

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Noons Creek Housing Co-Operative v.  
Myers,*  
2024 BCSC 1890

Date: 20241015  
Docket: S250288  
Registry: New Westminster

Between:

**Noons Creek Housing Co-Operative**

Petitioner

And

**Hayley Myers**

Respondent

Before: The Honourable Justice Armstrong

## Reasons for Judgment

Counsel for the Petitioner:

R. Hans  
C.G. Haddock

The Respondent in Person:

H. Myers

Place and Dates of Hearing:

New Westminster, B.C.  
November 28, 2023  
December 14, 2023  
May 21, 2024  
August 20, 2024

Place and Date of Judgment:

New Westminster, B.C.  
October 15, 2024

[1] The petitioner is a non-profit Housing Cooperative (the “Co-op”) providing members with affordable housing accommodation in the nature of apartments and townhouses at 675 Noons Creek Drive, Port Moody, British Columbia (“Noons Creek”). The respondent was a member of the Co-op and occupied Unit Number 25 in the Co-op’s housing pursuant to an occupancy agreement between the parties.

[2] Based on the respondent’s failure to pay housing charges for April 2023 and her failure to comply with other terms of the occupancy agreement, the petitioner terminated the respondent’s membership on May 24, 2023, which had the effect of terminating her right to occupy Unit 25.

[3] This decision was communicated to the respondent and she was in arrears of housing charges in the amount of \$1876 as at July 17, 2023.

[4] The petitioner seeks an order for immediate possession of Unit 25 and judgment for unpaid housing charges together with damages resulting from over holding of Unit 25.

[5] This matter first came before the court in December 2023. Much of the evidence relied on by the co-op was hearsay and not admissible in the hearing. Counsel requested an adjournment to give the petitioner an opportunity to provide admissible affidavit evidence without the necessity of commencing a new proceeding. I formed the view that it would be counterproductive to the interests of both parties to dismiss the petition due to the flaws in the petitioner’s material, forcing it to recommence its petition.

[6] I adjourned the petition hearing and informed the respondent that she could expect to receive a new affidavit from the petitioner setting out the claims against her. I indicated to her that she was entitled to file further affidavit material to respond to any claims made against her.

[7] The petitioner provided two additional affidavits, the second of which outlines claims against the respondent for housing charges and administrative fees.

[8] The respondent did not provide any additional affidavit in response to the claims, although she made extensive submissions that included many factual assertions that should have been included in her affidavit. In the interests of fairness to this self-represented respondent, I received this information on a basis similar to that allowed by Justice Barrow in *Kelly v. 115 Place Co-operative Housing Assn.*, 2009 BCSC 302 at para. 5, leave to appeal to BCCA ref'd 2009 BCCA 213.

**Facts**

**The Co-op**

[9] The Co-op is an organization incorporated under the *Cooperative Association Act*, S.B.C. 1999, c. 28 [CAA], and organized and operated on principles and methods set out in s. 8 of the CAA.

[10] The Co-op provides a non-profit Housing Cooperative that offers low-cost housing to its members. It receives subsidy monies from the Province of British Columbia Housing Management Commission (“BC HMC”). The Co-op administers subsidy monies to members of modest means and may receive subsidy assistance to pay for monthly housing charges.

[11] Members of the Co-op are entitled to take advantage of tax rebates in the form of Homeowners Grants that assist in funding the Co-op’s operations.

[12] The Co-op is governed by the CAA, the Rules of Noons Creek Housing Co-Operating (the “Co-op Rules”), and an Occupancy Agreement which is a schedule to the Co-op Rules. All three of these sources create the rights and obligations of the Co-op and its members.

**The Respondent**

[13] The respondent has lived in Unit 25 at Noons Creek since July 2009 when her marriage ended. She is disabled and her 21-year-old child resides with her. She also has a 23-year-old child who resides elsewhere in Coquitlam but considers Unit 25 his home.

[14] The respondent works on a part time basis in a limited capacity due to an earlier brain injury and a disability. She was disabled after a 2012 car crash at which time she said she suffered two brain aneurysms and other debilitating injuries.

[15] During her time in the Co-op, the respondent contends she experienced financial struggles while raising her children in Unit 25, but always kept her housing charges paid, albeit sometimes late.

[16] The respondent said that in the past she had felt harassed by other persons at Noons Creek including members of the Board of Directors. She described complaints involving her children's behaviours at Noons Creek.

