THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Malitsky v. Vera Housing Co-operative Association,* 2026 BCSC 858

Date: 20260511
Docket: S257076
Registry: Vancouver

Between:

Boris Malitsky

Appellant

And

Vera Housing Co-operative Association

Respondent

Before: The Honourable Justice Branch

On appeal from: Decisions of the Board and General Membership of Vera Housing Co-operative Association dated April 18, 2025 and August 18, 2025.

Reasons for Judgment

Counsel for the Plaintiff:	S. Khazei
Counsel for the Defendant:	C.G. Haddock, K.C.
Place and Dates of Hearing:	Vancouver, B.C. March 27, 2026
Place and Date of Judgment:	Vancouver, B.C. May 11, 2026

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I. INTRODUCTION

[1] Before me is an appeal of two decisions to terminate the appellant Boris Malitsky's occupancy and membership made by:

a) the directors (the "Board") of the respondent, Vera Housing Co-operative Association (the "Co-op"), on April 18, 2025; and

b) the general membership of the Co-op on August 18, 2025.

[2] For its part, the Co-op seeks an order of possession, given that this appeal has stayed the eviction.

II. BACKGROUND

A. The Co-op

[3] The respondent Co-op is a non-profit housing cooperative that provides members with affordable housing in apartments located at 575 Southwest Marine Drive in Vancouver, BC.

[4] Members are required to comply with the Co-op's rules (the "Rules"). The Rules provide as follows, in material part:

> 1.4 Occupancy Agreement attached as Schedule A
>
> 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 Grounds for termination of membership
>
> Where a member:
>
> (a) has engaged in conduct detrimental to the Co-op;
>
> (b) has not paid Housing Charges or 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; or
>
> (c) in the opinion of the Directors, based on reasonable grounds,
>
> (1) has breached a material condition of the Occupancy Agreement; and

> (2) has not rectified that breach within a reasonable time after receiving written notice from the Co-op to do so 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 called to consider the resolution.

[5] The occupancy agreement found at Schedule A of the Rules (the "Occupancy Agreement") provides as follows:

> 6.01 Comply with Rules and Policies
>
> The Member shall comply with and cause the Member's family, guests, employees and any other person occupying or visiting the Unit to comply with all the terms, conditions and provisions of this Occupancy Agreement and
>
> (a) the terms and conditions set out in the Memorandum, the Rules and the Policies of the Co-op as amended from time to time; and
>
> (b) all changes and additions to the Occupancy Agreement, to the same extent as if they were herein incorporated.
>
> …
>
> 10.01 Interior condition
>
> The Member shall at the Member's own expense, keep the interior of the Unit in good condition and repair and in keeping with the character of the rest of the Development.
>
> 10.02 Damage caused by leakage
>
> The Co-op shall not be answerable or chargeable for any decorations nor for any damage caused to contents of the Unit by leakage or overflow of water, electricity, gas, oil, steam or vapour from any water, steam, drain, or gas or oil pipes or electrical conduits, or from any other source, belonging or appertaining to any other part of the Development.
>
> 10.03 Liability for damage
>
> The Member shall be liable for any damage to any part of the Lands, Unit, or the Development caused by a pet of the Member or by those for whom the Member is responsible in law or caused by the negligent act or omission of either the Member or the Member's family, guests, agents, employees or any other person occupying or visiting the Unit.
>
> 10.04 Repairs as required
>
> The Member shall make all repairs as required by the Occupancy Agreement in a manner acceptable to the Directors. If the Member at any time fails, refuses or neglects for a period of ten days after having received written notice from the Directors to make repairs, or to maintain the Unit in good condition, the Directors may:
>
> (a) cause the repairs to be made, or restore the Unit to good condition; and

> (b) enter or cause its agents or servants to enter the Unit for that purpose.
>
> All expenses and costs incurred by the Co-op in doing so shall be due and payable by the Member to the Co-op immediately upon written notice to the Member.
>
> 10.05 Reports defects
>
> The Member shall immediately report in writing to the Directors any failure or defect of electrical, mechanical, or structural components or systems of the Unit or the Development of which the Member has notice or knowledge.
>
> …
>
> 12.01 Breach of conditions
>
> This Occupancy Agreement and the term hereby created shall be subject to the conditions herein set forth, and shall come to an end upon withdrawal from or termination of membership.
>
> …
>
> 25.01 Part of the Rules
>
> This Occupancy Agreement is Schedule "A" to, and forms part of, the Rules of the Co-op and is binding on the Member and the Co-op.

B. The Appellant

[6] The appellant is 70 years old and is a retired building maintenance engineer. He lives on a modest income from a pension, Old Age Security, and the Guaranteed Income Supplement.

[7] The appellant has lived in a unit in the Co-op (the "Unit") for approximately 41 years. He is the longest-standing member of the Co-op.

C. Difficulties with the Appellant and the Unit

[8] The Co-op says it has been struggling with the condition of the appellant's Unit condition for some time.

[9] As early as 1998, the Co-op's records indicate that a pest inspector had difficulties accessing parts of the Unit because of the many items accumulated against the appellant's walls.

