Date: 2025 12 11
Docket: S-1-CV-2025-000 020

2025 NWTSC 85 (CanLII)

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 NWT Rental Office, dated December 17, 2024

BETWEEN:

JENNIFER COCKNEY

Appellant

-and-

NWT HOUSING and INUVIK HOUSING AUTHORITY

Respondents

MEMORANDUM OF JUDGMENT

OVERVIEW

[1] The Appellant, Jennifer Cockney, had a long-standing tenancy agreement with the Respondent, the Inuvik Housing Authority, commencing in approximately 2009 or earlier, with a written agreement signed on April 1, 2012, which set forth the terms of the tenancy. The tenancy was for a five-bedroom unit (the "unit") located in Inuvik, NT. On September 24, 2024, the Respondent determined that the unit occupied by the Appellant had been abandoned and, consequently, the Respondent took possession of the unit and changed the locks.

[2] On November 14, 2024, the Appellant filed an application with the Rental Office alleging that she had wrongfully been locked out of her unit despite paying rent. The Appellant sought reinstatement of her tenancy and compensation for costs of alternate accommodation as well as for utilities paid by her after she had been locked out of the unit.

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[3] A rental hearing was held on December 11, 2024. The Rental Officer found that the Respondent was justified in finding that the unit had been abandoned and denied the Appellant's request to reinstate her tenancy. The Rental Officer ordered that the Respondent reimburse the Appellant $565.61 for utility costs incurred by the Appellant after the tenancy was deemed abandoned.

[4] The Appellant appeals from the Rental Officer's decision. For the reasons that follow, I dismiss the appeal.

PROCEDURAL HISTORY

[5] The Appellant named Housing NWT as the sole Respondent when she filed her appeal. When the appeal was initially spoken to, a representative of Housing NWT appeared and advised that they should not have been included as a Respondent. They further advised that they take no position on the matter and that the proper party should be the Inuvik Housing Authority. On February 11, 2025, the Inuvik Housing Authority was added as a Respondent.

[6] Additionally, on the same day, the Court made an order pursuant Rule 600 of the *Rules of the Supreme Court of the Northwest Territories*, NWT Reg 010-96 (the *Rules*), prohibiting the Respondent from renting the unit to another tenant pending the outcome of this appeal. The Appellant gave evidence to the effect that all of her possessions were in the unit and it was challenging for her to move them out of the unit. The presiding justice was satisfied that it was in the interests of justice to maintain the *status quo* pending the hearing of the appeal.

[7] The hearing of the appeal was initially set for June 24, 2025. On February 28, 2025, directions were given to the parties with respect to the filing of additional affidavits, if any, and briefs. The Appellant filed a pre-hearing brief on April 24, 2024 which appended additional evidence. At a pre-hearing conference held on June 6, 2025, the hearing of the appeal was adjourned as it appeared that the Appellant wished to rely on evidence, and she had not done so in the proper manner through filing the evidence by way of affidavit. While she had submitted some evidence by way of affidavits, she also wished to rely on evidence that was not properly before the Court. Additionally, the Respondent wished to cross-examine on affidavits filed by the Appellant.

[8] On June 6th, the presiding justice directed that the Appellant file any additional affidavits on or before June 27, 2025, and further directed that if the Appellant wished to file a supplemental hearing brief, she file and serve the supplemental hearing brief at least 10 days before the hearing. These terms were reduced to an order which was served on the Appellant,

[9] The appeal was rescheduled to November 26, 2025.

[10] Despite the filing deadlines contained in the order of June 6, 2025, the Appellant did not file additional affidavits or a further brief until the morning of November 26, 2025. Even though the material was submitted late, counsel for the Respondent indicated that they did not wish an adjournment and they were prepared to argue the appeal. Given this concession, I will consider the evidence submitted by the Appellant, notwithstanding its late filing.

FACTUAL BACKGROUND

[11] The evidence is that the Appellant has lived in the unit since approximately 2009, and possibly as early as 2007, although no written tenancy agreement was submitted during the hearing. Following the hearing, the Respondent provided the Rental Officer with a copy of a tenancy agreement commencing April 1, 2012. The tenancy agreement was for subsidized public housing. As is common with agreements for subsidized public housing, the lease provided that the tenant would pay market rent for the unit, however, the tenant would be eligible for a rent subsidy provided that the tenant was compliant in reporting their income, and the income of any authorized occupants, to the Respondent.

[12] The Appellant raised her children in the unit. As at 2024, the Appellant had three children living with her, a daughter 18 years of age (as of August 2024), and two sons, 20 and 26 years of age. Her children were authorized occupants on the tenancy agreement.

[13] The evidence before the Rental Officer was that the Respondent attempted to contact the Appellant for a six-month period about a variety of issues, including rental arrears. The Respondent attempted communications by phone (at the number provided by the Appellant), by letter and by notices left at the unit.