### **Background**

[17] There was a history of discord between the respondent and the Co-op that resulted in the respondent taking legal proceedings against the Co-op in 2022. Her membership had been terminated because of arrears in housing charges but she was able to eliminate the arrears, and the Co-op agreed to make the necessary repairs to Unit 25 and restore her membership.

[18] Timely payment of housing charges is a requirement of the Co-op Rules. In addition, Co-op members are required to deliver to the Co-op financial information with respect to a Homeowners Grant that is rebated to the Co-op.

[19] However, beginning in January 2023 the respondent fell into arrears due to her bank's refusal to honour several cheques. The following is a record of the respondent's delinquency and payments:

- a) On January 2023 housing payment cheque of \$581 was returned for non-sufficient funds ("NSF"). The Co-op added bank fees and she owed \$606. On January 19, 2023 this \$606 was paid.
- b) On February 1, 2023 the respondent's \$581 cheque for housing costs was again returned NSF and her debt including NSF fees was \$606. On February 28, 2023 the Co-op charged a \$25 late fee and the balance owing was \$631.

- c) On March 1, 2023 rent charge payable was \$581 and total arrears grew to \$1212. On March 13, 2023 the respondent paid \$1210 and the balance owing was two dollars.
- d) On or about March 9, 2023 the petitioner sent the respondent a Home Owner Grant (“HOG”) application form that was to be returned by March 23, 2023. The petitioner communicated to the respondent on March 30, 2023 that she had not returned her HOG application and extended the deadline to April 4, 2023. On April 6, the petitioner again communicated to the respondent that she had failed to provide her HOG application as required by the Occupancy Agreement, clause 4.9. The deadline was again extended to April 13, but the respondent did not comply. On April 20, the respondent was reminded of her obligation to complete an HOG application and informed that if the document was not returned by April 27, 2023, a \$45 fee would be incurred and she would be required to meet with the Board of Directors.
- e) On April 1, 2023, a \$581 payment was due for housing charges. On April 13, 2023, a late fee administration charge of \$45 was added, and the balance owing became \$628. On April 20, 2023, a further \$45 was charged and total indebtedness came to \$673.
- f) A meeting with the Board of Directors was scheduled for May 10, 2023. The respondent requested a change in the meeting date until after her return to Unit 25 on May 23. The new meeting was then scheduled for May 24, 2023, and at that meeting the Board of Directors terminated the respondent’s membership in the Co-op.
- g) The respondent has paid \$480 on each of October 26, 2023, November 4, 2023, December 6, 2023, January 2, 2024, February 6, 2024, March 5, 2024, and April 9, 2024.
- h) By October 1, 2023 the respondent’s indebtedness had risen to \$3909.

- i) Due to the respondent's failure to deliver the HOG application, rent arrears increased to \$1317 monthly after October 1, 2023. The \$1317 was added to her rental arrears for each month up to and including May 1, 2024. From October 26, 2023 until April 30, 2024 the respondent paid \$480 per month. She was also charged a \$570 property tax chargeback for 2023.
- j) Total arrears claimed as at May 1, 2024 amounted to \$11,700. This amount increased further by August 2024.

[20] Termination of the respondent's membership in the Co-op was preceded by correspondence with the respondent in which the Co-op threatened a process under which the Co-op Board of Directors could consider resolutions to terminate the respondent's membership for:

- a) payment delinquencies;
- b) breaches of the occupancy agreement due to her failure to provide an HOG form; and
- c) conduct detrimental due to the respondent's chronic arrears.

[21] A copy of the notice of this meeting was attached to the front door of Unit 25 on May 2, 2023 setting the meeting date for May 10, 2023. On that day, the respondent emailed the Co-op indicating she had just received the seven days notice of the proposed meeting and informing them she was out of town until after May 23, 2023. She asked that the meeting be scheduled for after May 23 and provided a new e-mail address.

[22] The respondent also informed the Co-op that she had suffered some hardship because of the additional cost she paid when the Co-op replaced flooring in her house. She asked for an extension of time to have her rent caught up to the end of June, 4.5 weeks later. She assured them she had a cheque coming that would cover all of her arrears.

[23] On May 11, 2023 counsel for the Co-op sent a letter to the respondent at the email address she had provided, informing her that the next meeting to consider termination of her membership was scheduled for May 24, 2023 at 7:30 pm. Notice of the adjourned meeting was delivered to the respondent's front door on May 11, 2023, and sent to the same email address.

