

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 decision of the Rental Officer, regarding a rental
premises located within the City of Yellowknife in the Northwest Territories,
dated August 14, 2024;**

BETWEEN:

COSMAS PUWAI

Appellant

-and-

MIDWEST PROPERTY MANAGEMENT

Respondent

**Transcript of the Ruling on the Application delivered by the
Honourable Justice A. Piché, sitting in Yellowknife, in the
Northwest Territories, on the 16th day of May, 2025.**

APPEARANCES:

Cosmas Puwai:

Self-represented

C. Buchannan:

Counsel for the Respondent/Landlord

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RULINGS, REASONS

Ruling on application

1

1 THE COURT: I am ready to deliver my reasons. I will
2 deliver them orally. I reserve the right to amend them
3 for grammar and clarity and to include full citations and
4 quotations.

5 This is an appeal from a decision of a Rental
6 Officer. In December 2020, Mr. Puwai signed a
7 tenancy agreement for a unit of an apartment building
8 owned by Midwest Property situated in Yellowknife. In
9 February 2024, the parties renewed the tenancy
10 agreement for one year.

11 In March 2024, Mr. Puwai stopped paying his
12 rent and electricity bill in the following context. In
13 February 2024, he requested consent from Midwest to
14 assign his tenancy agreement. The landlord refused
15 because at the time there was an Emergency
16 Protection Order issued pursuant to the *Protection*
17 *Against Family Violence Act* that gave a member of Mr.
18 Puwai's family exclusive occupation of the unit for 90
19 days which was in effect until May 26th, 2024.

20 Mr. Puwai brought an application to a Rental
21 Officer. On May 15, 2024, the Rental Officer allowed
22 him to assign his lease, but starting on June 1st after
23 the expiry of the Emergency Protection Order.

24 Mr. Puwai did not assign his lease and instead
25 requested consent from the landlord to sublet his
26 apartment. Midwest refused to give consent, so on

1 June 7th, 2024, Mr. Puwai applied to a Rental Officer to
2 force the landlord to allow the subletting of the unit.

3 By the end of June 2024, Mr. Puwai, who was
4 already behind on the payment of his rent since June
5 2023, had not been paying any amount towards his
6 rent since February 2024, accumulating arrears of
7 several thousands of dollars. Midwest also had to pay
8 for the electricity bill for the unit from March 2024 when
9 Mr. Puwai closed his account with the electricity
10 provider.

11 Midwest made an application to a Rental Officer
12 to obtain an order that the tenant pay the rent arrears
13 and the utility fees, pay the fees related to a fire alarm,
14 as well as an order terminating the lease and evicting
15 Mr. Puwai.

16 On August 16, 2024, a hearing was held before
17 a Rental Officer. Mr. Puwai appeared and so did a
18 representative of Midwest. Both parties filed
19 documents and gave oral evidence.

20 The Rental Officer decided that while Mr. Puwai
21 was authorized to assign his lease from June 1st, 2024,
22 he did not. When he did not, he remained a tenant for
23 the unit responsible under the Tenancy Agreement for
24 the payment of the rent and utilities.

25 She found that Mr. Puwai had repeatedly
26 breached his obligation to pay rent. She concluded the

1 termination of the Tenancy Agreement and the eviction
2 from the unit were justified. She, however, denied the
3 landlord's claim for the fees charged for pulling the fire
4 alarm.

5 She ordered Mr. Puwai to pay the arrears owed
6 and to compensate the landlord for the payment of
7 utilities. She also ordered the termination of the
8 Tenancy Agreement and his eviction from the rental
9 unit. Because she terminated the Tenancy Agreement,
10 the Rental Officer denied Mr. Puwai's application to
11 sublet the rental unit.

12 Mr. Puwai appeals this decision. The issues on
13 appeal are the following: Whether the Rental Officer
14 made a reviewable error in concluding that Mr. Puwai
15 had an obligation to pay rent and the cost of utilities
16 after March 1st, 2024; whether the Rental Officer made
17 a reviewable error in ordering the termination of the
18 lease and eviction; and whether the Rental Officer
19 made a reviewable error in denying Mr. Puwai's request
20 to order the landlord to allow him to sublet the
21 apartment.

22 Mr. Puwai appealed the decision from the Rental
23 Officer pursuant to section 87 of the *Residential*
24 *Tenancies Act* which I will be referring to as the *Act*.
25 When legislation creates a right to appeal the decision
26 of a statutory decisionmaker, the appellate standards of

1 review stated in *Housen v Nikolaisen*, 2002 SCC 33,
2 are applicable.

3 If the issue on appeal is a question of law, the
4 standard of review is correctness. If the issue on
5 appeal is a question of fact or a mixed fact and law
6 question, the standard of review is palpable and
7 overriding error.