[10] In 2007, the Co-op had correspondence with the appellant regarding the condition of his Unit and the need for inspections. There were also challenges

ensuring that the appellant complied with a pest control company's recommendations.

[11] In 2010, there were communications between the parties regarding "fire and safety risks [the Unit] presents due to excess storage".

[12] In 2011, there were concerns about "fungal contamination".

[13] In 2012, there was concern about combustible storage in the Unit.

[14] In 2018, there was correspondence regarding excessive clutter and poor cleanliness.

[15] In 2019, the Co-op brought formal proceedings similar to those advanced herein. The appellant was sent a warning letter from the Co-op raising similar concerns and attaching reports from Orkin Canada ("Orkin"), a pest control company. During Orkin's inspections, there had been difficulties between the appellant and Orkin's inspector, Kat Lavoie. Eventually, the Co-op sought to terminate the appellant's membership, and the Board passed a resolution accordingly. The appellant appealed the Board's decision to the wider Co-op membership, as occurred here. Unlike the situation here, on that earlier occasion he succeeded in his appeal, as the membership did not reach the approval level required to support eviction.

[16] Moving forward to the lead-up to the present eviction decisions, on October 29, 2024, the appellant was asked to attend a meeting with the Board. At this meeting, the Board informed the appellant that they had concerns about the need to declutter and remove pests from the Unit.

[17] Following the meeting, the Board sent the appellant a letter (the "October 2024 Letter") stating the following:

> The board considers the condition of your unit to be extremely hazardous and needs to respond with remediation work urgently. The board has advised the Hoarding Actions Response Team (HART) of the situation and they will be in contact with you to offer support.

> It is clear that majority of the contents of your unit will need to be removed and/or disposed of for the full scope of work to be completed. The board will assist by covering costs associated with the removal & disposal of the contents.
>
> The board demands the following:
>
> - That you make your unit available for contractors to inspect for the purpose of quoting over the next **10 days**
>
> - That you engage with HART for support and available services in assisting you with the management of this process
>
> - The unit is to be cleared of all contaminated items and ready for remediation work to safety begin within 30 days — **Deadline November 28th, 2024**
>
> - Make your unit available for follow up inspections to be conducted 14 and 21 days from today — **November 12th & November 19th**
>
> - Provide progress reports to the board via the office to align with the follow up inspection dates
>
> The board is committed to supporting you through this process and also expects your full cooperation and compliance with regards to these requests.
>
> [Emphasis in original.]

[18] Between the October 2024 Letter and February 2025, the appellant says he cleaned and decluttered his Unit, moved and disposed of many of his belongings, and worked with the Vancouver Fire Department's Home Actions Response Team ("HART") and Orkin to remove fire hazards and pests from the Unit.

D. Inspections and Communications with the Board in February-March 2025

[19] HART inspected the Unit in November 2024, February 2025 and March 2025. During the February 11, 2025 inspection, two Board members were present.

[20] The Board held a meeting on February 11, 2025 to discuss the condition of the Unit. On February 12, 2025, Board member James Quinn[1] went to the Unit with an inspector from COHO Management Services Society ("COHO"). The appellant says that Mr. Quinn did not go inside. The inspector inspected the Unit and filled out

[1] Mr. Quinn was also president of the Board at relevant times in 2025.

an inspection form titled “FINAL Move Out Inspection“, dated February 17, 2025 (the “COHO February 2025 Report”). This report identified the following issues:

- potential fire hazards, stove elements covered with items, baseboard heaters covered with items,
- potential water damage hazards, hot water tank & shut off not accessible, kitchen and bathroom fixtures not accessible
- potential tripping hazards, throughout every room in the unit
- potential health hazard, signs of mouse droppings behind bedroom door, kitchen floor, bathroom floor, along some hallways, ...

[21] On February 19, 2025, the Board wrote to the appellant (the “February 2025 Letter”) stating:

> The Board met Tuesday, February 11, 2025 and discussed the condition of your unit. Despite multiple inspections from Board representatives, the Vancouver Fire Department, Vancouver Coastal Health and Orkin, there continues to be issues of cleanliness, rodent infestation and significant clutter in the unit. You have also failed to comply with the demands of the October 29, 2024 correspondence to you from the Board (attached). The opinion of the Board is that your progress to date to improve the condition of the unit is insufficient.
>
> The Board has agreed to extend the deadline to March 11, 2025 for you to clear and clean your unit (including the balcony). This will be the final extension.
>
> The Board will inspect your unit on March 11, 2025 at 2:00 pm.
>
> Failure to comply with this requirement for you to clean and clear your unit may result in the Board terminating your membership for breach of a material condition: …

[22] The Board then cited sections 5.1 and 10.01–10.05 of the Occupancy Agreement.

[23] On February 26, 2025, the COHO inspector returned to the Unit and took additional photographs (the “COHO February 2025 Pictures”). Based on my review of these pictures, the Unit’s condition was a legitimate concern for the Co-op.