[24] The respondent informed the court that on her return to the Co-op on May 23, 2023, she did not find any notice of the May 24, 2023 meeting affixed to her front door. She told the court that she had been in Mexico and her return flight on May 23 had been bumped. She did not say what day or time she returned to Unit 25.

[25] The respondent did not attend the meeting on May 24, 2023; the board waited 15 minutes before proceeding to vote on the resolutions to terminate the respondent's membership. The respondent's membership was terminated by a unanimous vote. The Co-op informed the respondent of the decision to terminate her membership on May 25, 2023, also by placing an envelope containing the order at the front door of Unit 25.

[26] Interestingly, Unit 25 was visible from the common room where the May 24 meeting was taking place. The directors observed the front door of Unit 25 and they did not see the respondent before proceeding to vote on the motions terminating her membership in the Co-op and cancelling her right to occupy Unit 25 . For some reason, no one at the meeting took steps to knock on the respondent's door to see if she was inside and able to make it to the meeting. They knew the respondent would not agree to termination of her membership and her expulsion from Unit 25. It seems the directors were satisfied to rely on the strict application of the notice requirements in the Occupancy Agreement rather than ensuring the respondent had received the notice and was deliberately staying away from the meeting.

**Issues**

[27] As above, petitioner seeks:

- a) an order for immediate possession of Unit 25; and

- b) judgment for unpaid housing charges together with damages resulting from over holding of Unit 25.

[28] I will deal with those issues in turn.

**Order for Possession**

**Legal Framework**

[29] Sections 35–36 and 171 of the CAA provide for the termination of membership in a housing cooperative as follows:

**Termination of membership in a housing cooperative**

**35** (1) A housing cooperative may provide in its rules for the termination of the membership of a member.

(2) Rules referred to in subsection (1) and the rules that a housing cooperative may adopt under subsection (3) of this section are subject to this section and sections 36 to 39.

(3) A housing cooperative by its rules may adopt either of the following grounds as constituting grounds for termination of the membership of a member who has a right to possession or occupancy of residential premises that is dependent on the member's membership:

(a) the member has not paid rent, occupancy charges or other money due by the member to the housing cooperative in respect of the residential premises and has not rectified the nonpayment within a reasonable time after receiving written notice to do so from the housing cooperative;

(b) the member

(i) has not paid rent, occupancy charges or other money due by the member to the housing cooperative in respect of the residential premises, or

(ii) in the opinion of the directors, based on reasonable grounds, has breached a material condition of an agreement between the member and the housing cooperative relating to the member's

(A) possession or occupancy of the residential premises, or

(B) use of the property of which those premises form part,

and has not rectified the nonpayment or breach within a reasonable time after receiving written notice to do so from the housing cooperative.



(4) Subject to any rules of a housing cooperative for termination of membership, and to subsections (5) and (6), a housing cooperative may terminate the membership of a member if the member has engaged in conduct detrimental to the housing cooperative.

(5) A housing cooperative may exercise the powers under this section to terminate the membership of a member only by a resolution of the directors requiring a majority of at least 3/4 of all the directors and passed at a meeting of the directors called to consider the resolution.

...

**Notices respecting termination of membership**

**36** (1) A person whose membership in an association is proposed to be terminated by a resolution of the directors

(a) is entitled to at least 7 days' notice of the meeting at which the resolution is to be considered, together with a statement of the grounds on which the person's membership is proposed to be terminated, and

(b) may attend the meeting, either personally or by or with an agent or counsel, to make submissions.

(2) Within 7 days after the date on which a proposed resolution to terminate a membership referred to in subsection (1)

(a) is withdrawn,

(b) is defeated because it does not receive the required majority, or

(c) is passed by the required majority,

the directors must,

(d) subject to paragraph (e), deliver written notice of the outcome to the person, or

(e) serve written notice of the outcome on the person and cause the housing cooperative to comply with other prescribed conditions if

(i) membership in a housing cooperative is being terminated for non-payment of rent, occupancy charges or other money due by the member to the housing cooperative in respect of residential premises, and

(ii) the resolution is passed by the required majority.

(3) The notice referred to in subsection (2) (e) must be accompanied by a notice in the prescribed form of the person's right to appeal the termination under section 37 (3).

**Right to possession terminated**

**171** Any right of a member to possession or occupancy of residential premises that is dependent on the member's membership in a housing cooperative is terminated on the termination or other cessation of the membership.

