

*McLeod v Midwest Property Development, 2025 NWTSC 20*

S-1-CV-2024-000233

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**PATRICK MCLEOD**

**Applicant**

**-and-**

**MIDWEST PROPERTY DEVELOPMENT**

**Respondent**

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**Transcript of the Decision held before the Honourable Justice A. Piché, sitting in Yellowknife, in the Northwest Territories, on the 5th day of March, 2025**

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**APPEARANCES:**

P. McLeod:

Appearing on Own Behalf  
via teleconference

C. Buchanan:

Counsel for the Respondent



1           **(TELECONFERENCE COMMENCES)**

2           THE CLERK:           All rise. Court is reconvened. Please be  
3                            seated.

4           THE COURT:           All right. I am ready to give my decision.  
5                            Mr. McLeod, are you on the line?

6           P. MCLEOD:            Yes.

7           REASONS FOR DECISION:

8           THE COURT:           All right. Okay. Patrick McLeod had a  
9                            tenancy agreement with Midwest Property Management  
10                          for a lease of a unit in a Yellowknife apartment building.  
11                          After accumulating substantial arrears in the payment of  
12                          his rent, Midwest applied to the rental office for the  
13                          termination of Mr. McLeod's tenancy agreement and for  
14                          an eviction order.

15                            On July 3, 2024, after a hearing that took  
16                            place in Mr. McLeod's absence, the rental officer  
17                            granted the landlord's application and Mr. McLeod now  
18                            appeals this decision. Mr. McLeod claims that he did  
19                            not receive the landlord's application or the notice of  
20                            attendance for the hearing. He is asking to extend the  
21                            time to file his appeal. He further argues that the lack of  
22                            notice is a breach of the rules of natural justice that  
23                            justifies setting aside the rental officer's decision and  
24                            ordering a new hearing.

25                            Midwest takes the position that  
26                            Mr. McLeod filed his appeal outside the 14-day delay  
27                            imposed by section 87(1) of the *Residential Tenancies*

1 Act and invites this court to dismiss Mr. McLeod's  
2 request to extend time to file his appeal.

3 If the Court hears the appeal on the  
4 merits, Midwest argues that Mr. McLeod was validly  
5 served by email with the application and notice of  
6 attendance, which justified the rental officer to proceed  
7 in Mr. McLeod's absence pursuant to section 80(2) of  
8 the *Residential Tenancies Act*.

9 And finally, Midwest submits that the  
10 rental officer's decision to terminate the tenancy and  
11 evict Mr. McLeod was justified considering the tenant  
12 had not been paying rent for months.

13 The validity of service is a central issue in  
14 this appeal. It is relevant both to the question of the  
15 extension of time to appeal and to Mr. McLeod's ground  
16 of appeal that he did not receive notice of the application  
17 and notice of the hearing date.

18 Turning first to the issue of the extension  
19 of time to appeal, section 87(1) of the *Residential*  
20 *Tenancies Act* provides that a tenant and a landlord  
21 have 14 days to appeal a decision of the rental officer.  
22 The time to file the appeal starts running from the day  
23 the tenant is served with the rental officer's order.

24 In this case the rental office served the  
25 order on Mr. McLeod by email on July 3, 2024, and the  
26 email address used for service was a yahoo email  
27 address. Mr. McLeod filed his appeal on July 31, 2024.

1           The *Residential Tenancies Act* at section 71 sets out the  
2           valid methods of service under this legislation. They are  
3           personal service, registered mail, fax if a fax number is  
4           provided, and finally, a method set out in the  
5           *Regulations*. Service by email is allowed by the  
6           *Regulations* in certain circumstances.

7                           When service is done by email, it is  
8           deemed to have occurred three days after the email was  
9           sent under subsection 4(4) of the *Regulations*. Midwest  
10          argues that in this case service at the yahoo email  
11          address complied with the *Regulations*. I disagree.