[24] On March 4, 2025, the appellant received an email from Liam Marcoux, Fire Inspector at the Vancouver Fire & Rescue Service at the Vancouver Fire

Department, regarding HART's earlier inspection on February 11, 2025, that stated as follows:

> Apologies for the delay. Yes, since our first visit with yourself, I have seen improvements to your unit regarding Fire Safety. You now have a smoke alarm in your unit, the egress pathways are wider, and the overall accumulation of combustible items has decreased. I do still believe that there are improvements you can make to your unit. However, the HART (Home Action Response Team) is primarily focused on suites that present a hazard due to significant hoarding, and since our last visit, we feel that your unit no longer meets the threshold for our intervention. That being said, we will still be attending on March 11th to ensure you are continuing to make efforts to declutter and maintain your space.
>
> Thank you for your cooperation so far Boris.

[25] On March 11, 2025, HART inspected the Unit again. At least one Board member, and perhaps two, attended this inspection. Mr. Quinn says that "it did not appear to me that [the appellant] had made any significant progress in decluttering or cleaning the Unit."

[26] In an email to the appellant dated March 18, 2025, HART's Liam Marcoux reported as follows:

> Apologies for not getting back to your original email. During our visit on March 11th, I did see that you have made more progress in addressing the Fire Departments concerns, we appreciate your cooperation. Our approach is to identify Fire Safety risks in your home, and support you in rectifying them. Since our first visit, you have had a smoke alarm installed, and decluttered your suite to a level that does not require further attention by my team. Therefore, we are satisfied with the state of your home, from a Fire Safety aspect. I have asked Omar (VCH) to attempt to contact you this week, it is your decision if you would like to engage in his support. I hope you are able to resolve the difficult position you are in, Boris.

[27] On March 12, 2025, Kat Lavoie from Orkin wrote regarding the Unit to the Board:

> Inspected unit 23-533: No new mice activity in over a month (no new captures, bait activity and/or droppings). Sanitation and clutter is much better, I don't think this unit is a nuisance to other neighbors anymore but considering the history of this unit/tenants, I recommend that we stay on top of it with regular bi-weekly inspections.

[28] It is the Co-op's position that, notwithstanding the information from HART and Orkin, the Unit had not achieved compliance with the Board's conditions by its March 11, 2025 deadline. The appellant disagrees. On this mixed issue of fact and law, I agree with the Co-op. I note that:

a) HART was only assessing "Fire Safety risks", and hence only provided comfort "from a Fire Safety aspect".

b) Orkin, unsurprisingly, was focused on "mice activity", and opined only that sanitation and clutter were much "better", and not that concerns were completely absent. Orkin then offered its own opinion that the Unit was not "a nuisance to other neighbors", which is not the test the Board was applying under the Occupancy Agreement.

c) I find that in coming to its later decision on compliance with the Occupancy Agreement, and whether the appellant had addressed the Board's broader concerns about "cleanliness" and "significant clutter" and the demand that the appellant "clear and clean" the Unit, the Board was entitled to rely on:

    i. COHO's review on February 12, 2025;

    ii. the COHO February 2025 Pictures; and

    iii. Board members' own reviews on February 12 and March 11, 2025.

E. The April Board Meeting

[29] On April 2, 2025, the Board wrote to the appellant (the "April 2025 Letter"), requesting his attendance at a board meeting on April 11, 2025 (the "April Board Meeting"), at which the Board would discuss a motion to terminate the appellant's membership. The letter asserts that the appellant failed to meet his obligations to keep his unit in the condition required under the Occupancy Agreement. They specifically cited sections 10.01–10.05 of the Occupancy Agreement.

[30] On April 10, 2025, one day prior to the April Board Meeting, the Board sent a package to the appellant. This package included the COHO February 2025 Report and the COHO February 2025 Pictures (the "April Termination Package").

[31] As part of his preparations for the meeting, the appellant says he asked Board members for an HDMI cable so he could showcase photos of the Unit's current condition by connecting his laptop to the television in the meeting room. The appellant says that the Co-op President refused to provide the appellant with a cable and told the appellant that he could not present evidence. The Co-op disputes this version of events. Mr. Quinn has no recollection of the appellant asking for an HDMI cable before the meeting. He does recall the appellant asking for a cable at the meeting itself, but there were simply none available. Mr. Quinn also denies preventing the appellant from presenting evidence to the Board during the meeting.

[32] At the April Board Meeting, the Board discussed the appellant's failure to adequately address their concerns about hoarding and the sanitary condition of the Unit. The appellant responded by reviewing his remediation efforts and the positive feedback received from HART and Orkin.

[33] The April Board Meeting minutes suggest that the appellant conceded that he had failed to meet the Board's conditions:

> Questions from Board to Member:
> Why were deadlines not met for cleaning out the unit?
> Member: Personal delays (car broken down, couldn't borrow a wagon)

[34] The appellant says that during the meeting, one of the Board members, Don Macdonald, asked the appellant: "If we went to your unit now, would we be able to see these improvements?", at which point the appellant suggested recessing the meeting so that Don Macdonald could come with him to visit the Unit. Mr. Macdonald refused. Mr. Quinn disputes this version of events, stating that he does not recall the appellant issuing an invitation to inspect his Unit. In fact, Mr. Quinn says that he recommended that the Board attend at the Unit that day for an inspection, but that it was the appellant who turned this suggestion down.