[30] If a membership is terminated pursuant to ss. 35–36 and 171, and the member does not appeal that termination within the timelines set out in s. 37 of the CAA, the Co-op may apply for an order of possession under s. 172:

**Court order of possession — application by housing cooperative**

**172** (1) After termination under section 171 of a person's right to possession or occupancy of residential premises, the housing cooperative in which the person was a member may apply to the court for an order of possession of the residential premises.

(2) On an application under subsection (1), if an appeal has not been commenced under section 37 and the application relates to a termination under section 35, the court must first determine, on evidence the court considers relevant, whether the person's membership was terminated in accordance with the principles of natural justice.

(3) If the court determines under subsection (2) that the person's membership was terminated in accordance with the principles of natural justice, the court must make an order of possession in favour of the housing cooperative.

[31] If a person's membership is terminated, an appeal of the termination to this Court under s. 37(3) of the CAA can be brought. In this case, the respondent did not appeal.

[32] The grounds of review of the termination of membership under s. 172 are very limited and involve an assessment of whether the membership was terminated in accordance with the principles of natural justice: *Sunshine Housing Co-operative v. Hengari*, 2018 BCSC 144 at para. 35; *False Creek Co-operative Housing Association v. Scipio*, 2015 BCSC 2419 at paras. 24–25.

[33] The principles applicable to that assessment were set out by Justice Basran in *Oleman v. Laura Jamieson Housing Co-Operative*, 2022 BCSC 483 at paras. 34–39:

[34] Section 172 of the CAA requires the court to determine whether Ms. Oleman's termination was conducted in accordance with the principles of natural justice before granting an order of possession to the Co-Op: s. 172(2) and (3).

[35] If a cooperative association's application for an order for possession under s. 172 of the CAA is dismissed, membership in the Co-Op should be reinstated along with the corresponding right to possession and occupancy of

the unit: *Sunshine Housing Co-Operative v. Hengari*, 2018 BCSC 144 at paras. 49 to 51.

[36] One of the most fundamental principles of natural justice is *audi alteram partem*, a right to notice, right to a hearing, right to know the case one has to meet, and the right to answer it: *Roberts v. Lore Krill Housing Cooperative*, 2008 BCSC 1034 at para. 104; *Kelly v. 115 Place Co-operative Housing Assn.*, 2009 BCSC 302 at para. 33.

[37] A party's right to be heard is a foundational principle of our justice system and ought not to be hindered by technical obstacles and rigid formulae. Every reasonable effort must be made to allow individual parties to be heard before a decision is rendered: *Zutter v. British Columbia (Council of Human Rights)* (1993), 1993 CanLII 2582 (BC SC), 82 B.C.L.R. (2d) 240 (S.C.) at para. 32, affirmed (1995), 1995 CanLII 1234 (BC CA), 3 B.C.L.R. (3d) 321 (C.A.).

[38] The scope of the rules of natural justice is context dependent. In the context of an organization such as a cooperative association, issues should be determined practically and pragmatically with respect for the need to ensure that individuals have a right to know what accusations they face and the ability to respond without the imposition of rigid formulae: *Kelly* at paras. 16 to 17.

[39] Termination proceedings in the context of a cooperative association are exceptional because the association is both the decision maker and the adverse party raising the allegation against the member. The directors of a cooperative association are laypeople who do not swear an oath of impartiality: *Swanson v. Mission Co-operative Housing Association*, 2021 BCSC 465 at para. 13.

### **The Petitioner's position**

[34] The petitioner argued that the only basis for the court to intervene at this stage in the proceedings arises if the person's membership was not terminated in accordance with the principles of natural justice.

[35] The petitioner referred to a series of cases they contend militates against any finding of a breach of natural justice in this case. They contend that the respondent was given adequate notice of the initial hearing and of the rescheduled date, and argue that she failed to attend the meeting and has not been denied natural justice.

### **The Respondent's Position**

[36] The respondent told the court that there were other people living in her residence while she was away and that she never received notice of the May 24, 2023 meeting.

[37] The respondent concedes that in May 2023 she was “a few weeks behind on my housing fees” but had agreed to pay all charges by June 30, 2023.

[38] The respondent referred to previous disputes with Noons Creek concerning problems with flooring in her unit. At that time her membership in Noons Creek was cancelled, but she was successful in obtaining orders that Noons Creek replace her flooring and her membership was reinstated. There was a continuing dispute about payment for the work necessary to facilitate the flooring replacement that required her to bear costs to remove carpets from Unit 25. She said those expenses put a strain on her ability to pay housing charges on time but that she believed she could catch up on her arrears with more time.

