SUPREME COURT OF YUKON

Citation: *Westerlaken v Yukon Residential Tenancies Office*, 2025 YKSC 7

Date: 20250204
S.C. No. 23-AP008
Registry: Whitehorse

BETWEEN:

SCOTT WILLIAM WESTERLAKEN

APPLICANT

AND

THE DIRECTOR OF YUKON'S RESIDENTIAL TENANCIES OFFICE
and BYRON HOLBEIN

RESPONDENTS

Before Justice E.M. Campbell

Appearing on his own behalf	Scott Westerlaken
Counsel for the Director of the Yukon's Residential Tenancies Office	Sruthi Tadepalli
Appearing on his own behalf	Byron Holbein

REASONS FOR DECISION

OVERVIEW

[1] Generally, the Director of Residential Tenancies (the "Director") has authority over residential tenancy disputes between landlords and tenants for claims of up to $25,000. This judicial review raises the issue of the Director's authority over rental disputes between roommates and, more specifically, between a tenant - who is not the owner's agent and who does not act on behalf of the landlord – and a person who pays that tenant to occupy a room within a residential unit also occupied by the tenant. For the following reasons, I find the Director does not have authority over those disputes.

The Small Claims Court of the Yukon or the Supreme Court of Yukon, depending on the amount at issue, have jurisdiction over those matters.

FACTS AND CHRONOLOGY OF THIS PROCEEDING

[2] In February 2023, Scott Westerlaken and Byron Holbein entered into an oral agreement regarding occupancy of a bedroom, with access to the common living areas, in a house Mr. Westerlaken rented and occupied with his partner and his son. Mr. Holbein agreed to pay a security deposit and a monthly amount to Mr. Westerlaken for that room and access to the common areas. On April 30, 2023, after an incident, Mr. Westerlaken requested that Mr. Holbein vacate the property right away. Mr. Holbein left the next day.

[3] On May 10, 2023, Mr. Holbein filed an application with the Director for lack of proper notice to end the tenancy and the return of his security deposit. Mr. Westerlaken made a counterclaim for unpaid rent, a veterinary invoice, damage to a rug and a duvet, as well as for labour for patching, painting, and cleaning after Mr. Holbein's departure. The matter proceeded in writing. Mr. Holbein and Mr. Westerlaken filed documents and written submissions in support of their respective positions.

[4] It appears the matter proceeded before the Deputy Director of Residential Tenancies (the “Deputy Director”) on the basis that Mr. Westerlaken and Mr. Holbein were in a landlord-tenant relationship. On July 7, 2023, the Deputy Director found that Mr. Westerlaken did not comply with his obligations as a landlord under the *Residential Landlord and Tenant Act*, SY 2012, c 20 (the “*Act*”), and that his non-compliance extinguished his right to claim compensation against the security deposit. In addition, she found that the Director did not have jurisdiction over Mr. Westerlaken’s claim for the veterinary expenses he incurred as a result of the injuries allegedly caused by

Mr. Holbein's dog to his dog. Ultimately, based on her finding regarding Mr. Westerlaken's non-compliance with his obligations as a landlord under the *Act*, the Deputy Director determined that Mr. Holbein was entitled to compensation in the amount of $1,349.39, which includes the return of the security deposit plus applicable interests ($965.61) and the cost of a camping site at an RV park from May 1 to 8, 2023 ($383.78) for lack of proper notice.

[5] The facts, as found by the Deputy Director, regarding the dispute between Mr. Westerlaken and Mr. Holbein were as follows:

- Mr. Holbein rented a room from someone in a rented house;
- Mr. Holbein did not reside with the owner of the unit;
- there was no written tenancy agreement;
- there was neither a move-in nor a move-out inspection;
- Mr. Holbein paid a security deposit of $950;
- Mr. Holbein paid $950 per month for the room. At some point, that amount was increased to $1,100 per month;
- on April 30, 2023, Mr. Westerlaken told Mr. Holbein he had to vacate the premises because of a disagreement;
- on May 1, 2023, Mr. Holbein moved out of the house into a trailer in an RV Park and then a campground. He incurred the cost of a camping site at the RV Park; and
- Mr. Westerlaken returned to Mr. Holbein his partial payment for May 2023, but he did not return the security deposit.

