

CITATION: Lom Nava Housing Co-operative Inc.v. Francis, 2014 ONSC 2392
COURT FILE NO.: CV-13-1931-00
DATE: 20140422

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Lom Nava Housing Co-operative Inc., Plaintiff

AND:

Althea Francis, Respondent

BEFORE: André J.

COUNSEL: C. Chandler, for the Plaintiff

A. Francis, In Person

HEARD: April 7, 2014

ENDORSEMENT

Introduction

- [1] The applicant brings an application pursuant to s. 171.13 of the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35 (the "CCA"), for an order terminating the respondent's membership in the applicant's co-operative and for a writ of possession in favour of the applicant. The respondent, who is unrepresented, opposes the application on the ground that the application is simply a vengeful act by the applicant against her because she has repeatedly challenged its board to respect the rights of its members.

Overview

- [2] The applicant is a non-profit co-operative incorporated without share capital under the CCA.
- [3] The co-operative owns the property known as Unit 4, 5955 Glen Erin Drive, Mississauga, in the Province of Ontario (the "Unit").
- [4] The respondent became a member of the co-operative in August 2008 and commenced occupancy on or about September 15, 2005
- [5] On February 1, 2013, the applicant served the respondent with a Notice to Consider Termination of Membership and Occupancy Rights (the "Notice").

- [6] The Notice invited the respondent to attend a meeting of the board of directors of the applicant on February 13, 2013 and to make representation regarding the action the board was contemplating.
- [7] The ground for termination was the alleged behaviour of the respondent which the board believed constituted a "nuisance" as defined by Article 5.2 in the applicant's "Occupancy By-laws."
- [8] The applicant alleged the respondent had interfered with the right of peaceful enjoyment of their property of many of its members including:
- (a) advising fellow members that two of the co-operative's board members were experts on bullying, defamation of character, etc.;
 - (b) accusing a board member of misappropriation of funds from the applicant;
 - (c) accusing the company which manages the applicant co-operation of illegally managing the building;
 - (d) falsely accusing certain board members of the applicant of bullying, harassment and discrimination;
 - (e) posting messages on her website accusing a board member of promoting hate crimes against individuals who were bi-polar;
 - (f) contacting a member of the local media in Mississauga and accusing certain board members of poor work ethics and misusing funds; and
 - (g) the respondent struck a member with a water bottle, yelled at members and ran into one of the applicant's members who was her neighbour, and of mistreating persons.
- [9] The respondent sent an e-mail of the applicant advising that she would not be able to attend the meeting set for February 13, 2013. The e-mail requested that the applicant "provide flexible meeting dates in order to have representation for a fair outcome at this hearing."
- [10] On February 12, 2013, the applicant advised the respondent by letter that it had rescheduled the board meeting for February 26, 2013.
- [11] The respondent did not attend the meeting on February 26, 2013. The applicant's board members waited thirty minutes before commencing their meeting. The members voted unanimously to terminate the membership and occupancy rights of the respondent, effective March 31, 2013.
- [12] On February 28, 2013, the applicant served a copy of its decision to evict the respondent and to end her occupancy rights on March 31, 2013. The notice served on the respondent advised the respondent that if she did not vacate her

unit by March 31, 2013, it would commence court proceedings against her. It also advised the respondent that she may appeal the applicant's decision under Article 9.4 of the Occupancy By-law and s. 171.3 of the CCA.

- [13] The respondent did not file an appeal of the applicant's decision to terminate her membership.

Parties' Positions

- [14] The applicant submits that its decision to evict the respondent on the ground of her unjustifiable conduct was reasonable and that the procedure it followed was fair and entirely in accordance with its enabling by-laws.
- [15] The respondent maintains that she was not afforded a reasonable opportunity to attend the hearing, and that the allegations of nuisance levelled against her by members of the co-operative were fabricated.

Analysis

- [16] The standard of review of a decision of a co-operative corporation is one of reasonableness. *Forestwood Co-operative Homes Inc. v. Blake*, 2010 Carswell Ont. 900, 2010 ONSC 1179, at para. 16.
- [17] A review court will generally not intervene in a decision of a co-operative's board if a member has been dealt with in accordance with principles of natural justice and procedural fairness and if the board has a reasonable basis for its decision. *Bowmanville Valley Co-operative Homes Inc. v. Spicer*, 2005 Carswell Ont. 5902 (Ont. S.C.J.), at para. 19.
- [18] Absent bad faith, dishonesty, failure to consider some issue or egregious breach of public policy, a court should not substitute its own view of what is reasonable for that of board members of a co-operative who have democratically agreed to live under a common set of mutual obligations. *Ryegate (Tecumseh) Co-operative Homes Inc. v. Stallard*, 2000 Carswell Ont. 5170 (Ont. Div. Ct.), at paras. 35-38.
- [19] Persons who serve on the board of co-operatives which, among other things, provide subsidized housing to members, provide a service to the community. They should be allowed by fellow members of the co-operative, to conduct their duties free of any unwarranted interference or conduct that could be construed as intimidating or harassing in nature. Furthermore, members of a co-operative must not be forced to countenance intimidating behaviour, or false accusations as a necessary cost of being a member of the co-operative. *Lakeshore Gardens Co-operative Homes Inc. v. Bhikram* 2005 Carswell Ont. 8824 (Ont. S.C.J.), at para. 2.
- [20] On the other hand, members of a co-operative must be permitted to exercise their democratic right to oppose the policy of their board as long as they do not

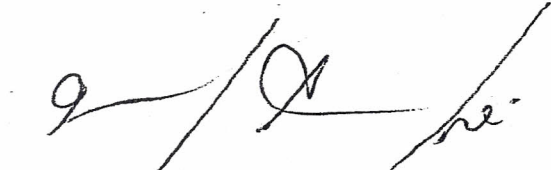
abuse, violate or trample on the democratic rights of other members of the co-operative.