[39] The respondent had become aware of the May 10, 2024 scheduled meeting of the directors of the petitioner, at which time they intended to consider cancellation of her membership and an order that she vacate Unit 25 by June 30, 2023.

[40] The respondent was away from Unit 25 immediately before the May 10, 2024 scheduled meeting and requested a new date be set. She informed the Board of Directors that she would be away until May 23, 2024.

[41] On or about June 23, 2023 the respondent obtained some legal assistance and requested through counsel an extension of the time limit for filing an appeal of the termination of her membership. This request by letter from Community Legal Assistance Society contains the following:

Sadly, Ms. Myers suffers from a brain injury that significantly affects her memory and ability to navigate legal processes. Consequently, she was unable to attend the May 24, 2023 board meeting and has missed the seven day deadline to appeal that decision to the general membership.

[42] The Co-op refused to consent to an extension of the time to appeal the Board’s decision. On July 17, 2023 the petitioner brought this petition seeking an order for possession of Unit 25, judgment for arrears of housing charges, and damages for over holding.

[43] The respondent did not appeal the termination of her membership to the court. She seeks to argue that termination of her membership was improper and, I infer her argument suggests the plaintiff did not observe the principles of natural justice in the termination process.

[44] The respondent said that she had had many financial struggles throughout her time at Noons Creek and had experienced abusive comments and harassment during her tenure in Noons Creek.

[45] She argued, with a very limited and unhelpful affidavit, that her son had delivered the HOG documents to the petitioner and she had promised to pay all arrears of Housing Charges by June 2023.

[46] The respondent said that the appliances in Unit 25 belong to her and were not property of the petitioner and she is worried about losing these items. She said Noons Creek demanded an inspection of Unit 25 in June 2024.

[47] She said that she had provided financial information required by the petitioner but they would not accept that information, and she was told that she could not tender her HOG application documents because her tenancy had been terminated.

[48] The respondent also told me that the petitioner had refused to take payments from her in June 2024, although there was some type of order that she would pay \$400 on the first of each month. She stated that in February 2024 the petitioner again refused to accept her monthly payments.

[49] This application was originally argued on December 13, 2023 and again on May 21, 2024. On May 21, I granted the petitioner's request to file affidavit material that would comply with the Rules of Court in places where they were earlier relying on hearsay evidence. I indicated to the respondent she would be able to file further affidavit evidence.

## Discussion

[50] After this application was adjourned on May 21, 2024, the petitioner presented a further affidavit to address flaws that existed throughout the original affidavit filed by Dean McLennan, a director on behalf of the petitioner. Although I indicated to the respondent that she had the right to file an affidavit to add any information she thought could be pertinent, she declined this opportunity. Nevertheless, the respondent was unfortunately not equipped to address the petitioner's claims in any way informed by the legal principles. Unit 25 had been the respondent's residence for almost 15 years and, although she was often in arrears of her rents, these arrears did not appear to be serious and were usually addressed in a reasonable time. However, she was in arrears at the time of the May 24, 2023 meeting and she had not provided a copy of the HOG application to the Co-op as required by the Occupancy Agreement.

[51] At this stage, the court does not consider the merits of the Board of Directors decision terminating the respondent's membership in the Co-op or terminating her right to possession of unit 25.

[52] Rather, I must address the question of whether the petitioner accorded the respondent her right of natural justice and to attend the meeting of the Board of Directors to present her submissions.

[53] As set out above, in *Oleman* at paras. 36–42 Justice Basran explained that the right to be heard is a fundamental right in our system of justice, and that:

- a) every reasonable effort must be made to allow individuals to be heard before a decision is rendered;
- b) the scope of the rules of natural justice is context dependent;
- c) issues should be determined practically and pragmatically with respect for the need to ensure that individuals have an ability to respond without the imposition of a rigid formula;

- d) termination proceedings in the context of cooperative associations are exceptional because the Association and decision-maker are adverse parties to the respondent;
- e) one purpose of the CAA is to protect members from boards making unreasonable decisions regarding termination; and
- f) the loss of one's home is a serious matter that demands strict compliance with natural justice and a right to be heard.

[54] In light of those principles, I will address some of the facts surrounding the respondent's failure to attend the May 24, 2023 meeting.

[55] The Board of Directors was aware that the respondent was away from her unit until May 23, 2023. They scheduled the new date for the next day, May 24. I am satisfied from the respondent's submissions and from her general appearance and delivery, that she has some cognitive difficulties and, in her words, has suffered from a significant head injury.

