

Neilson Creek Housing Co-operative Inc. v. Vella, 2024 ONSC 171 (CanLII)

Date: 2024-01-10
File number: CV-22-00692273-0000
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COURT FILE NO.: CV-22-00692273-0000
DATE: 20240110

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
NEILSON CREEK HOUSING CO-OPERATIVE INC.) *Safia J. Lakhani*, for the Applicant
Applicant))
))
- and -))
))
ERIN VELLA)
Respondent) Self-represented Respondent
))
))
) **HEARD:** January 5, 2024

REASONS FOR DECISION

MERRITT J.

OVERVIEW

[1] This is an application by Neilson Creek housing Co-operative (the “Co-operative”) for a writ of possession under [section 171.13](#) of the *Co-operative Corporations Act, R.S.O. 1990, c. C.35* (“the *Act*”) with respect to the unit described as 245 Manse Road, Unit 106, Toronto, Ontario M1E 4X7 (the “Unit”). The Unit is currently being occupied by the respondent Erin Vella (“Ms. Vella”) and her daughter Emily-Rose Ellis who are not members of the Co-operative.

[2] Ms. Vella is self represented. She appeared and made submission on behalf of herself and her daughter Emily Rose Ellis (collectively the “Respondents”).

PRELIMINARY ISSUE

[3] The Co-operative seeks leave to add Emily Rose Ellis (“Ms. Ellis”) as a respondent to this application. The parties agreed that Ms. Ellis would be added as a respondent and that no costs would be sought against her and I so order. If there are any further steps in this case, the title of proceedings shall be amended accordingly.

DECISION

[4] A writ of possession shall issue in respect of the Unit, effective 60 days from the release of these reasons.

BACKGROUND FACTS

[5] The Co-operative is incorporated under the *Act* and is the owner of the Unit. It provides housing to individuals on a non-profit basis.

[6] Tony Vella was a member of the Co-operative who occupied the four-bedroom Unit.

[7] On October 2, 2018 Erin Vella and her daughter Emily-Rose Ellis moved into the Unit to live with Tony Vella.

[8] On October 20, 2021 Tony Vella wrote to the Co-operative office to request guest status for the Respondent. The request was approved for one year and the Respondents signed a Long-Term Guest Agreement whereby they agreed to leave by October 20, 2022 or immediately if Tony Vella’s occupancy rights ended and acknowledged that they had no right to a unit or to be on the waiting list for a unit (the “LTG”).

[9] In December 2021, the housing manager of the Co-operative Deborah DiSalle (“DiSalle”) formed the view that Tony Vella was no longer living in the Unit.

[10] On July 14, 2022, the Co-operative wrote to Tony Vella regarding his extended absence and reminded him that the LTG was only valid for one year. Tony Vella responded saying he would return within 2 weeks.

[11] In September 2022, the Co-operative scheduled two meetings which Tony Vella did not attend. Tony Vella did attend a meeting on October 5, 2022 after being served with a Notice to Appear but did not bring documents which the Co-operative had requested regarding his employment and place of residence. During the meeting, Tony Vella confirmed that he had not lived in the Unit for almost two years. He advised that he and his boys were living in Owen Sound with a friend. He was advised that he could not continue with membership in the Co-operative if he no longer resides in the Unit. He acknowledged understating that he was not entitled to membership without occupancy.

[12] DiSalle has not seen Tony Vella on the Co-operative property since the October 5, 2022 meeting.

[13] On October 7, 2022, the Co-operative served an Eviction Decision and Notice of Eviction terminating Tony Vella’s membership and occupancy rights effective October 20, 2022.

[14] The Respondents say that before October 20, 2022, Tony Vella had been living in the Unit “on and off” but concede that Tony Vella has not lived in the Unit since October 20, 2022.

[15] On November 3, 2022, counsel for the Co-operative wrote to the Ms. Vella requesting that she vacate the Unit by November 30, 2022. Ms. Vella requested a

reconsideration of the decision. The Co-operative confirmed the decision requiring her to vacate the Unit and extended the time to December 16, 2022.

[16] Part of the reason for the refusal to reconsider the decision is the fact that the Co-operative has a long waiting list. There are 11 families on the internal waiting list to move into a four-bedroom unit and one of these families has been waiting since 2008.

THE ISSUES

[17] There are two issues as follows:

- a. Does the court have jurisdiction to grant a writ of possession? And,
- b. Is it unfair to do so?

ANALYSIS

[18] The *Act* provides as follows:

171.13 (1) After a person's membership and occupancy rights are terminated under section 171.8, or if there is no member occupying a member unit, the non-profit housing co-operative may apply to the court for an order,

(a) declaring that the person's membership and occupancy rights are terminated or that there is no member occupying the unit, as applicable; and

(b) directing that a writ of possession be issued.

(1.1) Subsection (1) does not apply in the circumstances in which Part V.1 of the *Residential Tenancies Act, 2006* applies.

[19] Part V.1 of the *Residential Tenancies Act, 2006, S.O. 2006, c. 17* gives the Landlord and Tenant Board (the "LTB") the power to terminate the occupancy rights of a member in a non-profit housing co-operative. However, these provisions do not apply when there is no member occupying the unit and the LTB has refused to assume jurisdiction in the case of unauthorized occupants in a co-operative: *TSC-00659-16 (Re)*, 2016 CanLII 25272 (ON LTB).

[20] The Respondents are not members of the Co-operative. I am satisfied that there is no member occupying the Unit and therefore I have jurisdiction to grant a writ of possession.