[35] On April 18, 2025, the appellant received a letter from counsel for the Co-op Board stating that the Board had voted in favour of the termination of the appellant's membership (the "Board Decision"). It read:

> **Re: Notice of Outcome of Directors Meeting**
>
> We write with regard to the Board of Directors meeting held on April 11, 2025 where the Directors considered a resolution to terminate your membership in the Co-op.
>
> Please be advised that the resolution passed by the requisite 75% of all directors. Your membership in the Co-op is now terminated.
>
> Further, the Board of Directors resolved that you vacate your unit by May 31, 2025. Accordingly, pursuant to the termination of your Membership, the Co-operative hereby demands that by 12:00 noon on the 31st day of May, 2025, you:
>
> 1. remove all persons and personal property from your unit;
> 2. leave your unit in a clean and habitable condition; and
> 3. surrender all keys to your unit to the Co-operative.
>
> Should you not vacate your unit by that date, the Co-op will avail itself of all legal remedies available to it to obtain possession of your unit.
>
> Finally, please be advised that you have a right of appeal of this decision. You must provide the Co-op with written notice of your intention to appeal this decision within seven days of receipt of this notice.
>
> Your appeal will be brought to the General Membership and a resolution to uphold the decision of the Directors will be put to the Membership.
>
> Please also be advised that it will be necessary for the Co-op to rely on the documents that were before the Board of Directors at the Board Meeting if you choose to appeal and, as such, those documents would necessarily have to be made available to the membership on appeal so that the membership is able to consider whether or not to support the decision of the directors.
>
> Please govern yourself accordingly.

[36] On April 23, 2025, the appellant wrote to the Board requesting an appeal of the Board Decision to the Co-op's general membership (the "Membership").

F. August 2025 General Membership Meeting

[37] On July 29, 2025, the Board scheduled a general membership meeting for August 13, 2025 (the "August General Membership Meeting"). The Board distributed a package to the Membership (the "Termination Package"). The Termination Package included a formal Notice stating:

> WHEREAS the directors of the Co-op determined that Member Boris Malitsky had breached material conditions of an agreement between himself and the Co-op, particulars of which are as follows:
>
> > 1. That the member had failed to keep his unit in good condition and repair as required by the Occupancy Agreement.
>
> …
>
> BE IT RESOLVED by ordinary resolution that the Directors resolution to terminate the membership of Boris Malitsky is hereby confirmed.

[38] The Termination Package included the COHO February 2025 Pictures and COHO February 2025 Report. The correspondence from HART and Orkin was not included.

[39] The appellant accepts that he was able to distribute “some of” his evidence to “some of” the Membership before the meeting.

[40] The Co-op hired an independent chair for the August General Membership Meeting. The Co-op also sourced an HDMI cable for the appellant, but his computer was not actually HDMI-compatible. The appellant accepts this, but complains that none of the Co-op board members offered to help him find an appropriate cable.

[41] At the meeting, the appellant was allowed to make extensive submissions, which, according to the evidence, lasted more than an hour. Members were able to come up to view materials and photos on the appellant’s computer, and some did. He reviewed and quoted from several documents.

[42] Notwithstanding an August 11, 2025 diagnosis of compulsive hoarding disorder received by the appellant from his doctor, Mr. Quinn’s recollection is that the appellant was “non-committal” at the meeting about whether he suffered from such a disorder.

[43] After the appellant completed his extensive submissions, the Membership nonetheless voted to terminate his membership (the “General Membership Decision”).

[44] On August 20, 2025, the appellant received a letter from the Board confirming the General Membership Decision and requesting that he vacate the Unit by October 31, 2025.

[45] On September 19, 2025, the appellant launched a proceeding in this Court, which had the effect of staying the eviction: *Cooperative Association Act*, SBC 1999, c. 28, s. 37(3.1) [*CAA*].

G. The Leak in the Unit

[46] The appellant complained to the City of Vancouver about a leak in the Unit on or about August 26, 2025. The Co-op asserts that the appellant failed to notify it of this leak, as required by the Occupancy Agreement. The appellant says he discussed the leak with the Co-op as early as October 2024.

[47] The Co-op warned the appellant about his alleged failure to advise them in a timely way about the leak by letter dated October 8, 2025.

H. Current State of the Unit

[48] Orkin inspected the Unit on several occasions from March 2025 until March 2026. In these inspections, Orkin reported no new mice/rodent activity in the Unit, including no captures, droppings, or bait activity.[2]

[49] HART closed the appellant's file in March 2025 and has not reopened it.