[56] It was obvious to me that the respondent's compromised cognitive abilities, her abilities to recall events, to organize herself or her thoughts and to provide an accurate accounting of events were affirmations of the impact of her head injury.

[57] The directors warned the respondent that they would not reschedule the meeting a second time "if you choose not to attend the directors meeting on May 24, 2023 at 7:30 PM." Thus, the directors intended to proceed in the absence of the respondent if she chose not to attend.

[58] The meeting convened by the Board of Directors was immediately across the hall from the respondent's residence. The Board of Directors waited 15 minutes for the respondent to appear, they checked the hallway, but no one took steps to knock on the respondent's door to ascertain if she was inside and if there was some difficulty preventing her from attending at the meeting.

[59] The Board of Directors knew the respondent wished to appear and make submissions at their meeting, a meeting that resulted in the termination of her membership and possession of Unit 25 after 15 years of residency in the Co-op. The respondent's intentions were clear in that she had already requested by email that the first scheduled meeting be rescheduled for a time after she returned from out of town. It was obvious from that request that she wanted to attend the meeting and make representations to the board of directors. Her later request for an extension of time to appeal the Board of Directors decision, is a further indication that she wanted to be involved in the process in an effort to save her membership and right of occupancy in Unit 25.

[60] As the above makes clear, the circumstances in this case relating to the respondent's right to natural justice are not clear or straightforward. I have concluded that an email was sent to the respondent with notice of the May 24 at her then current email address. The respondent was unable to explain whether she was inside Unit 25 at 7:30 PM on May 24 or if the delay in her flight from Mexico caused her to arrive later than that.

[61] I also observed that when the respondent requested an extension of the time to appeal through counsel, the reasons for her non-attendance did not include the absence of notice of the meeting. The explanation focused on the respondent's cognitive problems.

[62] It is clear to me the respondent's intentions were to plead her case before the members and not abandon her membership and right to occupancy of Unit 25. She had already requested extra time to appeal to the membership and requested the delay of the May 10 meeting to facilitate her attendance. She intended to be present at the meeting of the Board of Directors. When informing her of the new meeting date, the Co-op warned:

If you choose not to attend, the meeting will proceed without you. The Directors will not reschedule the meeting a second time if you choose not to attend the Director's meeting on May 24, 2023 at 7:30 p.m.



[63] I find that the respondent did not choose to attend. As mentioned in her counsel's letter to the Co-op seeking extra time to appeal to the membership, her cognitive abilities played a role in her failure to attend.

[64] In my view, on all the evidence including her request for an extension of time to appeal, it is more likely than not that the respondent was not aware of the of the May 24 meeting and that, if she had been aware all of this notice, she would have attended. Keeping in mind that Unit 25 had been the respondent's home for 15 years, that she has various handicaps affecting her cognitive and organizational abilities, and would not have deliberately failed to attend the meeting, I conclude that the respondent (who had been a neighbour to all of the directors and members of the petitioner), was entitled to further consideration from the Board of Directors before they embarked on their meeting that would ultimately cancel her membership in the Co-op and oust her from her residence.

[65] The scope of the rules of natural justice is context dependent. The Co-op was under an obligation to make every reasonable effort to allow the respondent to be heard before a decision was rendered. Issues ought to have been determined practically and pragmatically, with respect of the need to ensure that individuals like the petitioner have a right to know answer accusations that could result in removal from their home. The ability to respond unrestrained by the imposition of rigid formulae is crucial: *Oleman* at paras. 37–38.

[66] While I recognize the difficulties and limitations faced by laypersons volunteering to be directors of cooperatives, I am of the view that, in light of the respondent's residence this cooperative, her 15 year membership in the Co-op, the knowledge of the Board of Directors concerning her circumstances, and the previous years' discord between the petitioner and the respondent, a reasonable and pragmatic consideration of the principles of natural justice compelled the directors to at least knock on the plaintiff's door before terminating her membership after her years of residency.

[67] Fairness is a consideration in the analysis of the principles of natural justice: see *Sunshine Housing Co-operative v. Hengari*, 2018 BCSC 144 at para. 39.

[68] Instead, as in *Oleman*, the Co-op is standing on formality and rigidity in asserting that it has complied with the processes and timelines set out in the CAA to oust the respondent from her home. This does not meet the standard of compliance with the principles of natural justice: *Oleman* at para. 49.