- [21] There are many aspects of the co-operative's proceedings against Ms. Francis which were reasonable and fair. For example, Ms. Francis stated that after she received the Notice of the co-operative's decision to terminate her membership, she contacted the Mississauga Community Legal Services for advice. A male, who identified himself as Mr. Khan, suggested that she should organize a petition to garner membership support for her position. She therefore started to knock on a few doors for signatures for the petition.
- [22] Ms. Chandler, counsel for the co-operative, confirmed Ms. Francis' statement about her efforts to organize a petition. She sent Ms. Francis a letter dated April 4, 2013. The letter made reference to Article 9.4 of the Occupancy By-law which sets out the process regarding the appeal of the board's decision. The By-law was reproduced at the end of the letter. The letter advised Ms. Francis that if the co-operative did not hear from her by April 12, 2013, the co-operative would "begin the process of preparing the eviction application to be filed in Superior Court." Ms. Francis sent an e-mail to Ms. Chandler which can best be described as incoherent. It advised Ms. Chandler that: "You proposed Supreme Court of Canada (*sic*) as a venue for handling peaceful disputes and I am accepting so ... please provide details to be more productive in getting desired results to protect my overall rights in this uncivil matter."
- [23] Despite the efforts made by the applicant to apprise Ms. Francis of her rights of appeal, I have a few concerns about the applicant's decision to terminate the membership rights of the respondent and the fairness of the proceedings.
- [24] First, the respondent advised the applicant that she would not be available on February 13, 2013 and requested the board to provide "flexible dates" for a hearing. Instead, the board selected February 26, 2013, for its meeting and advised the respondent of its decision.
- [25] The respondent sent an e-mail to the applicant on February 26, 2013, at 5:58 p.m. complaining that the board had proceeded to schedule its hearing for that date "without options." It indicated that the respondent's doctor was away for two weeks and that the respondent would be meeting with him on March 6, 2013.
- [26] This e-mail clearly conveyed the fact that the respondent would be unable to attend the meeting yet the applicant's board nevertheless proceeded to hold the meeting.
- [27] There were no exigent circumstances that justified the board's decision to proceed with this meeting later that evening. Ms. Francis' e-mail clearly suggested that she would not be attending. And yet the board made no effort, except for delaying its proceedings by one half hour, for the respondent to attend the meeting.

- [28] Second, some of the allegations the board considered in its decision to terminate the respondent's membership involved allegations or insinuations that a member of the plaintiff's Property Management Company, Ms. Caroline Carty, had acted dishonestly or fraudulently. The respondent gave this court a copy of the minutes of a General Members' meeting on October 28, 2013, in which a board member, Mr. Philip Gray, stated of Ms. Carty, that there "was also corruption, conspiracy and favouritism" from the office of the Property Management Company. To that extent, any accusations of financial impropriety which the respondent may have levelled against Ms. Carty may have been justified.
- [29] Third, I am concerned about the composition of the Board which decided to terminate the respondent's membership in the applicant co-operative.
- [30] The meeting was chaired by Mr. Philip Gray who admitted in October 2013 that there was corruption and conspiracy in the Property Management Office.
- [31] The directors who participated in the meeting included Mr. Warsame Warsame. Ms. Caroline Carty, the property manager, was also present in the meeting, although she did not vote to terminate Ms. Francis' membership. One of the allegations against Ms. Francis is that on November 5, 2012, she sent a letter to the Peel Halton Co-operative Housing Federation in which she accused Mr. Philip Gray of putting members' lives at risk by failing to cancel an annual general meeting which was held on the night of Hurricane Sandy.
- [32] Another complaint against Ms. Francis is that on September 12, 2012, she wrote a letter to the board in which she accused Mr. Warsame of bullying and defamation of character. On November 22, 2012, she also accused Mr. Warsame of lying.
- [33] In my view, the participation of these individuals in a meeting where it was decided to terminate the respondent's membership in the co-operative, raises serious questions about the impartiality of those who were involved in the decision to terminate Ms. Francis' membership in the co-operative.
- [34] The principles of natural justice requires that the board which decided to terminate Ms. Francis' membership must be above any reproach of bias. The test for a reasonable apprehension of bias requires a consideration of the following question: "What would a reasonable person conclude viewing the matter realistically and practically – and having thought the matter through?" *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 (S.C.C.)
- [35] Given the above, this is not a case where I can extend the deference normally accorded to the decision of the board of a co-operative, regarding the continued membership of a member.
- [36] The board's decision has serious ramifications on the respondent. She would be required to look for alternative subsidized housing, in a housing market where the

demand for such housing significantly exceeds the supply. For a healthy person, this is a rather daunting proposition. The task is even greater for someone like the respondent, who is bi-polar and suffers from other illnesses.

- [37] For these very reasons, the board should have scrupulously ensured that in its deliberations concerning the respondent's continued membership in the co-operative, it was free from any appearance of partiality or reasonable apprehension of bias.
- [38] Pursuant to s. 171.21 (1)(a) of the CCA, a court has the equitable jurisdiction, in exceptional circumstances, to deny a request for eviction of a member of a co-operative. *Tamil Co-operative Homes Inc. v. Arula*, [1996] O.J. NO. 768, at para. 2 and 59 (Ont. Gen. Div.).
- [39] In my view, the circumstances surrounding the applicant's decision to terminate Ms. Francis' membership justify the exercise of my equitable jurisdiction under s. 171.21 (1) (a) of the CCA.
- [40] Accordingly, the application is denied.



André J.

Date: April 22, 2014