[50] On October 8, 2025, the Co-op warned the appellant about his practice of storing personal possessions on the Unit's balcony:

> The board has received a complaint regarding storage on your balcony. Please remove any items being stored on your balcony that are not patio furniture, plants, or a bbq by October 17, 2025. Food storage is prohibited due to pests. Please be reminded of the Co-op policy:

[2] The appellant claims that Orkin's Kat Lavoie told him that "your unit looks normal" and "I would be fine living here". I choose not to rely on this information as it is hearsay, and there was no explanation why Ms. Lavoie could not have been asked to provide her own affidavit in terms of assessing necessity. The appellant similarly claims that HART's Vana Dufour advised him that the "Unit looks normal, the passages in the Unit are clear, and that there are no safety concerns regarding the Unit". I decline to give weight to this additional evidence for the same reason.

> **Vera Co-Op Policies**
>
> 5.02 Patios and balconies should not be used as storage or utility areas to house crates or other unsightly items (freezers, etc. must be covered as per recommendations on sheds).

[51] The appellant asserts that he has kept the Unit in good condition. He provided photographs which he says illustrate this. In my view, the evidentiary weight of such photographs must be reduced because they were taken at a time of the appellant's own choosing, allowing him an opportunity to prepare in advance, and then potentially revert to form after they were taken. Furthermore, even these updated photos continue to show a good deal of clutter. Although my personal view of the Unit's compliance with local "character" is of marginal value (more on this issue below), I would not want to reside in the Unit under the conditions reflected in these photographs.

[52] On March 4, 2026, COHO returned to the Unit and produced a new report detailing the Unit's condition (the "COHO March 2026 Report"). Key findings on the physical condition of the Unit were as follows:

> At the time of inspection, the [U]nit contained stored household items and personal belongings in several areas, including the living area, dining area, bedroom, kitchen, and bathroom. In some locations, these stored items partially limited access to walls, corners, and certain surfaces, particularly in the living and bedroom areas. In the bathroom, the presence of stored items on and around fixtures, including the bathtub area, limited normal use of portions of the space and reduced accessibility for cleaning and maintenance.
>
> Access to some building service components was partially limited due to nearby stored items. In particular, access to the water heater was restricted, and the electrical panel door could not be opened fully due to stored items nearby. These areas should remain clear to allow safe access for inspection, maintenance, and emergency shut-off if required.
>
> …
>
> A noticeable odor was present within the [U]nit at the time of inspection, which may indicate limited or insufficient ventilation. Improving ventilation and maintaining regular cleaning may help reduce odour accumulation and improve indoor air quality.
>
> Within the kitchen area, food debris and organic materials were observed on floor surfaces and nearby areas. Conditions of this nature can attract rodents and other pests. Openings and holes were observed in ceiling surfaces in the

kitchen and living area, which may be associated with previous moisture or ceiling leakage conditions. Additional holes in wall surfaces were observed in the entrance stairway area and dining area, which may provide potential entry points for pests if not properly sealed. Multiple mouse traps were also observed throughout the [U]nit, indicating that pest control measures may currently be in place or have been used previously.

In the bedroom area, a large number of books and stored materials were observed on shelving and nearby surfaces, contributing to an elevated combustible load in that area. Additionally, a storage shelf located above the entrance stairs was observed to contain a significant amount of stored items. Due to its elevated location, the shelf and the amount of stored materials on it should be assessed and the load reduced if necessary to minimize the potential risk of items falling or the shelf becoming overloaded.

Overall, the [U]nit would benefit from general cleaning, attention to flooring condition, maintaining clear access to service components, and addressing areas that may contribute to pest activity, in order to support safe and healthy living conditions.

[53] This new report includes further photographs. I attach three as examples.

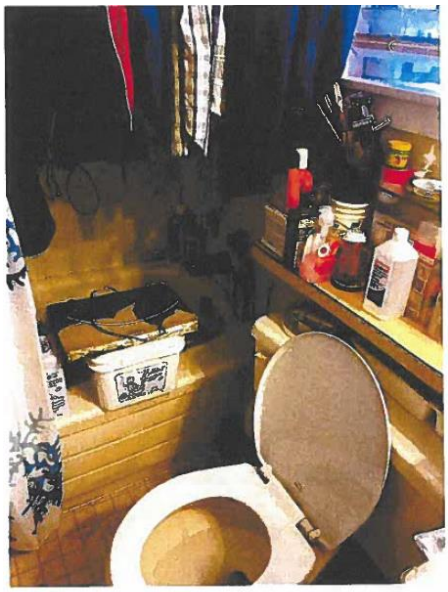

FIGURE 7 - STORED ITEMS OBSERVED IN BATHTUB AND AROUND BATHROOM FIXTURES LIMITING NORMAL USE AND CLEANING ACCESS. REDUCING STORED MATERIALS IS RECOMMENDED TO MAINTAIN PROPER SANITATION AND FUNCTIONALITY.

