

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Residential Tenancies Act*, RSNWT 1988, c-R-5, as amended;

AND IN THE MATTER OF the Order of the Rental Officer of the Northwest Territories, File No. 17735 dated November 22, 2022

BETWEEN:

IRIS BOUCHER

Appellant

-and-

FORT SMITH HOUSING AUTHORITY and NORTHWEST TERRITORIES
HOUSING CORPORATION

Respondent

MEMORANDUM OF JUDGMENT

OVERVIEW

[1] Iris Boucher had a tenancy agreement with the Fort Smith Housing Authority (FSHA). After accumulating substantial arrears in the payment of her rent, the FSHA applied to the Rental Office for the termination of Ms. Boucher's tenancy agreement and for an eviction order. On November 22, 2022 after a hearing that took place in Ms. Boucher's absence, the Rental Officer granted the FSHA's application. Ms. Boucher appeals this decision.

[2] In her Originating Notice of Appeal, Ms. Boucher claims that the Rental Officer erred when she proceeded with the hearing when Ms. Boucher had not

received valid service of the notice of hearing. Ms. Boucher further argues that the Rental Officer's decision to terminate the tenancy agreement and evict Ms. Boucher from the rental unit was not justified.

[3] I heard this appeal on January 27, 2025. Ms. Boucher did not appear. For the following reasons, I grant her appeal and order a new hearing.

PROCEDURAL HISTORY

[4] Before I turn to the merits of this appeal, I must set out the procedural history before this Court and explain why I am satisfied that it was appropriate to proceed with the hearing of this appeal in Ms. Boucher's absence.

[5] Ms. Boucher filed her originating notice of appeal on January 4, 2023. On the same day, she filed an affidavit in which she deposed, amongst other things, that she did not know about the hearing before the Rental Officer until she received service of the order on December 5, 2022.

[6] There were six appearances before this Court between January 13, 2023 and June 7, 2024. Ms. Boucher was in attendance by phone at the first five of these appearances.

[7] On April 26, 2024 she was present by phone when a pre-hearing conference was scheduled for June 7, 2024. Ms. Boucher did not appear at the pre-hearing conference. The presiding judge directed that Ms. Boucher be personally served with the order issued on that day, which indicated the hearing of this appeal was scheduled on August 13, 2024. Ms. Boucher was served personally on July 4, 2024.

[8] Ms. Boucher received service of the FSHA's legal brief by registered mail on August 12, 2024 the day before the scheduled hearing. She did not appear before the court on August 13, 2024. Because of the short service of its materials, the FSHA sought an adjournment, which I granted. The hearing of this appeal was re-scheduled to September 25, 2024.

[9] Ms. Boucher appeared before me on September 25, 2024. She requested an adjournment of the hearing. She told me that she had been struggling with personal problems and needed more time to file additional affidavit evidence and her legal submissions. I granted the adjournment and scheduled the hearing for November 26, 2024. I imposed filing deadlines on Ms. Boucher and the FSHA. I told Ms. Boucher

she needed to make sure she was prepared to proceed with this matter on November 26, 2024.

[10] By November 26, 2024 Ms. Boucher had not filed any materials. On that date, she appeared by telephone and sought another adjournment. Ms. Boucher explained that she was not able to meet the filing deadlines because of serious health problems she experienced during the 2024 fall season. I granted the adjournment. The matter was rescheduled for a hearing on January 27, 2025 with a confirmation date on December 13, 2024.

[11] On December 13, 2024 Ms. Boucher appeared by telephone. Ms. Boucher reiterated her wish to file additional materials. Ms. Boucher informed the court she was receiving assistance from the Legal Aid Outreach Clinic in preparing affidavit evidence. I imposed new filing deadlines. I advised Ms. Boucher that if for some reason she felt she could not proceed on January 27, 2025 she needed to contact the court in advance of the hearing to seek an adjournment.

[12] Ms. Boucher did not file any further materials, she did not seek an adjournment before January 27, 2025 and she did not appear before me for the hearing of this appeal on January 27, 2025.

[13] I am satisfied that Ms. Boucher was aware of the hearing date considering she was in attendance by telephone both when the date was initially set on November 26, 2024 and when it was confirmed on December 13, 2024. She had the opportunity to participate in the hearing of this appeal if she wished to do so.

ISSUES ON APPEAL

[14] Ms. Boucher raises two issues on appeal:

1. She claims that she did not receive service of the application to the Rental Officer and the notice of hearing before the Rental Officer, and that the Rental Officer committed an error that offends the rules of natural justice in proceeding in her absence.
2. She argues that the Rental Officer failed to give a fair, large, and liberal interpretation to the remedial intent of the *Residential Tenancies Act*, RSNWT 1988, c R-5 (the *RTA*). This ground of appeal has been helpfully reframed by

the FSHA as whether the Rental Officer committed an error when she ordered the termination of the tenancy agreement and the eviction.