[6] In addition, in their written submissions, both Mr. Westerlaken and Mr. Holbein referred to the fact that Mr. Westerlaken, his partner, and his son also resided in the rented home at the time.

[7] Mr. Westerlaken sought a review of the Deputy Director's decision (as permitted under s. 84 of the *Act*) on several grounds, including his view that the Director does not have jurisdiction over this matter because a tenant who rents a room in a rental unit he also occupies is not a landlord as defined in the *Act*. On July 17, 2023, the Director found that the evidence on which Mr. Westerlaken relied in support of most of his grounds for review did not constitute new and relevant evidence that was not available at the time of the original hearing. She concluded that most of Mr. Westerlaken's grounds for review could be dismissed on that basis alone. Nonetheless, the Director proceeded to consider, address, and reject each of Mr. Westerlaken's grounds for review. On the jurisdictional issue, the Director considered that Mr. Westerlaken rented the house from someone else. However, the Director relied on ss. 34(1) of the *Act*, which speaks to assignment and subletting, to find that Mr. Westerlaken qualified as a landlord under the *Act* because he sublet part of the rental unit to Mr. Holbein, and, therefore, permitted, on behalf of his landlord, the occupation of the rental unit under an oral agreement and exercised the powers and performed the duties of a landlord. The Director added that s. 2 of the *Act* provides that the *Act* applies to all tenancy agreements, rental units, and other residential property. Also, she found that Mr. Westerlaken's circumstances did not fit within the list of specific circumstances to which the *Act* does not apply, as set out in s. 3 of the *Act*. As a result, the Director dismissed Mr. Westerlaken's argument based on lack of jurisdiction, and, ultimately, his application for review.

[8] On August 18, 2023, Mr. Westerlaken filed a petition for judicial review in this Court based on lack of jurisdiction. However, he did not perfect his application until September 3, 2024, when he filed his amended application for judicial review. He later filed his supporting materials and submissions. The Director, who had been ordered to remain a respondent in this matter, but whose participation was limited to addressing process issues and making submissions on jurisdiction and possible interpretations of the *Act*, filed written submissions within the limits of their participation. Mr. Holbein filed a response and made submissions at the hearing. I heard the application on November 18, 2024.

ANALYSIS

The Standard of Review

[9] Mr. Westerlaken and Mr. Holbein, who are self-represented litigants, did not make submissions on the standard of review. The Directed submitted at the hearing, that reasonableness is the applicable standard of review.

[10] The legislation does not specify a standard of review. Therefore, the principles enunciated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*"), apply.

[11] Broadly speaking, the Director has jurisdiction over rental disputes between residential landlords and tenants involving claims of $25,000 or less, which would otherwise be within the jurisdiction of the Small Claims Court of Yukon. As stated earlier, this judicial review raises the issue of the Director's authority over disputes between roommates sharing a rental unit. This issue turns on a question of statutory interpretation: whether a tenant who charges an amount to another person to occupy a room in a rental unit where the tenant also resides is a landlord under the *Act*. If so, the

Director has authority over the dispute. If not, considering the amount at issue, the Small Claims Court has jurisdiction over the dispute.

[12] As this matter raises a question regarding the jurisdictional boundaries between the Director and the courts of civil jurisdiction — and more particularly the Small Claims Court considering the amount at issue — the correctness standard applies (*Vavilov* at paras. 63 and 64).

Principles of statutory interpretation

[13] The Director's decision-making authority over residential tenancy disputes arises from the *Act* and is circumscribed by the provisions of the *Act*. Determining the scope of the Director's authority thereby involves the application of statutory interpretation principles.

[14] The modern approach to statutory interpretation is well-established. It provides that: "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" E.A. Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87, *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para. 21, and *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para. 26.