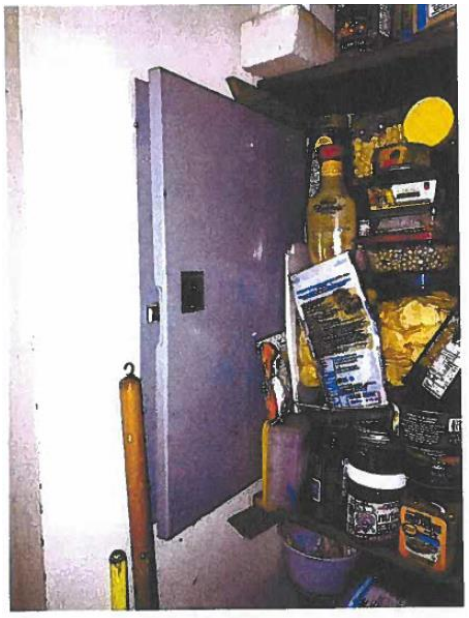

FIGURE 8 - STORED ITEMS ADJACENT TO ELECTRICAL PANEL LIMIT FULL ACCESS AND DOOR CLEARANCE. AREA SHOULD REMAIN CLEAR TO ALLOW SAFE ACCESS FOR INSPECTION, MAINTENANCE, AND EMERGENCY SHUT-OFF.

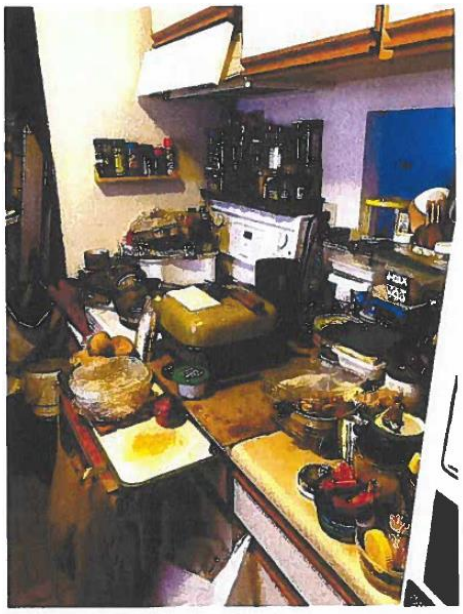

FIGURE 12 - KITCHEN COUNTERS AND COOKING AREAS WERE OBSERVED TO BE HEAVILY CLUTTERED WITH FOOD ITEMS, CONTAINERS, AND COOKING MATERIALS. FOOD DEBRIS AND ORGANIC MATERIALS WERE ALSO PRESENT ON SURFACES. CONDITIONS OF THIS NATURE MAY ATTRACT RODENTS AND OTHER PESTS. IMPROVED HOUSEKEEPING AND REGULAR CLEANING OF FOOD PREPARATION AREAS IS RECOMMENDED TO MAINTAIN SANITARY CONDITIONS AND REDUCE POTENTIAL PEST ATTRACTION.

III. ANALYSIS

A. The Statutory Framework

[54] The source of the Co-op's right to seek an order of possession is found in ss. 171–172 of the *CAA*:

> **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.
>
> **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.

[55] The appellant's termination appeal is advanced pursuant to s. 37(3) of the *CAA*:

> (3) If a person's membership in a housing cooperative is terminated, the person may appeal the termination to the court
>
> …
>
> (b) on any one or more of the following grounds:
>
> (i) the housing cooperative failed to observe the principles of natural justice in terminating the membership;
>
> (ii) the decision of the housing cooperative is not reasonably supported by the facts;
>
> (iii) the decision of the housing cooperative is not authorized by section 35.

[56] The appellant says that the decisions here both (1) failed to observe the principles of natural justice, and (2) were not reasonably supported by the facts.

B. The Standard of Review

[57] The BC Court of Appeal sought to explain the applicable standard of review of cooperative decisions in *Russell v. Craigflower Housing Cooperative,* 2021 BCCA 330 [*Russell BCCA*]:

[3] For the reasons below, I would allow the appeal. In my view, the judge erred in concluding that she could not substitute her decision for that of the Board. Indeed, she was required under s. 37(3)(b)(ii) of the *Act* to consider whether the decision to terminate the appellant's membership was reasonably supported by the facts. However, I would reject the appellant's claim for relief from forfeiture. In my view, the Act establishes a comprehensive scheme intended to govern appeals by a member of a housing cooperative who has had their membership terminated. The court is given broad powers to hear new evidence. make findings of fact and arrive at a different conclusion on the issue of the termination of membership. Accordingly, I would conclude that the legislature intended the statutory appeal mechanism to be a complete code applicable to such appeals. I would remit the matter to the court below for determination of whether the Board's decision to terminate the applicant's membership was reasonably supported by the facts.

…

[39] When reading the statutory scheme in context, s. 37(5)(a) specifically refers to "an appeal to the court under subsection (3)", linking the grounds of appeal in s. 37(3) to the court's powers and role on review. Those powers include the ability to conduct a "new hearing" and "hear all evidence the court considers relevant" before it must either restore membership or confirm the termination. It is further empowered to make any other order it considers appropriate. Reading ss. 37(3) and (5) together, it is clear that a court may restore membership and grant an order of possession in favour of a member on three grounds: where the principles of natural justice have not been followed; where the decision of the cooperative is not reasonably supported by the facts; or where it was not otherwise authorized by s. 35, i.e., relating to the rules for termination adopted by the cooperative.

...