STANDARD OF REVIEW

[15] Ms. Boucher appeals the Rental Officer decision pursuant to s 87 of the *RTA*. When legislation creates a statutory right to appeal the decision of a statutory decision-maker, the appellate standards of review stated in *Housen v Nikolaisen*, 2002 SCC 33, are applicable (*YWCA NWT v Hashi*, 2021 NWTSC 15 at paras 28 to 31). If the issue on appeal is a question of law, the standard of review is correctness. If the issue on appeal is a question of fact or a mixed fact and law question, the standard of review is palpable and overriding error. A palpable and overriding error is one that can be plainly seen (*Crozier v Northview Fund*, 2024 NWTSC 7 at para 6 [*Crozier*]; *Mantla v Behchokò Kò Gha K'àodèe*, 2024 NWTSC 11 at para 14 [*Mantla*]).

[16] Whether Ms. Boucher received adequate notice of the hearing and whether the Rental Officer breached the rules of natural justice in proceeding in her absence are questions of mixed fact and law (*Crozier* at para 7; *Mantla* at para 15). Whether, in the circumstances of this case, the Rental Officer was justified to terminate the tenancy agreement and order the eviction is also a question of mixed fact and law. The applicable standard of review on both grounds of appeal is palpable and overriding error.

ANALYSIS

Service of the Notice of Attendance

[17] Ms. Boucher was the sole tenant of the unit she was renting from the FSHA under a tenancy agreement dated December 19, 2014. Her spouse, Dennis Penner, was named as an authorized occupant in the agreement.

[18] When the FSHA launched an application before the Rental Office seeking the termination of the tenancy agreement and an eviction order, it listed both Ms. Boucher and Mr. Penner as respondents. As a result, notices of attendance for the hearing scheduled for November 22, 2022 were prepared for the two respondents. These notices were sent to Ms. Boucher and Mr. Penner in one envelope addressed to both. The post office in Yellowknife received the envelope on November 3, 2022 and it was delivered in Fort Smith on November 10, 2022. The registered mail

tracking information shows a signature of the addressee is available, but no proof of the signature was adduced before the Rental Officer or before me.

[19] On November 22, 2022 Ms. Boucher did not appear before the Rental Officer. The Rental Officer noted that Mr. Penner was mistakenly listed as a respondent on the FSHA application and struck his name from the style of cause. She found that a notice of attendance was validly served by registered mail. The Rental Officer further indicated that she was satisfied that Ms. Boucher was aware of the application and had the opportunity to appear and concluded that she could proceed in Ms. Boucher's absence pursuant to s 80(2) of the *RTA*. At the conclusion of the hearing, the Rental Officer ordered Ms. Boucher to pay rental arrears in the amount of \$20,475, ordered the termination of the tenancy agreement, and ordered Ms. Boucher's eviction from the rental unit.

[20] With her originating notice of appeal, Ms. Boucher filed an affidavit sworn on December 15, 2022 in which she indicated she did not receive the notice of attendance for the November 22, 2022 hearing. She deposed that she only became aware of the hearing when she received a copy of the order issued by the Rental Officer.

[21] Section 87(5) of the *RTA* provides that this Court can receive any evidence, oral or written that is relevant to an issue on appeal. In *Galtee Mountain Holdings Ltd v Wilson*, 1991 CanLII 13208 (NWT SC) at page 236, Justice de Weerd interpreted this provision as meaning that the Court has the discretion to hear additional evidence but no obligation to do so. In this case, considering the importance of proper service, I find it is appropriate to allow Ms. Boucher's additional evidence on this issue.

[22] Ms. Boucher is the tenant of the unit, and pursuant to s 80(2) of the *RTA*, she had the right to be served with a notice of hearing. Registered mail is a valid method of service recognized by s 71(1) of the *RTA*. In this case, notices were sent by registered mail and delivered to Ms. Boucher and Mr. Penner. The concern is not with the method of service but rather to whom the registered mail was sent. The evidence before the Rental Officer did not establish who between Ms. Boucher and Mr. Penner received the registered mail envelope.

[23] The FSHA claims that if Mr. Penner received service, the Rental Officer could infer that Mr. Penner provided the document to Ms. Boucher because Mr. Penner and Ms. Boucher lived at the same address, and they were common law spouses. I

do not accept this argument. The Rental Officer did not draw this inference in her decision and such a conclusion would be speculative. In addition, service to another adult residing with the tenant is only envisioned by the governing legislation when the tenant is absent or evading service (s 71(7) of the *RTA*). There is no evidence of such circumstances in this case.