[15] In *La Presse inc v Quebec*, 2023 SCC 22 at paras. 23 and 24, the Supreme Court of Canada clarified two principles flowing from the application of the modern approach:

> [23] First, the plain meaning of the text is not in itself determinative and must be tested against the other indicators of legislative meaning — context, purpose, and relevant legal norms (*R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31). The apparent clarity of the words taken separately does not suffice because they "may in fact prove to be ambiguous once placed in their context. The

> possibility of the context revealing a latent ambiguity such as this is a logical result of the modern approach to interpretation" (*Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 10).
>
> [24] Second, a provision is only "ambiguous" in the sense contemplated in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, if its words can reasonably be interpreted in more than one way *after* due consideration of the context in which they appear and of the purpose of the provision (paras. 29-30). This is to say that there is a "real" ambiguity — one that calls for the use of external interpretive aids like the principle of strict construction of penal laws or the presumption of conformity with the *Canadian Charter of Rights and Freedoms* — only if differing readings of the same provision *cannot* be decisively resolved through the contextual and purposive approach set out by Driedger (*ibid*.). [italics in original]

[16] Also, in accordance with s. 10 of the *Interpretation Act*, RSY 2002, c 125, the provisions of the *Act* must be given the fair, large, and liberal interpretation that best ensures the attainment of its object.

[17] In addition, s. 8 of the *Interpretation Act* provides that:

> The title and preamble of an enactment shall be read as a part thereof intended to assist in explaining its purpose and object.

[18] Finally, s. 4 of the *Languages Act,* RSY 2002, c 133, provides that the English and French versions of Yukon's legislation and regulations are equally authoritative.

The scope of the Director's authority under the dispute resolution process provided by the *Act*

[19] Part 4 of the *Act* (ss. 65-88) sets out a comprehensive process for the resolution of residential tenancies disputes under the *Act.* Section 65 circumscribes the types of disputes that fall within that process and must be brought to the Director for determination.

[20] Section 65 provides:

> (1) Except as restricted under this Act, a person may make an application to the director in relation to a dispute with the person's landlord or tenant in respect of any of the following
>
> (a) rights, obligations and prohibitions under this Act; or
>
> (b) rights and obligations under the terms of a tenancy agreement that
>
> (i) are required or prohibited under this Act, or
>
> (ii) relate to
>
> (A) the tenant's use, occupation or maintenance of the rental unit, or
>
> (B) the use of common areas or services or facilities.
>
> …
>
> (4) Except as provided in subsection (5), a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted for a determination by the director under this Act. [1]
>
> …

[21] The rights, obligations, and prohibitions under the *Act* are set out in Part 2 of the *Act*. They relate only to:

(i) residential tenancy agreements, which are defined at s. 1 of the *Act* as agreements between a landlord and a tenant respecting possession of a living accommodation rented or intended to be rented by a tenant (rental unit), use of common areas and services and facilities; and

(ii) residential landlord-tenant relationships.

[1] Subsections 65(3) and (5) provide that the Supreme Court of Yukon has jurisdiction over disputes involving an amount of more than the monetary limit set out in the *Small Claims Court Act* ($25,000) as well as disputes under the *Act* that are linked substantially to a matter that is before the Supreme Court.

[22] In addition, the Director's authority to determine disputes is circumscribed at s. 73 of the *Act* as follows:

> 73 Director's authority
>
> (1) The director has the authority to determine
>
> (a) a dispute in relation to which the director has accepted an application for dispute resolution;
>
> (b) any matters related to that dispute that arise under this Act or a tenancy agreement; and
>
> (c) any other matter related to a contravention of or failure to comply with this Act, the regulations, an order made under this Act or a tenancy agreement.

[23] As a result, the authority of the Director to resolve disputes is limited to disputes that arise between residential landlords and tenants over their respective rights, obligations and prohibitions under the *Act* or a tenancy agreement (as per ss. 65 and 73(1)(a)) and any matters related to these specific disputes (as per s. 73(1)(b) and (c)).

[24] The scope of application of the *Act* (ss. 2 and 3), the general principles regarding the enforcement of rights and obligations between landlords and tenants (s. 8), and the Director's responsibilities (s. 90) support this interpretation.

[25] Therefore, the Director only has authority to resolve disputes between roommates, if one may be considered a landlord and the other a tenant, under the *Act*. The Director's submissions on this judicial review align with this conclusion.