12                           Paragraph 17.1 of the tenancy agreement  
13          signed by Mr. McLeod stipulates that service by email to  
14          the tenant is agreed to, but importantly, at a different  
15          email address than the one used in this case. The email  
16          address listed on the tenancy agreement for the  
17          purpose of service is an entirely different Gmail address.

18                           Midwest argues that because Mr. McLeod  
19          had been exchanging emails with its staff at the yahoo  
20          email address, including emails that discuss rental  
21          arrears, essentially, Mr. McLeod had agreed to service  
22          by email at the yahoo address.

23                           But section 4(2) of the *Regulations*  
24          stipulates that,:

25                                   For the purpose of subsection 71(1) of the *Act*, a  
26                                   notice or other document to be served or given to  
27                                   a landlord, tenant or rental officer may be served

1                   or given by email if the receiver provides his or  
2                   her email address to the sender for that purpose.  
3           The words "for that purpose" are important. Service by  
4           email is only valid if the email address was provided for  
5           the purpose of service. This rule makes sense. Many  
6           people have more than one email address they use for  
7           different purposes. Some they check every day; others  
8           they log into rarely.

9                   When a tenant provides a specific address  
10           for the purpose of service in the tenancy agreement,  
11           they are entitled to expect that this is where they will  
12           receive important documents such as the order from the  
13           rental officer. In this case the rental office served Mr.  
14           McLeod the July 3, 2024 order to the yahoo email  
15           address that they presumably obtained from the  
16           landlord's documents filed at the hearing -- and I will  
17           come back to this -- not the Gmail address specified in  
18           the tenancy agreement.

19                   As a result, no valid service of the order  
20           was ever effected. The clock never started to run, and  
21           therefore, the 14-day delay to appeal had not expired  
22           when Mr. McLeod filed his originating notice of appeal  
23           on July 31, 2024, so I find that Mr. McLeod did not file  
24           his appeal outside the 14-day delay, and therefore, I do  
25           not need to extend the time to appeal.

26                   I will now turn to Mr. McLeod's ground of  
27           appeal that he did not receive the landlord's application

1 or the notice of attendance for the hearing, which he  
2 submits is a breach of the rules of natural justice. The  
3 record establishes that the landlord Midwest served  
4 Mr. McLeod with the application and the notice of  
5 attendance by email at the yahoo email address on May  
6 13, 2024, for a hearing scheduled for July 3, 2024, and  
7 that is based on the proof of service documents signed  
8 by Lalani Alcock at Tab 5 of the record.

9 Ms. Alcock filed an additional affidavit  
10 before this Court sworn on February 25, 2025, in which  
11 she confirms that she served Mr. McLeod at the yahoo  
12 email address instead of the Gmail address listed on the  
13 tenancy agreement. She indicates that to her  
14 knowledge, the Gmail address belonged to Mr.  
15 McLeod's daughter who he had designated as his  
16 representative when he was unavailable.

17 She further explains that when she served  
18 the documents in May 2024, Midwest employees had  
19 recently been corresponding with Mr. McLeod at the  
20 yahoo email address. She deposes that she had no  
21 reason to believe at the time that Mr. McLeod would not  
22 receive her email with the documents related to the  
23 hearing before the rental officer.

24 I accept Ms. Alcock's evidence that she  
25 thought Mr. McLeod would receive the documents at the  
26 yahoo address. It is evident to me that she meant well  
27 and was trying to comply with the landlord's obligations

1 under the *Act*. But it does not change that, as explained  
2 earlier, service by email at the yahoo email address was  
3 not valid service in this case because the *Regulations*  
4 provide that only service to an email address provided  
5 for the purpose of service can be used.

6 In this case the email address provided by  
7 Mr. McLeod for service was the Gmail address. This is  
8 different from the situation in *Crozier v Northview Fund*,  
9 2024 NWTSC 7, where the tenant had agreed to service  
10 by email in the tenancy agreement and received service  
11 of the notices at the email address listed in the  
12 agreement.

