



Osorio v. Atkinson Housing Co-operative Inc., 2024 ONSC 2631 (CanLII)

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**DIVISIONAL COURT FILE NO.:** DC-23-00000677-0000

**DATE:** 20240509

**SUPERIOR COURT OF JUSTICE – ONTARIO  
DIVISIONAL COURT**

**RE:** Hector F. Osorio  
Appellant

**AND:**

Atkinson Housing Co-operative Inc.  
Respondent

**BEFORE:** O’Brien J.

**COUNSEL:** *C. Sakuraba*, Counsel for the Appellant

*D. Levitt and T. Duggan, Counsel for the Respondent*

**HEARD:** On May 3, 2024 via Videoconference

## **ENDORSEMENT**

### **Overview**

[1] The appellant, Mr. Osorio, appeals three orders of the Landlord and Tenant Board that found he was not a member of the respondent non-profit housing co-operative and ordered his eviction from the unit in the co-op. The appellant makes several arguments that I discuss further below but that are without merit. However, as the respondent concedes, the Board did not have jurisdiction to order his eviction once it found he was a non-member occupying the unit.

[2] The appellant used to be a member of the co-op. He lived in the unit with his former spouse from 2005 to 2011. He left the unit in approximately August 2011 because of a restraining order against him associated with domestic violence. His ex-spouse continued living in the unit. The Board found that in 2018, the appellant provided the co-op with written confirmation that he had not resided in the unit since August 2011 and that he agreed to resign his membership with the co-op.

[3] In March 2022, the co-op discovered the appellant's ex-spouse had moved out of the unit in February 2021. It also had information the appellant was living in the unit, but he had not applied to be reinstated as a member of the co-op. The co-op then started an application against the appellant's ex-spouse to terminate her occupancy of the unit because it was abandoned.

[4] In its first decision, dated April 26, 2023, the Board concluded the appellant's ex-spouse had abandoned the unit and that, since the appellant was not a member, he had no right to occupy the unit. The Board ordered the unit to be vacated by May 7, 2023.

[5] The appellant then filed a request for review, arguing that he was not able to participate in the hearing because the

notice of hearing was not addressed to him. The request for review was referred to a hearing, which took place on September 28, 2023. After hearing from the appellant, the Board concluded that the appellant had resigned his membership with the co-op in 2018. Because he was not a member, he did not have standing to participate in the April 26 hearing. The request for review therefore was denied.

[6] The appellant made a further request for review, which was denied because he had not provided a basis to waive the Board's rule providing it would not consider a further request to review the same order from the same party.

[7] The appellant submits:

1. The Board did not have jurisdiction to evict him.
2. The Board erred in determining he was not entitled to notice of the initial hearing.
3. The Board erred in finding he was not a member of the co-op.
4. The Board erred in failing to consider whether his notice to resign his membership was valid.
5. The Board erred in evicting his ex-spouse without making a finding that she was in arrears of monthly charges.

[8] For the following reasons, the appeal is allowed. The Board did not have jurisdiction to order the appellant's eviction.

## **Analysis**

### *The Board's Jurisdiction to Evict the Appellant*

[9] The respondent concedes for the purposes of this appeal that the Board did not have jurisdiction to evict the appellant when it found he was not a co-op member. This appears to be correct on the face of the relevant legislation. The issue was not put to the Board in this matter, but the Board previously has held the *Residential Tenancies Act, 2006*, S.O. 2006, c. R. 17 (RTA) does not provide it with jurisdiction to evict an unauthorized occupant from a co-op: *TSC-00659-16 (Re)*, [2016 CanLII 25272 \(ON LTB\)](#), at para. 8.

Merritt J. recently adopted this position in *Neilson Creek Housing Co-Operative Inc. v. Vella*, [2024 ONSC 171](#), at para. 19, although the question of the Board's jurisdiction was not directly before her.