[26] Essentially, the *Act* defines a tenant as a person who enters into an agreement with a landlord regarding the possession of a rental unit, use of common areas, and services and facilities (see definitions of the words tenant, tenancy, tenancy agreement,

and rental unit at s. 1 of the *Act*). Therefore, Mr. Holbein could only be considered a tenant under the *Act* if Mr. Westerlaken meets the definition of a landlord.

[27] Section 1 specifically sets out the circumstances in which a person may be considered a landlord under the *Act*:

> "landlord", in relation to a rental unit, means
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord
>
> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act or the tenancy agreement,
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a),
>
> (c) a person, other than a tenant occupying the rental unit, who
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement, this Act or the regulations in relation to the rental unit, and
>
> (d) a former landlord, when the context requires this; «locateur »

[28] Mr. Westerlaken was not the owner of the rental unit. He was a tenant occupying the rental unit with his family and his roommate, Mr. Holbein. Clearly, paras. (b) and (d) of the definition do not find application in the circumstances of this case. Nor does para. (c), which specifically and clearly excludes a tenant occupying the rental unit from being considered a landlord under that part of the definition.

[29] Paragraph (a) is the only part of the definition of "landlord" that may encompass a tenant occupying the rental unit. However, under para. (a), a tenant sharing a rental unit with a roommate may only be considered a landlord if the tenant is acting as agent for the owner or on behalf of the landlord when permitting the roommate to occupy the rental unit under a tenancy agreement, or in exercising the powers and performing the duties of the landlord under the *Act* or the tenancy agreement. Either way, the owner or landlord would have to authorize the tenant to act in their name or on their behalf with respect to the roommate's occupancy of the rental unit in order for the tenant to be considered a "landlord" under the *Act.*

[30] The Director found that Mr. Westerlaken was a landlord under para. (a) based on her conclusion that (i) Mr. Westerlaken had sublet part or all the rental unit to Mr. Holbein, and (ii) Mr. Westerlaken could not have legally sublet part of the rental unit, as he did, without his landlord's consent. The Director's reasons on this point are as follows (pp. 4-5):

> The Landlord [Mr. Westerlaken] submits that the definition of "landlord" in the Act excludes him from being deemed a landlord.
>
> Under the Act, any of the following may be considered a landlord:
>
> [*definition of landlord omitted*]
>
> The Landlord argues that since one of these possibilities does not apply to him, specifically subsection (c), that he cannot be considered a landlord.
>
> However, the Landlord does fall within the definition of "landlord". A tenant cannot assign or sublet part or all of a rental without their landlord's consent (subsection 34(1)). In this case, the Landlord in this tenancy agreement, on behalf of their own Landlord, permitted the occupation of the rental unit under a verbal agreement, and exercised the powers

> and performed the duties of a landlord. They therefore properly fit within subsection (a) of the definition of "landlord". [underline added]
>
> Further, per section 2, the Act applies to all tenancy agreements, rental units and other residential property. Section 3 defines specific circumstances that the Act does *not* apply. The Landlord's circumstance is not listed as one to which the Act does not apply. This tenancy relationship is therefore governed by the Act. [italics and underline in original]

[31] The Director's reasoning follows previous decisions where the Director assumed jurisdiction over disputes between roommates based on the Director's finding that a tenant, who rents a room to someone in a rental unit in which the tenant also resides, is subletting part or all the rental unit, and may only legally do so, pursuant to s. 34 of the *Act*, with the knowledge and consent of their landlord (see *L v K* (October 23, 2020), Yukon, 3620-20-20-061 (YTRTO) (unreported) at p. 3 (under "Issue 1") and *B v L* (March 14, 2023), Yukon, 3620-20-22-136 (YTRTO) (unreported) at p. 4). In *B v L*, the Director found as follows:

> This file is related to a roommate relationship. The tenant rented a room from the landlord in a home the landlord resides in. The Residential Tenancies Office has jurisdiction of this dispute as the landlord rents the entire home and then rented (sublet) a bedroom to the tenant. Because the landlord is not the owner of the home, this case is not excluded from the RLTA under section 3(c).