8 A palpable and overriding error is one that can
9 be plainly seen. In this case, all the issues raised are
10 questions of mixed facts and law. The standard of
11 review is palpable and overriding error.

12 Before I turn to the grounds of appeal, I first
13 need to address the evidence that was presented
14 before this court. Both parties filed additional evidence.

15 Section 87(5) of the *Act* provides that this court
16 can receive any evidence - oral or written, that is
17 relevant to an issue on appeal. In *Galtee Mountain*
18 *Holdings v Wilson*, 1991 CanLII 13208 (NWT SC),
19 Justice de Weerdts interpreted this provision as meaning
20 that the court has the discretion to hear additional
21 evidence but no obligation to do so.

22 Mr. Puwai filed an affidavit sworn on December
23 18, 2024, essentially summarizing the evidence and
24 submissions he presented before the Rental Officer.
25 He also appended to his legal brief an email and letter
26 sent to Midwest Property in February 2024 requesting

1 to assign his lease. These documents are not
2 otherwise part of the record. At the oral hearing,
3 Midwest admitted the authenticity of the email and the
4 letter and took no issue with the court considering
5 them.

6 Midwest filed an affidavit of Jenni Bruce,
7 Regional Manager for Midwest Properties, sworn on
8 December 20th, 2024. In her affidavit, Ms. Bruce
9 provided an update on Mr. Puwai's situation with
10 Midwest Property.

11 She deposed that Mr. Puwai continued to
12 occupy the rental unit while refusing to pay rent. She
13 provided an update of the rental arrears owed in
14 December 2024. She also explained the reason
15 Midwest Property refused to assign Mr. Puwai's lease
16 in March 2024, the reason being the Emergency
17 Protection Order I mentioned earlier.

18 The parties both took no issues with me
19 considering the additional evidence presented. I find
20 that it does have some relevance to the issues before
21 me and I have admitted and considered them in coming
22 to my decision.

23 The first issue on appeal is whether the Rental
24 Officer made a palpable and overriding error in
25 concluding that Mr. Puwai owed rent and the cost of
26 utilities after March 1st, 2024. Mr. Puwai argues that

1 Midwest Property was not justified to withhold consent
2 to assign the lease from March 2024 and any delay in
3 obtaining consent was due to the unreasonable
4 conduct of the landlord. As a result, he claims the
5 Rental Officer was wrong in deciding that the Tenancy
6 Agreement was in place and that he had the obligation
7 to pay rent and utilities from March 1st, 2024.

8 I do not accept this argument. As pointed out by
9 the Rental Officer, there was an earlier decision from a
10 different Rental Officer rendered on May 16, 2024, that
11 determined the landlord was justified to withhold
12 consent to sign the lease while the Emergency
13 Protection Order was in effect. Mr. Puwai did not
14 appeal this earlier decision and I agree with the Rental
15 Officer that she had to accept the conclusions of her
16 colleague.

17 The conclusion of the earlier decision was that
18 Mr. Puwai could not have assigned the lease from
19 March 1st as he claims. He could only have assigned
20 the lease from June 1st.

21 I accept Mr. Puwai's evidence that by June 1st
22 the prospective tenant was no longer interested, but it
23 does not change the fact that this situation was not the
24 landlord's fault as Mr. Puwai claims. Mr. Puwai could
25 not assign the lease before June 1st because of the
26 Emergency Protection Order.

1 In June 2024, Mr. Puwai did not assign the lease
2 and, as noted by the Rental Officer, it means that he
3 remained a tenant of the unit who, pursuant to section
4 41 of the *Act*, had an obligation to pay rent, and
5 pursuant to section 45 of the *Act* and clause 9 of the
6 Tenancy Agreement, had the obligation to pay for
7 electricity. I see no error in the Rental Officer's
8 decision on this issue.

9 The next question is whether the Rental Officer
10 made a reviewable error in ordering the termination of
11 the lease and the eviction. As indicated by the Rental
12 Officer, Mr. Puwai disputed having an obligation to pay
13 rent from March 1st, but he did not dispute the
14 calculation of the amount owed.

15 Mr. Puwai had been behind in the payment of
16 his rent since June 2023. The last payment he made
17 towards his rent was \$238 in February 2024. When the
18 Rental Officer heard the application in August 2024, Mr.
19 Puwai had not made any payment to Midwest Property
20 in six months and he owed a total of \$12,918 in arrears.

21 Section 41(4)(c) of the *Act* states:

22 Where, on the application of the landlord, a
23 Rental Officer determines that a tenant has
24 failed to pay rent in accordance with subsection
25 (1), the Rental Officer may take an order
26 terminating the tenancy on the date specified in

1 the order and ordering the tenant to vacate the
2 rental premises on that date.

3 Section 63(4) of the *Act* gives the Rental Officer
4 the authority to evict the tenant when the Rental Officer
5 has ordered the termination of a tenancy under the *Act*
6 and determine if an eviction is justified.