[41] As there are no decisions of the Supreme Court considering the proper approach to determining whether a decision of a board is reasonably supported by the facts, and the judge did not consider that issue in this case, it would not be appropriate for this Court to attempt to set out the scope of an appeal under subsection (b)(ii) for the first time on this appeal, other than to make some observations based on the principles enunciated in *Vavilov*. However, in determining what is reasonable on the facts, the court will have to consider the nature of the entire legislative regime, the cooperative's rules and the fact that housing cooperatives are a unique statutory creation. Courts must recognize that board members who are charged with the governance of a cooperative are often placed in challenging situations with the potential for a high degree of tension between members, whose housing security is at stake. Recognition of the legislative regime and the board's role in that scheme will necessarily lead to affording deference to the decisions of a board.

[42] In summary, I would find that the judge erred in concluding that it was not open to the court to substitute its decision for that of the Board. It is open to

> courts to do so by virtue of the clear and unequivocal statutory language of the Act.
>
> …
>
> [46] …A court on review is permitted to conduct a new hearing and hear all evidence it considers relevant to the issues at hand, including subsequent events that occurred after the Board's initial decision in May 2020…
>
> …
>
> [66] Finally, I would re-emphasize the broad discretion afforded to the court to hear new evidence, make findings of fact, and consider all evidence it considers relevant to whether a membership termination was reasonably supported by the facts. The appeal procedure under the *Act* is not limited to consideration of the Board's decision based on the facts at that time; rather, the Court is empowered through s. 37(5) to conduct a new hearing and hear "all the evidence [it] considers relevant".

[58] Additional clarity on the standard was provided in the subsequent decision in the same matter, *Russell v. Craigflower Housing Co-operative,* 2022 BCSC 1275 [*Russell #2*]:

> [50] In my opinion, given that s. 37(5) of the *Act* provides that the appeal may be a new hearing, and in view of Justice Butler's discussion of the approach to be taken on an appeal, the court hearing an appeal is able to consider afresh all matters (including facts that were before the board when a decision was made), decide how evidence should be weighed, and (if the court concludes it appropriate given the grounds raised on the appeal) come to a different decision than that reached by a co-op board.

[59] With respect to the natural justice ground, the following decisions provide further guidance as to the proper approach to a review of cooperative conduct.

[60] In *Kelly v. 115 Place Co-operative Housing Association*, 2009 BCSC 302, Justice Barrow determined that due process and the principles of natural justice include, but are not limited to: the right of members to be informed of when and where the membership will meet to consider a resolution terminating membership; the basis upon which the resolution is being considered; the right to attend the meeting and answer allegations on which the resolution is based; and the right to have the matter determined by the membership (at para. 33).

[61] In *Noons Creek Housing Co-Operative v. Myers,* 2024 BCSC 1890 at para. 33, Justice Armstrong accepted that the principles applicable to assessing whether a

membership was terminated in accordance with the principles of natural justice were accurately set out by Justice Basran in *Oleman v. Laura Jamieson Housing Co-Operative,* 2022 BCSC 483, in which the Court held as follows:

> [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 (BCCA), 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.

[62] Finally, in *Mardones v. Chilean Housing Co-operative*, 2022 BCSC 221, the Court summarized the applicable principles as follows:

> [70] The issue I must decide is whether Ms. Mardones' membership was terminated in accordance with the principles of natural justice. The "scope of the rules of natural justice is context dependent": *Kelly v. 115 Place Co-operative Housing Association*, 2009 BCCA 213 at para. 16. In the context of the termination of membership in a housing cooperative, the courts have found that natural justice includes fairness, the right to know the case to be met and the right to answer it: *Sunshine Housing Co-operative v. Hengari*, 2018 BCSC 144 [Sunshine] at paras. 38-39. In Sunshine, the court found that the rules of natural justice were breached when a board of directors decided to terminate membership in the co-operative based on the wrong amount of arrears and then refused to give the member an opportunity to respond when a different amount of arrears was assessed. The member's right to know the case against her and to respond were breached.

> [71] In this case, I find that the rules of natural justice were breached when the Co-op failed to notify Ms. Mardones of the amount of arrears owing and announced the wrong amount of arrears to the membership at the general meeting.

C. Application of the Test

1. Principles of natural justice

[63] I do not find any breach of natural justice in the manner in which the appellant was able to present his case at either the April Board Meeting or the August General Membership Meeting.

[64] Regarding the complaints about cabling problems, the appellant had a responsibility to marshal his own evidence and the technological tools needed to present it. It is not the Co-op's responsibility to hold the appellant's hand through the process to the extent suggested.

[65] Next, the appellant complains that at the April Board Meeting, the Board relied on the COHO February 2025 Report, which the appellant says was outdated. I do not find that a report dated a mere 53 days before the meeting was too stale, particularly as it would have been supplemented by the information obtained by the Board Members who attended the Unit on March 11, 2025. The Board also had the benefit of the more recent HART and Orkin information.

[66] I initially had concerns about the documents provided to the Membership in the Termination Package—in particular, whether the Board effectively "cherry-picked" them, in that only the COHO material was provided, rather than the material from HART or Orkin. While not one piece of evidence is (or would necessarily have been) definitive to the Membership's decision, the Membership would arguably have been better served with a more fulsome review of the evidence relevant to the issue before it.