[24] When the Rental Officer recognized that Mr. Penner was not a tenant and amended the style of cause accordingly, she should have turned her mind to the issue of service. The evidence before her was inconclusive as to whether the sole tenant Ms. Boucher had been validly served. Proceeding in Ms. Boucher's absence in these circumstances was a palpable and overriding error. In addition, Ms. Boucher's uncontradicted affidavit evidence that she only became aware of the hearing when she obtained a copy of the Rental Officer's order supports the conclusion that she did not receive the required notice of the hearing held on November 22, 2022.

Remedy

[25] Section 75 of the *RTA* provides that “[a] rental officer shall adopt the most expeditious method of determining the questions arising in any proceedings and ensure that the rules of natural justice are followed”. The lack of proper notice of the hearing to Ms. Boucher prevented her from having the opportunity to present evidence and make submissions. This is a serious breach of the right to be heard, a fundamental principle of natural justice and procedural fairness (*Vento Motorcycles, Inc. v Mexico*, 2025 ONCA 82 at paras 23-24).

[26] The next question is what remedy is Ms. Boucher entitled to? Must I order a new hearing?

[27] Ms. Boucher entered into a tenancy agreement for subsidized public housing. The tenancy agreement stipulates that her rent would be calculated based on her income and the income of the other authorized occupants. Under this agreement, it was her responsibility to provide the proof of income to the FSHA. Over the years, Ms. Boucher's monthly rent fluctuated. In July 2022 her rent was assessed at market value, presumably because she did not provide the required proof of income to the FSHA.

[28] Ms. Boucher was behind on the payment of her rent in 2020 and 2021 but she did make some partial payments. However, she did not pay any amount towards her

rent from October 1st, 2021 to July 1st, 2022. The FSHA launched the application before the Rental Office in August 2022.

[29] In Ms. Boucher's December 15, 2022 affidavit, and when she sought adjournments of the appeal hearing, she indicated that she intended on filing evidence of her income and Mr. Penner's income, which she claimed would have resulted in her monthly rent being significantly lower than market value and, as a result, would reduce the arrears owed. Ms. Boucher did not adduce the evidence of income before this Court. As set out above, she had ample opportunity to present this evidence.

[30] In November 2022 Ms. Boucher had not made any payment towards rent in over a year. Between 2020 and 2022 her monthly rent was increased three times from \$365 to \$610, to \$1,295 and finally to market value of \$1,625 in July 2022. Even if in July 2022 Ms. Boucher's rent was reassessed as low as \$365 a month, she would still owe the FSHA thousands of dollars in rental arrears. Ms. Boucher also had a history of accumulating rental arrears. Two prior decisions from Rental Officers found that she had repeatedly failed to pay her rent and ordered that she pay rental arrears in the amount of \$1,632.14 in 2018 and \$9,545.25 in 2021. In November 2022 Ms. Boucher had still not paid the arrears from the 2021 order.

[31] In reaching the conclusion that the termination of the tenancy agreement and the eviction were warranted in this case, the Rental Officer noted the pattern of failing to pay rent and that Ms. Boucher had shown a "blatant disregard to comply with her obligations and comply with rental officer orders". A lower rent would not change this conclusion.

[32] Considering the way Ms. Boucher handled the proceedings before this Court and the apparent weakness of her arguments on the merits of the Rental Officer's decision, I have considered whether remitting the issue back to the Rental Officer would be a futile exercise. However, I am not convinced that if Ms. Boucher had the opportunity to present evidence of her income and her spouse's income, it would not have affected the Rental Officer's order with respect to the amount of rental arrears owed.

[33] In addition, the common law has taken a very strict approach to violations of the rules of procedural fairness by administrative adjudicators. The usual remedy is to order a new hearing. (*6370 NWT Ltd v City of Yellowknife*, 2017 NWTSC 87 at para 40). The applicant does not need to establish that the outcome of the decision

would or might have been different if not for the unfair procedure (*Cardinal v Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 SCR 643 at p 661; *D.L. Pollock Professional Corporation v Blicharz*, 2018 ABCA 252 at para 11).

CONCLUSION

[34] I find that Ms. Boucher did not receive valid notice of the hearing before the Rental Officer in violation of the principles of natural justice and procedural fairness. The remedy is to order a new hearing.

[35] The appeal is granted. The Rental Officer's order of November 22, 2022 is set aside. I order a new hearing before the Rental Officer. I further order that a notice of attendance be served on the parties at least 14 days before the scheduled hearing date and that Ms. Boucher receive personal service of the notice of attendance.

Annie Piché
J.S.C.

Dated at Yellowknife, NT, this
5th day March 2025.

Counsel for Appellant: Self-Represented
Counsel for the Respondent: Christopher D. Buchanan

S-1-CV-2023-000002

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MEMORANDUM OF JUDGMENT OF
THE HONOURABLE JUSTICE ANNIE PICHÉ