[10] Part V.I of the *RTA* authorizes the Board to terminate the occupancy rights of a member but does not expressly authorize termination of occupancy rights of non-members. Meanwhile, s. 171.13 of the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35 (*CCA*) authorizes the court to declare a person's membership and occupancy rights to be terminated or that there is no member occupying the unit and to direct that a writ of possession be issued.

[11] Considering the relevant statutory provisions and in the absence of any argument to the contrary before me, I find the Board did not have jurisdiction to evict the appellant.

### *Appellant's Other Submissions*

[12] I dismiss the appellant's remaining grounds of appeal for the following reasons.

[13] There is no merit to the appellant's argument that the Board erred in finding he was not entitled to notice. The Board has consistently held that non-tenant occupants are not entitled to notices of a hearing before the Board<sup>[1]</sup>: *TEL-72556-16-RV (Re)*, [2016 CanLII 88141 \(ON LTB\)](#), at para. 6, *TEL-74728-16-RV (Re)*, [2017 CanLII 14294 \(ON LTB\)](#), at paras. 11-12, *Courtney Holdings Inc v. Wheeler*, [2021 CanLII 124569 \(ON LTB\)](#), at para. 3.

[14] In any event, the Board referred the appellant's request for review to a hearing, at which the appellant was represented by a paralegal and made submissions. The Board considered the appellant's evidence before determining that, contrary to his submissions, he was not a co-op member at the time of the landlord's application. This meant that, as a practical matter, the appellant was heard on the central issue he disputed. There was no error or breach of procedural fairness on this point.

[15] I also reject the appellant's submission that the Board erred in finding he was not a member of the co-op. The court's jurisdiction is restricted to appeals on questions of law: *RTA*, s. 210. This is a question of fact or mixed fact and law.

[16] Further, contrary to the appellant's submission, the Board was not limited to determining whether the appellant was a co-op member under an application pursuant to s. 94.10 of the *RTA*. That provision did not apply to the circumstances of this case but in any event, the appellant has not provided authority for the proposition that it is the only situation in which membership rights can be determined. Here, it was within its jurisdiction and appropriate for the Board to determine whether the appellant was a member so it could determine whether the unit had been abandoned, as requested by the respondent's application. I note that if the respondent files an application under [s. 171.13](#) of the *CCA*, it will be for the court to determine any impact of the Board's findings on the application before it.

[17] There is similarly no merit to the appellant's submission that the Board erred in failing to consider whether his notice to resign his membership was valid according to [s. 171.8.1](#) of the *CCA*. Section 171.8.1 establishes notice requirements for the benefit of the co-op. The appellant cannot rely on a breach of those requirements to invalidate his notice. In any event, this submission does not appear to have been raised at the Board and cannot be raised for the first time on appeal.

[18] Finally, I dismiss the appellant's claim that the Board could not evict the appellant's ex-spouse without considering whether she was in arrears of monthly charges, as required by s. 2(3) of the *RTA*. I agree with the respondent's position that the appellant does not have standing to challenge the orders against his ex-spouse, particularly given that she has not appealed any of the orders and is not a party to the appeal: *Carleton Condominium Corp. No. 396 v. Burdet*, [2016 ONCA 394](#), 70 R.P.R. (5th) 231, at para. 12.

### **Disposition**

[19] The appeal is allowed. The Board's order terminating the appellant's occupancy and evicting him is quashed.

[20] The parties agreed that costs of \$7,000 would be awarded to the successful party on the appeal. Although the appeal is

allowed, the respondent conceded the Board's lack of jurisdiction to order the appellant's eviction and was successful on the remaining issues. It was also reasonable for the respondent to respond to the appeal to defend the Board's conclusion that the unit had been abandoned. In these circumstances, I do not award costs to either party.

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O'Brien J.

**Date:** May 9, 2024

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[1] Section 94.16 of the *RTA* provides that certain sections of the *RTA* apply with necessary modifications to an application by a non-profit housing co-operative. "Tenant" in those sections is to be read as "member." None of the relevant sections provide for notice to an occupant who is not a tenant or a member.

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