

2002

S.K. No. 182859

IN THE SUPREME COURT OF NOVA SCOTIA
[Cite as: Evangeline Courts Housing Co-op v. Lapointe, 2002NSSC211]

BETWEEN:

EVANGELINE COURTS HOUSING CO-OPERATIVE

APPLICANT

- and -

WILLIAM LAPOINTE

RESPONDENT

D E C I S I O N

HEARD: At Kentville, Nova Scotia, on September 3, 2002.

BEFORE: The Honourable Justice Allan P. Boudreau.

DECISION: Orally, September 3, 2002.

WRITTEN RELEASE
OF DECISION: September 10, 2002

COUNSEL: Bernard G. Conway, Esq., on behalf of the respondent.

Tristan Mostovac, Brian Murphy and Heather Kitchin
On behalf of Evangeline Courts Housing Co-operative.

Boudreau, J., (Orally)

[1] William Lapointe, the primary applicant in this chambers matter, has been a member and tenant of Evangeline Courts Housing Co-operative for approximately six years and I say he is the primary applicant in this matter because the ultimate decision is whether the eviction order of the Supreme Court should be stayed.

[2] Around the beginning of this year a dispute arose between the parties; the Co-op claiming Mr. Lapointe was a few months in arrears on his rent and Mr. Lapointe denying the allegations and the claim. The matter eventually proceeded before the Residential Tenancies Board with the Co-op claiming the arrears and requesting the right to evict Mr. Lapointe. The Residential Tenancies Board ruled in the Co-op's favor and found Mr. Lapointe in arrears in excess of \$1,000.00 of rent and granted the right for the Co-op to evict Mr. Lapointe. Mr. Lapointe appealed that decision but failed to appear at the appeal. Thereafter the Board's ruling was made an order of this court as a matter of course.

[3] Mr. Lapointe then applied on an *ex-parte* basis to stay the eviction order pending a review by this court because the Board of Directors of the Co-op insisted on the eviction and termination of Mr. Lapointe's tenancy even if he paid the arrears. The Board's decision was unanimous and appears to have been made on the basis of their view of proper tenancy administration and there is no indication of any bad faith whatsoever. Mr. Lapointe has objected to the Board of Director's decision to continue with the eviction procedures and he did so upon learning of the Board's decision. He then attempted to assemble as

many Co-op members as he could to have the members decide on whether he should be evicted or not. Mr. Lapointe had been informed of the court eviction order on July 13th and on July 18th, as I indicated, he contacted some members of the Co-op, but the exact number is unclear. However, on July 19th, fourteen members showed up at his residence and unanimously signed a resolution stating that if Mr. Lapointe paid up his rental arrears he should not be evicted. There is no question that this meeting held at Mr. Lapointe's residence was not a duly constituted meeting as it was not in accordance with the Co-op Act or the Bylaws of the Co-op.

[4] Mr. Lapointe now contends he has a right to appeal his eviction to the general membership of the Co-op. He says that eviction is akin to or in effect that he is being excluded from membership and that he has a right of appeal pursuant to s. 29(2) of the **Co-operative Associations Act**. That section states as follows:

29(2) A member who fails in the observance of any of the regulations or the by-laws of the association may, by resolution of the board of directors, be excluded from membership in the association whereupon he shall be entitled to a refund of any amount held to his credit in share capital or loan capital and deposits ;and upon which the association has no lien or other lawful claim but

- (a) notice shall be sent by the board of directors by registered mail to such member to his last known address setting forth a date not sooner than one month after the date of mailing the notice upon which he is to be excluded from membership in the association and stating the reasons therefor;
- (b) the member so notified, if he is not satisfied with the decision of the board, may at any time before the date upon which it is proposed that he is to be excluded from membership in the association request the board to place the matter on the agenda for consideration by the membership during the next special or general meeting of the members; and

- (c) the member who has been notified that he is to be excluded from the association shall have the right to appear personally before the meeting to give reasons why he should not be excluded after which the question shall be submitted to a vote of the meeting and the decision of the meeting thereon shall be final.

[5] There is another section which has some application and it is section 6 of the Co-op's bylaws and it states:

EXCLUSION FROM MEMBERSHIP:

Members may be excluded from membership according to Section 29 of the Co-operatives Act and also if a member fails to live in the co-operative for a period of one year.

[6] Mr. Lapointe claims he has been attempting as best he could to have the issue of his eviction and the alleged resulting de facto exclusion from membership brought before the general membership since at least July 18th, but that the Board has refused to do so. This, in essence, is Mr. Lapointe's claim.

[7] A general meeting of the Co-op members was held in August but the issue was not notified to the members and it was not on the agenda circulated for the meeting. Although Mr. Lapointe was present at the meeting and raised the matter the question of his eviction was not put to the general membership or voted upon.

[8] Mr. Lapointe claims he has been denied his right of appeal as provided by section 29(2) of the Co-op Act. The Board of Directors has made a forceful argument that evicting Mr. Lapointe will not exclude him from membership because he will remain on what has

been referred to as an “outside member list”, that is, a member without tenancy for a period of one year after which he can appeal to the general membership to continue as an outside member. The Board says that membership is a totally different issue than tenancy. The Board of Directors apparently approve tenancies, whereas the general membership votes on new or extended outside memberships. However, in Mr. Lapointe’s case, there is no question that he will not be approved for tenancy as long as the current Board is in power. It is difficult to conclude that the effect of Mr. Lapointe’s eviction would be anything but kicking him out of the Co-op for the purpose for which it was established, namely, lower cost co-operative community living.

[9] The Board also contends that it is they and not the general membership who administer and control the management and day to day business affairs of the Co-op, especially the enforcement of rent collection and other tenancies matters. There is no question that that is the case, but what if the effect of the Board’s decision is to expel a member from his Co-op residence with no foreseeable chance of appealing that decision. Does that not trigger the appeal procedure provided for in section 29(2) of the Act? There is no question that the Board of Directors acted in good faith in taking the matter to the Residential Tenancies Board and those proceedings and those decisions are not in question, but it is the decision of the Board to proceed to and continue with eviction that is being brought into question in these proceedings. Does it trigger the appeal procedure provided in section 29(2) of the **Act**?

[10] I find that in the present case the eviction of Mr. Lapointe when he has agreed and attempted to pay his rental arrears, amounts to an exclusion of him from the Co-op for the purposes for which it exists, which is as I said, low cost, co-operative community living. I find that in this case the continuing eviction procedure triggers s. 29(2) and that Mr. Lapointe has not been afforded that procedure. The eviction order is therefore stayed until the appeal procedure provided for by s. 29(2) has been completed. According to subsection (c) of s. 29(2) the decision of the meeting will be final and binding on the issue of the exclusion of Mr. Lapointe from the Co-op's housing community. I should point out that there is no exclusion from s. 29(2) of the Co-operative Associations Act for tenancies matters and even though proper Residential Tenancies Board procedures were followed it does not, in my view, usurp or preclude the application of s. 29(2) of the Co-op Act.

[11] I realize that this decision will undoubtedly place a strain on the workings between the Co-op members and its Board of Directors, however, I presume in the end the democratic process will decide how best to handle this matter, which appears to be the legislative intent of s. 29(2).

[12] I am not going to award any costs in this matter for or against any party. Each party shall bear their own costs. In my view Mr. Lapointe's successful argument was just raised last Friday. He is the one that was in arrears of the rent. It was found so by the Residential Tenancies Board. In my view the situation does not warrant awarding costs to Mr. Lapointe and I am not going to award any costs to any party. Each party shall bear their own costs.

Boudreau, J.