13 In that case Chief Justice Smallwood  
14 found it was valid service and that the rental officer did  
15 not err in proceeding in the tenant's absence. In the  
16 present matter the rental officer had the tenancy  
17 agreement between Mr. McLeod and Midwest before  
18 him with the Gmail address appearing.

19 He had the proof of service documents  
20 that indicated the landlord served Mr. McLeod at a  
21 different email address, so I find that the rental officer  
22 made a palpable and overriding error when he found  
23 that service at the yahoo email address was valid.

24 Section 75 of the *Residential Tenancies Act* provides  
25 that:

26 A rental officer shall adopt the most expeditious  
27 method of determining the questions arising in

1                   any proceedings and ensure that the rules of  
2                   natural justice are followed.

3                   The lack of proper notice of the hearing to Mr. McLeod  
4                   prevented him from having the opportunity to present  
5                   evidence and make submissions. This is a serious  
6                   breach of his right to be heard, an important principle of  
7                   natural justice and procedural fairness.

8                   The usual remedy for such a breach by an  
9                   administrative decision maker is an order of a new  
10                  hearing, and I see no compelling reasons in this case to  
11                  depart from this. So I make the following orders. I grant  
12                  the appeal, and I order a new hearing before the rental  
13                  officer.

14                  Mr. Buchanan, is there anything else I  
15                  need to order?

16                  C. BUCHANAN:        No, I think that's it, Your Honour.

17                  THE COURT:         Okay.

18                  Mr. McLeod, you have heard my decision,  
19                  so I have granted your appeal so you have been  
20                  successful before this Court on your appeal. But this is  
21                  not the end for you. This means that I am remitting this  
22                  matter back to the rental officer for a new hearing, and  
23                  you will receive a new notice of hearing. Please be  
24                  aware of that and cautious and make sure that you  
25                  verify your email so that you are aware of the new  
26                  hearing date.

27                  P. MCLEOD:         Okay. Now, as for my email, Your Honour,

1 I'll just stay with my daughter's because, like, you know,  
2 she's keeping me up to date on everything now. I just  
3 actually got off the phone with her and explained that,  
4 you know, she really has to let me know what's going  
5 on. And yeah, that's at A-D-R-I-A-S@gmail.com.

6 THE COURT: Okay. But --

7 P. MCLEOD: -- that one I'll be using all the time.

8 THE COURT: Well, that is the one that is on your  
9 tenancy agreement, so --

10 P. MCLEOD: Yes.

11 THE COURT: -- my decision today, what I said is that  
12 serving you documents at that email address is valid  
13 service. And whether it is the rental office or the  
14 landlord, once they send you an email at that address,  
15 after three days you are considered to have been  
16 served with the documents.

17 So you need to be aware of that going  
18 forward. So this is not the end; this is the end in this  
19 court at this time, but it is not the end of the proceedings  
20 because the landlord now is going to pursue their  
21 application I expect again before the rental officer, and  
22 you are going to receive more documents about a  
23 hearing, not in court, but before the rental officer. So  
24 really watch out for it.

25 P. MCLEOD: Okay.

26 THE COURT: Okay?

27 P. MCLEOD: Okay.

1 THE COURT: I think that is it for today. Thank you,  
2 everyone. We will close court.

3 THE CLERK: All rise. This court is now closed.

4

5 **(TELECONFERENCE CONCLUDES)**

6 **(PROCEEDINGS CONCLUDED)**

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9 **CERTIFICATE OF TRANSCRIPT**

10 Veritext Legal Solutions, Canada, the undersigned, hereby  
11 certify that the foregoing pages are a complete and accurate  
12 transcript of the proceedings transcribed from the audio  
13 recording to the best of our skill and ability. Judicial edits  
14 have been applied to this transcript.

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17 Dated at the City of Toronto, in the Province of Ontario, this  
18 26th day of March, 2025.

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21 *Veritext Legal Solutions, Canada*

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