7 In reaching the conclusion that the termination of
8 the Tenancy Agreement and the eviction were justified
9 in this case, the Rental Officer noted Mr. Puwai had
10 repeatedly breached his obligation under the *Act* to pay
11 his rent. The Rental Officer was entitled to reach this
12 conclusion on the record before her. There is no
13 palpable and overriding error.

14 Because she ruled the tenancy would be
15 terminated, the Rental Officer denied Mr. Puwai's
16 request for an order requiring Midwest Property to allow
17 the subletting the rental. Considering the contractual
18 relationship between Mr. Puwai and Midwest Property
19 was to end on August 31st, 2024, and I have already
20 determined that the Rental Officer made no error in
21 coming to this conclusion, it would not have made
22 sense to permit the subletting of the unit.

23 In his legal brief, Mr. Puwai sought before this
24 court an order declaring the Tenancy Agreement was
25 terminated on March 1st, 2024. First, this order was
26 not sought before the Rental Officer and this is an

1 appeal, not a new hearing of the matter. But in any
2 event, considering my finding that the Rental Officer did
3 not make any error in deciding that there was a valid
4 tenancy agreement in place and that Mr. Puwai
5 remained a tenant of the unit who had the obligation to
6 pay rent and utilities, there would be no valid reason to
7 grant such an order. The appeal is dismissed.

8 Midwest Property, the successful party, is
9 seeking costs. Mr. Puwai argues he is a person of
10 modest means, unlike Midwest Property, a big
11 corporation. He argues that a costs order would
12 discourage litigants like him to access justice. He
13 claims it would be unfair to order him to pay the
14 respondent's costs.

15 Rule 643(2) of the *Rules of the Supreme Court*
16 *of the Northwest Territories* provides that the general
17 rule is that the successful party is entitled to costs.
18 There are circumstances that justify departing from this
19 general rule but they are limited. I agree with Mr.
20 Puwai that the importance of access to justice and the
21 imbalance in means between litigants can bear on the
22 court's award of costs, but only in exceptional
23 circumstances.

24 The general rule is that the personal and
25 financial circumstances of litigants are not considered
26 relevant to costs awards. This is not one of the

1 exceptional cases that justify departing from the
2 general rule. It's not a case involving public interest
3 litigation or that raises novel legal issues. I see no valid
4 reason to deny costs to the successful party, so
5 pursuant to Rule 606.1, costs will be taxed on Column
6 3 of Schedule A.

7 The last issue I need to address is whether I can
8 renew the Eviction Order. In this case, the Rental
9 Officer issued the Eviction Order on August 16, 2024.
10 Midwest Property is asking that I renew the Eviction
11 Order because section 86.1(2) of the *Act* provides that
12 such an order expires six months after the date the
13 order takes effect.

14 Section 89 of the *Act* stipulates:

15 After hearing the appeal, a judge of the
16 Supreme Court may allow the appeal and vary
17 or set aside the order or dismiss the appeal.

18 This provision gives the court the authority to
19 vary the Rental Officer's order when it allows the
20 appeal, not when it dismisses it. Midwest Property
21 argues that despite the language used in the provision
22 of the *Act*, have jurisdiction to renew the Eviction Order.

23 Although section 89 of the *Act* does not specify
24 that the court has the power to renew the Eviction
25 Order, section 27 of the *Judicature Act* gives this court
26 power to:

1 Grant all remedies that any of the parties may
2 appear to be entitled to in respect of any and
3 every legal or equitable claim properly brought
4 forward by them respectively in the cause or
5 matter so that, as far as possible, all matters so
6 in controversy between the parties respectively
7 may be completely and finally determined and
8 all multiplicity of legal proceedings concerning
9 those matters avoided.

10 Having the jurisdiction to dismiss the appeal but
11 not the jurisdiction to renew the Eviction Order would
12 require Midwest Property to apply for a new Eviction
13 Order before a rental officer. This is exactly what
14 section 27 of the *Judicature Act* aims to prevent.

15 I am satisfied that I have the jurisdiction to renew
16 the Eviction Order. I am comforted in this interpretation
17 by the fact that this court has renewed the Eviction
18 Order in cases where it dismissed appeals under the
19 *Act*, for example, the cases of *Porter v Northwest*
20 *Territories Housing Corp.*, 2023 NWTSC 11 and *Mantla*
21 *v Behchokò Ko Gha K'aodee*, 2024 NWTSC 11.

22 I am renewing the Eviction Order. Mr. Puwai
23 shall vacate the rental premises by June 16th, 2025.

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25 **(PROCEEDINGS ADJOURNED)**

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CERTIFICATE OF TRANSCRIPT

Veritext Legal Solutions, Canada, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings transcribed from the audio recording to the best of our skill and ability.

Dated at the City of Toronto, in the Province of Ontario, this 9th day of June, 2025.

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