[69] It may have been that even if the respondent attended the May 24 meeting, she would have been incapable of persuading the Board of Directors to reach a different result or of remedying her default under the Occupancy Agreement. She contends, however, that during her time living at the Co-op, no one had their membership cancelled due to short-term arrears in Housing Costs payments, and that she was hoping for the same result. The respondent was entitled to be heard and to make her submissions.

[70] It is also somewhat surprising in the context of the history of the relationship between the respondent and the Co-op that the Board of Directors also refused the respondent's request for an extension of time to make an appeal to the membership.

[71] I am satisfied that the respondent was not accorded the rights of natural justice in the circumstances of the termination of her membership. This court has extremely limited jurisdiction to provide relief in such circumstances and no relief is available under the *Law and Equity Act*, R.S.B.C. 1996, c. 253.

[72] Section 172 is the basis of the petitioner's claim for an order of possession; and based on the fact her membership was terminated without observing the principles of natural justice, this petition cannot succeed. I am satisfied that the respondent's membership was not terminated in accordance with the Co-ops obligations to accord the respondent the benefit of natural justice and decline to make an order of possession in favour of the petitioner. It follows that the respondent's membership in the Co-op is reinstated, and she is not required to relinquish possession of Unit 25: see *Oleman* at para. 35.

[73] The Occupancy Agreement governing the respondent’s membership in the Co-op contains terms including the following:

4.01 Payment of Housing Charge

The member shall pay the Co-op on the first day of each and every month of occupancy... during the term of the Occupancy Agreement, a housing charge is determined and assessed by the Co-op from time to time (the Housing Charge) and notified to the Member in writing.

...

4.03 Setting the Housing Charge

From time to time the directors of the Co-op shall set and recommend to the members of the Co-op the monthly Housing Charge payable hereunder by estimating the amount of money which, in the opinion of the Board of Directors shall be required by the Co-op during each fiscal year for the maintenance of the corporate existence of the Co-op and the carrying charges on the Lands and the development... all of which shall be approved by ordinary resolution at a general meeting of the Co-op...

4.07

Failure of the Member to pay the Housing Charge, any additional or supplementary charge or any amounts owing to the Co-op in accordance with this Occupancy Agreement shall be cause for termination of this Occupancy Agreement.... and upon such termination, the Member shall vacate the Unit.

16.01

Right of Occupancy

The right of the member, and that of any other person residing in the Unit, to possession or occupancy of the unit shall terminate if the membership of the member is terminated pursuant to the rules.

16.03

...

The Co-op shall have the right, through its directors to terminate this occupancy agreement if:

[b] the Member fails to pay the Housing Charge or any other assessment

17.02

The Member agrees to immediately quit and give up vacant possession of the unit upon the effective date of termination of the occupancy agreement.... but if the member does not immediately quit and give up vacant possession then the member shall pay to the Co-op an amount equal to the Housing Charges herein prorated on a daily basis for each day the member fails to quit...

... The amount due to the co-op... may be deducted from any money otherwise payable by the Co-op to the Member.

18.02

Upon the members... termination of this occupancy agreement, the Co-op shall purchase or sell the Members Shares in the Co-op in the amount and in the manner specified in Section 19 of this Occupancy Agreement.

19.05

if the amount realized on the sale of Shares pursuant to Section 19 is insufficient to fully satisfy all indebtedness by the Member to the Co-op, any balance of the indebtedness shall be due and payable by the member immediately upon notice notwithstanding that this occupancy agreement has terminated his treatment force

[74] The Co-op Rules provide as follows:

1.1[e] "Housing Charge" means Occupancy Charge for the purpose of the Act and is the amount due by the member to the Co-op on a monthly basis on account of occupancy of the unit and as determined by the Co-op under the Occupancy Agreement

1.4

The terms and conditions of the Occupancy Agreement attached as Schedule A to these rules shall be binding upon each member and the Co-op with respect to the occupancy of the Unit by the member

5.1

Where a member:

[b] has not paid Housing Charges are any other money due by the member to the Co-op within five days after receiving written notice to do so from the Co-op;

the membership of that member may be terminated by a resolution of the directors requiring a majority of at least three quarters of all the Directors and passed at a meeting of the Directors...

5.4

A member of the co-op whose membership is proposed to be terminated...

[a] must receive at least seven days notice of the meeting at which the resolution is to be considered, together with a statement of the grounds on which the member's membership is proposed to be terminated;

[b] may appear, either personally... at the meeting

12.2

Subject to these Rules and Act, the Co-op must redeem the Shares of a person who... Whose membership is terminated...