[21] I may refuse to grant a writ of possession where it is unfair to do so. Section 171.21 (1) of the *Act* provides as follows:

Upon an application by a co-operative for a writ of possession relating to a member unit, a judge may, despite any other provision of this *Act* or the co-operative's by-laws,

(a) refuse to grant the application if he or she is satisfied, having regard to all the circumstances, that it would be unfair to grant it;

(b) order that the enforcement of the writ of possession be postponed for a period not exceeding one week.

[22] The court may exercise its discretion not to issue a writ of possession where the decision of the co-operative was made in breach of the principles of natural justice and fairness, or made in bad faith, or was based on extraneous considerations or was an

egregious breach of public policy: *Tamil Co-operative Homes Inc. v. Kandiah*, 2003 CanLII 47096, at para. 14.

[23] Courts usually defer to eviction decisions made by non-profit housing co-operatives unless they are unreasonable or the co-operative failed to meet the requirements of procedural fairness in reaching the decision. The discretion to refuse to grant a writ of possession on grounds of unfairness is to be exercised only in exceptional circumstances: *Windward Co-Operative Homes Incorporated v. Shuster*, 2007 CanLII 8010, at paras. 11-12.

[24] In exercising its discretion, the court considers whether the decision is patently unreasonable: *Beaver Hall Artists' Co-Operative Inc. v. Berry*, 2011 ONSC 685, at paras. 32 and 35.

[25] In this case, the Respondents have no right to live in the Unit.

[26] The relationship between the Co-operative and its members is defined by an occupancy agreement and the Co-operative's Occupancy By-law. Members are not allowed to transfer their membership or occupancy rights to anyone else. Non-members have no right to occupy a unit independent of a member. Members who wish to leave the Co-operative for more than three months in any year must obtain the written approval of the board of directors. If a unit is vacant or abandoned, the Co-operative may take possession.

[27] Article 8 of the Co-operative's Occupancy By-Law provides that:

(a) In the co-op's by-laws, household means:

a member

any other members living in the unit

persons under sixteen living in the unit

persons who have turned sixteen and continue to live in the unit, and

any long-term guests approved by the board under this Article.

Someone is considered a child of a member if they would be considered the member's child under the *Ontario Family Law Act, R.S.O. 1990, C. F.3*

(b) Only persons mentioned in paragraph (a) are part of a member's household. Other persons can stay in the member's unit only as casual guests and only if permitted by this By-Law. Members must not allow anyone other than the persons referred to in paragraph (a) and this paragraph to use their unit.

(c) Non-member occupants. Occupants of a unit who are not members have: no right to occupy the unit independent of the member, no right to occupy any other unit in the co-op and no right to a place on the co-op's internal waiting list.

[28] On October 20, 2021, the Respondents signed a Long-Term Guest Agreement which ended on October 20, 2022. They agreed to leave the Unit on or before the end date. They also they agreed to leave immediately if Tony Vella's occupancy rights ended. They further agreed and acknowledged that they have no right to a unit or to be on the waiting list for a unit.

[29] On October 7, 2022, the Co-operative terminated Tony Vella's membership and occupancy rights effective October 20, 2022 by serving an Eviction Decision and Notice of Eviction. It was not necessary for the Co-operative to take eviction proceedings under the *Residential Tenancies Act* against Tony Vella because he accepted the decision and has not lived in the Unit since October 20, 2022.

[30] The Respondents' rights to occupy the Unit ended on October 20, 2022 when the Long-Term Guest Agreement expired and Tony Vella's occupancy rights ended.

[31] As set out above, the Co-operative extended the time for the Respondents to vacate the unit to November 30, 2022 and again (after Erin Vella's request for reconsideration) to December 16, 2022. The Co-operative specifically notified them that there was a long list of candidates waiting for a four-bedroom unit and if they failed to vacate the Unit the Co-operative would seek a writ of possession from this court.

[32] In the circumstances it is not unfair grant a writ of possession.

[33] Section 171.21 (1) (b) of the *Act* provides that a judge may "order that the enforcement of the writ of possession be postponed for a period not exceeding one week." In *Windward*, the co-operative argued that the hearing judge erred in ordering a stay that exceeded one week because of s.171.21(1)(b). On appeal, the Divisional Court found that the hearing judge refused to grant the application pursuant to s.171.21(1)(a) and instead, imposed terms and conditions pursuant to 171.13(12).

[34] Section 171.13(12) provides:

After a hearing, the judge shall determine the applicant's claim and may make an order declaring the membership and occupancy rights terminated or declaring that there is no member occupying a unit or directing that a writ of possession issue or give judgment for the arrears of housing charges or for compensation under section 171.10 found due or amounts owing under subsection 171.3 (4), or any of them, and in any such order may impose such terms and conditions as the judge considers appropriate.

In *David B Archer Co-operative Inc.* on appeal the Divisional Court set aside the hearing judge's decision and ordered, among other things, that a writ of possession issue effective 60 days from the release of the court's reasons. Similarly in *City Park Co-operative apartments Inc.* the Divisional Court ordered that the writ of possession not be enforced until 30 days after the release of its decision.

[35] Although the Respondents have been aware since November 30, 2022 that they might be evicted, it is appropriate to give them some additional time to make other living arrangements.

[36] A writ of possession shall issue in respect of the Unit, effective 60 days from the release of these reasons.

COSTS

[37] I note that neither party filed costs outlines as required by rule 57.01(6). If the Co-operative intends to seek costs against Ms. Vella, it may make written submissions of no longer than two pages in length, in addition to a costs outline, on or before January 12, 2024. Ms. Vella will have two weeks to make reply submissions. If the Co-operative seeks costs, it shall upload both its costs submissions and Ms. Vella's reply submission to CaseLines. If no costs submissions are uploaded to CaseLines by January 15, 2024, the file will be closed and the issue of costs considered settled.

Released: January 10, 2024

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