[32] Section 34 of the *Act*, which the Director relied on to find Mr. Westerlaken was a landlord, prescribes the rights and obligations of landlords and tenants in cases of assignment or subletting:

> 34 Assignment and subletting
>
> (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

> (2) The landlord must not unreasonably withhold their consent to assign a tenancy agreement or sublet a rental unit.
>
> (3) A landlord must not charge a tenant anything for considering, investigating or consenting to the assignment of a tenancy agreement or the sublet of a rental unit.
>
> (4) Unless otherwise agreed by the landlord, the tenant must give to the landlord notice of the request for consent to the assignment of a tenancy agreement or the sublet of a rental unit on a date that is
>
> (a) not earlier than one month after the date the landlord receives the notice; and
>
> (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
>
> (5) Subsection (2) does not apply to
>
> (a) a housing agency; or
>
> (b) a person or organization prescribed in the regulations.

[33] Pursuant to s. 34, a tenant must obtain their landlord's written consent before they "sublet a rental unit'', and the landlord must not unreasonably withhold their consent in that regard. However, s. 34 does not expressly provide or specify whether these obligations arise only when the tenant sublet the whole rental unit and/or part of it. The word "sublet" is not defined in the *Act*. However, the expression "rental unit" is defined at s. 1 as "living accommodation rented or intended to be rented to a tenant and includes a mobile home site". The French version of "rental unit" is "unité locative", which is defined as "Logement loué ou destiné à être loué à un locataire, y compris un site de maison mobile." In both the French and the English versions of the *Act*, a rental unit is defined as a whole unit (logement), not just part of it. Therefore, I am of the view

that s. 34 only applies to situations where the tenant is subletting the whole rental unit, not just part of a rental unit.

[34] As a result, I find the Director erred in interpreting the expression “to sublet a rental unit” as including situations where a tenant rents a room within a rental unit in which they also reside, because s. 34 only applies to situations where a tenant rents the whole rental unit to someone else not just part of it. I note the written submissions of the Director on this judicial review accords with this conclusion.

[35] Based on that error of interpretation, the Director wrongly found that Mr. Westerlaken had entered into a subletting agreement with Mr. Holbein and deemed Mr. Westerlaken to have done so with the required written consent of his landlord - as per ss. 34(1) – even though there was no evidence before the Director that the landlord was even aware of the agreement. On that basis, she concluded that Mr. Westerlaken must have acted on his landlord’s behalf and, therefore, met the definition of a “landlord” under the *Act*. In my view, neither the provisions of the *Act* nor the facts of this case supported the Director’s finding in that regard.

[36] Mr. Holbein argued before me that the Director was right to find that Mr. Westerlaken was his landlord because he presented himself and acted as a landlord. Mr. Westerlaken disputed that assertion. Even if I were to accept Mr. Holbein's version of events, it would not and could not affect the conclusion that Mr. Westerlaken does not meet the definition of “landlord” under the *Act* because the *Act* requires a finding that Mr. Westerlaken acted as agent for the owner or acted on behalf of the landlord, not just that he presented himself as such.

[37] This conclusion does not leave roommates, including Mr. Holbein, without recourses when a dispute arises between them regarding an occupancy agreement or

the rental unit. The Small Claims Court - for claims up to $25,000 - and the Supreme Court of Yukon have jurisdiction over those disputes.

CONCLUSION

[38] I find the Director erred in interpreting s. 34 and the definition of “landlord” under the *Act*. Mr. Westerlaken was Mr. Holbein's roommate, not his landlord. Therefore, considering that the amount at issue is less than $25,000, the Small Claims Court, not the Director, has jurisdiction over the dispute between Mr. Holbein and Mr. Westerlaken. Mr. Westerlaken’s application is granted, and the decision of the Director is quashed. This matter shall be brought back before me to hear the parties’ submissions on the other relief sought by Mr. Westerlaken and the issue of costs of this proceeding.

[39] The stay of the garnishment order made in the related Supreme Court of Yukon file, SC No. 24-A0074, will remain in place until a final decision is made on the other relief sought by Mr. Westerlaken in this matter and on costs of this proceeding.

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CAMPBELL J.