12.4 the Co-op shall have a lien on a member' will s Shares for a debt or any other amount whatsoever due to the Co-op by the member and the lien will extend to the proceeds of any redemption of the Shares.

12.7 if the amount realized on the redemption of Shares is insufficient to fully satisfy the lien of the Co-op, any balance of the debt shall be due and payable by the member immediately upon notice.

**Petitioner’s Position**

[75] The petitioner contends that the respondent owed \$11,700 for Housing Charges as of May 1, 2024. The petitioner argues the respondent has remained in possession of Unit 25 and has incurred charges of approximately \$15,000 up to and including April 2024. They contend the respondent fell into arrears from early 2023 until her membership was terminated in May 2023 because of her ongoing failure to make the payments for housing charges. She continued in breach of her obligation to provide information to enable the petitioner to obtain the benefit of her entitlement to an HOG.

[76] They now seek to recover \$15,831 as of August 6, 2024. This includes a substantial amount for administrative penalties charged at \$45 per month commencing April 6, 2023.

**Discussion**

[77] In light of the provisions of the Occupancy Agreement and Co-op Rules set out above, I conclude that the amount owing by the respondent for outstanding Housing Charges, administrative penalties, and other costs cannot be resolved at this time. A number of issues emerge in consideration of the respondent’s financial obligations.

[78] First, the Occupancy Agreement was terminated by the Board of Directors effective May 24, 2023. After that point, the respondent was not obliged to pay “Housing Charges” under the Terminated Occupancy Agreement, but rather an “amount equal to Housing Charges” under clause 16.02 of the Occupancy Agreement. Under clause 4.01 of the Occupancy Agreement, Housing Charges payable by members are “determined and assessed by the Co-op from time to time and notified to the Member in writing”. There was no evidence in the petition informing the court when the housing charges are determined or assessed by the

Co-op, nor when the respondent was notified of same. It may very well be that Housing Charges shown in Mr. McLennan's affidavit were reviewed on March 29, 2023. He does not say what the Housing Charges were for Unit 25 before or after March 29, 2023.

[79] Second, it is clear that administrative charges are not part of the "Housing Charges". Insofar as the petitioner seeks to recover judgment for amounts owing by the respondent, more fulsome evidence would be necessary. In order to establish the basis of the respondent's outstanding obligations, there will need to be a proper inquiry and assessment into that amount if there is to be judgment given.

[80] If I had allowed the Co-op application for a possession order, I would have been required to consider the amount of money owed by the respondent under clause 17.02 of the Co-op Rules (if possession were granted). In this case the question of arrears (if possession were denied) must be calculated in the context of clause 18.02 of the Occupancy Agreement that requires the petition to purchase or sell the respondent's shares in the Co-op in the matter specified in clause 19.

[81] The petitioner claims an "absolute and preeminent lien upon the funds resulting from the sale of the Shares, and shall be entitled to recover and be paid out of such funds all money due to the Co-op by virtue of the Occupancy Agreement together with all other charges..."

[82] In my view, if the respondent's shares in the Co-op are liquidated in the manner set out in the Occupancy Agreement, the petitioner's entitlement would be to the net amount after deducting the proceeds from disposing of Unit 25.

[83] The only affidavit dealing with the amount claimed as Housing Charges appears to be in the August 8, 2024 affidavit of Nabila Moradi wherein she indicates sending an email to the respondent setting out an amount alleged to be owing. This document contains a number of administrative penalty charges and administration fees, none of which are defined as Housing Charges.

[84] There was no argument advanced on the calculation of the quantum of the respondent's obligations. It seems to me better evidence would be necessary to establish the actual amounts. Although those amounts may be as set out in Mr. McLennan's first affidavit, the amount due and owing as of July 6, 2023 was only \$1876 which is the amount set out in the Petition as owing. There was no evidence concerning the review of Housing Charges after March 2023.

[85] In my view, assessment of any monetary judgment claimed under this petition must be referred to the registrar for a proper inquiry and accounting with the result being certified by the Registrar.

[86] The respondent will be indebted to the Co-op for her housing charges from April 2023 to the present less any payments she has made. It may be necessary for there to be an accounting of those amounts in order for the respondent to bring her payments into good standing. A determination of this amount could also be directed to an inquiry and accounting by the Registrar and certified to the court.

[87] The parties have leave to make submissions on the question of costs.

"Armstrong J."