inquiry an advertisement of vacancies had appeared in the Victoria Colonist. On each occasion there had been a "vacancy" sign on the lawn of the complex, in front of the Manager's apartment. Moreover, Mr. Stern, a relative of the complainants and an RCMP officer, had been advised, when he telephoned after each of the Nelson's unsuccessful inquiries of Mrs. Gubbins, that vacancies existed. In addition to this, after making a further inquiry by telephone, subsequent to the first failed attempt to rent the townhouse, Mrs. Nelson had been told by an employee of Byron Price and Associates Ltd. that there was in fact a vacancy, and she had been referred to the resident manager of the complex.

On the occasion of the second personal inquiry by the Nelsons, Mrs. Gubbins had stated that there already was an application pending on the available townhouse, and that therefore there was no longer a vacancy. On the basis of this information, and on the basis of Mrs. Gubbins'

testimony at the board of inquiry that there were tenants of a variety of racial origins in the complex, counsel for the respondent sought dismissal of the complaint.

In his decision upholding the complaint, the chairman of the board of inquiry confirmed that the Human Rights Code does not require that there be space available for occupancy by a tenant, but simply that it be advertised or represented as available, for a complaint of discriminatory treatment to be successful. The newspaper advertisements, telephone information provided to Mr. Stern, and the "vacancy" sign outside the complex were found to be sufficient to meet this requirement. Mrs. Gubbins' position, that there was no vacancy since another application was pending, was considered to be insufficient, given the wording of the Code, to dismiss the complaint. In addition, Mrs. Gubbins had testified that there was a fairly high rate of rejection of applications.

The board of inquiry found that Mrs. Gubbins had in fact denied the Nelsons the right to occupy space represented as being available for occupancy, because of their race. This decision was not modified in testimony that other tenants in the complex were of a variety of racial origins: Professor Getz stated: "It cannot, in my opinion, be deduced from the fact that one is tolerant of, and not disposed to discriminate against some racial groups, that one is similarly disposed in respect of all racial groups."

With respect to liability for damages, the board ruled that Byron Price and Associates Ltd., although not responsible for the payment of