[67] However, after a more fulsome consideration, I find that this should not be treated as a breach of procedural fairness in this case as:

a) There are dangers in requiring that a Co-op include in a termination package any information that could benefit the member's position. If such an obligation were imposed, it would be very difficult for a lay board to understand precisely where such a line should be drawn; and

b) In this specific case, any prejudice to the appellant was mitigated by the fact that he had an opportunity to put forward the favourable evidence from HART and Orkin himself at the August General Membership Meeting, and to argue what inferences should properly be drawn from such evidence. Although we do not know precisely what evidence he relied on at the meeting, we do know that he addressed the Co-op members present for over an hour. He was certainly given the time necessary to provide a review of the HART and Orkin evidence. By the time of the vote, I find that the Membership would have been "properly informed": *Mardones* at para. 77.

[68] The Court of Appeal in *Russell BCCA* emphasized that the rules of natural justice, as applied in the context of a cooperative, must accommodate the unique facts of each dispute and the status of cooperatives and their lay boards generally. Applying these principles here, I find that the identified procedural quibbles did not affect the overall fairness of the procedure. At the end of the day, the appellant knew the case he had to meet, and had every reasonable opportunity to advance his own position.

2. Reasonably supported on the facts

[69] I find that there was adequate evidence to support the ultimate decision to evict. On this aspect of the test, it should be noted that the decision need not be correct (in the sense that the Court would have arrived at the same conclusion), but only that the decision is "reasonably supported on the facts". In my view, the Co-op's General Membership had sufficient information available to it to reach a decision that the appellant was not taking proper steps to ensure that the Unit was "in good condition and repair and in keeping with the character of the rest of the

Development". As part of this evaluation, the Membership could properly have regard to the appellant's long history of similar difficulties. Given that history, the evidentiary weight of recent improvement may reasonably been treated as mitigated by the reality that similar improvements had occurred or been promised in the past, followed by a later "return to form".

[70] In applying the rule that the member keep the interior of their unit in good condition and repair "and in keeping with the character of the rest of the Development", there should be a strong degree of deference granted to the Membership to interpret this clause in light of their own understanding of the local "character", so long as that interpretation is reasonable. The members are in a far better position to make such an assessment than a court.

[71] From the Court's perspective, there is nothing in the material which suggests that the members made their decision in a manner that was not "reasonably supported on the facts". From the material presented to me, it appears that the decisions were indeed "reasonably supported on the facts", even considering the additional evidence that became available after the challenged decisions.

[72] The appellant emphasizes that the Court has the power to consider all matters afresh, decide how evidence should be weighed and, if the Court concludes that it was appropriate given the grounds raised, come to a different decision than that reached by a cooperative association's board and membership. Although I certainly have that power, I find it inappropriate to conduct a full *de novo* examination of all the issues in this case. The statutory language states that the Court's evaluation "may be a new hearing", which language implies a discretion on the part of the Court: *CAA*, s. 37(5). It is admittedly somewhat unclear from the case law when and how this discretion should be exercised. However, I find that it would be inappropriate to engage in such a complete fresh hearing in this case in light of the fact that such a fresh review would require an assessment of the Co-op's "character", which the Court is in a very poor position to perform. As noted, this is a

situation in which, in my view, the Court should afford substantial deference to the Membership's decision, notwithstanding the Court's wide powers under the statute.

[73] That said, I find in the alternative that, even were I to engage in a more fulsome fresh review, my decision would not change. Considering all of the available evidence in more complete detail, including the subsequent evidence not before the Board or the Membership, I would still conclude that the decision to evict the appellant under section 10.01 of the Occupancy Agreement was "reasonably supported by the facts". In particular, the updated COHO February 2026 report continues to support the Co-op's concerns.

[74] It is unfortunate that the statute does not provide more specific guidance on when and how a court should hear the matter *de novo*, or when and how deference principles should be applied in analyzing cooperative decisions. The fact that the *CAA*'s statutory appeal right is essentially a "custom build" means that it is difficult to set such appeals within the broader context of administrative reviews governed by the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 or *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. This may be a useful area for statutory intervention.[3]

IV. CONCLUSION

[75] I find that the eviction should stand, and that an order for possession should issue.

[76] If the parties are unable to agree on costs, the parties may make written submissions of no more than ten pages each on the following schedule:

a) Appellant's submission: 30 days from the date of these reasons;

[3] It appears that circa 2022 the government was soliciting input on updating the *CAA*, and as part of this process noted the complexity and ambiguity created by the membership termination provisions of the *CAA*, although it does not appear that any steps have been taken since that call for input: BC, Ministry of Finance, *Supporting Cooperatives to Thrive: Modernizing the Legislative Framework for Cooperative Corporations in British Columbia* (Consultation Paper, November 2022 at 19–20.

b) Co-op's response: 30 days from receipt of the appellant's submission; and

c) Appellant's reply: 10 days from receipt of the Co-op's response.

"The Honourable Mr. Justice Branch"