[14] The first notice was a warning on February 7, 2024 regarding unit cleanliness.

[15] The second notice was a termination letter which was mailed out on February 28, 2024, based on a failure to pay rent.

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[16] The third notice was a letter mailed to Ms. Cockney on May 16, 2024, to have two of her children come to the Respondent's office and sign a form so as to verify their income information.

[17] The fourth notice was a termination letter mailed out on June 10, 2024, based on a failure to pay rent.

[18] On June 11, 2024, there was a Notice of Inspection left at the Appellant's unit regarding inspecting her unit the following day. While there was no answer at the door, the individual delivering the notice observed one of the Appellant's adult sons looking out the window.

[19] An inspection of the unit was conducted on June 12, 2024. The unit was noted as being very dirty. No one was present in the unit.

[20] On June 14, 2024, the Respondent mailed a letter to the Appellant asking her to clean up her yard as an unlicensed or inoperable vehicle was noted on the yard.

[21] On June 24, 2024, a follow up was sent to the Appellant regarding having her children attend and sign a tax consent form.

[22] On June 26, 2024, a telephone message was left regarding failure to pay rent and the tax consent form.

[23] On July 3, 2024, a 24-hour notice of inspection was hand delivered. The inspection occurred on July 4, 2024. The unit appeared unoccupied, and it appeared to have gotten a "bit more dirty" than on the June 12, 2024 inspection.

[24] On July 23, 2024, a termination notice was mailed regarding the Appellant's failure to pay rent.

[25] On July 24, 2024, a letter was mailed to the Appellant regarding the June 12, 2024 inspection and the requirement to keep the unit clean.

[26] On August 2, 2024, another termination notice was mailed regarding failure to pay rent.

[27] On August 26, 2024, another inspection of the unit occurred. The 24-hour notice which had been left the day prior was still in the door and no-one was home. The employee noted that the unit was dirtier than before, that the upright freezer door was open and food was leaking onto the floor. They opened the windows to assist in addressing the odour within the unit.

[28] On September 5, 2024, another inspection occurred. The 24-hour notice which had been left the day prior was still in the door. No one was present in the unit and the premises had not been cleaned. The door to the upright freezer remained open. The employee closed the windows that had previously been left open to air out the place.

[29] On September 9, 2024, another letter was mailed to the Appellant regarding the need for her children to sign the tax consent form.

[30] On September 10, 2024, a termination letter was mailed to the Appellant regarding her failure to pay rent. In order to cancel her termination, the Respondent advised the Appellant that her rent had to be paid by October 31, 2024.

[31] On September 24, 2024, the Respondent formed the opinion that the unit was abandoned and changed the locks. A letter was sent to the Appellant on October 21, 2024 advising her of this decision and the change of the locks for the unit.

[32] The Appellant discovered that the locks had been changed on the unit sometime in late September when a family member with keys told her that he was unable to get into the unit.

[33] On October 7, 2024, a termination letter was mailed to the Appellant regarding her failure to pay rent. As of that date, outstanding arrears were $9,700 and the Appellant was advised that she had until November 29, 2024 to pay the arrears or enter into an agreement with the Respondent respecting same, failing which, the Respondent would terminate the tenancy. The evidence at the hearing was that this letter was sent in error.

[34] On October 25, 2024, more than a month after the Respondent had deemed the unit abandoned and changed the locks, the Appellant reached out to the Respondent seeking entry to the unit.

[35] The Appellant did not respond to any of the letters, phone calls or notices from the Respondent. The evidence of the Respondent's representative was that they had not had any response to any of their communications since February 2024 although it was later revealed through the evidence of the Appellant's mother, who worked for the Respondent, that there may have been some contact in May 2024. The evidence did not reveal the nature of the contact in May 2024.

[36] During the six-month period between April 1, 2024 and October 1, 2024, two rental payments were made: one for $200 on July 2, 2024 and one for $300 on August 16, 2024. These payments were made by one of the Appellant's adult sons.

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[37] The Appellant testified that she was often away from the community during this period, doing seasonal work as well as caring for a sick family member. Her oldest son, and her daughter, remained in the home and until they joined her at some point towards the end of the summer. She had asked her eldest son to go into the offices of the Respondent to make the two rental payments which he made. Her evidence was that the unit was never abandoned and that her children were generally occupying the unit throughout.

[38] The Appellant made a further payment of $700 on October 31, 2024 and $400 on November 29, 2024. After taking into account these payments, as of November 29, 2024, rental arrears were $6,848.26. Some of the rental arrears were incurred at the unit's market rate, as the Appellant had not provided the necessary information to qualify for a rental subsidy. Had the Appellant qualified for the subsidized rental rate, the arrears would have been $3,285.26 as of November 29, 2024.

[39] After discovering that the locks had been changed, and that the Respondent considered the tenancy terminated as a result of the unit being abandoned, the Appellant applied to the Rental Office on October 25, 2024 seeking a reinstatement of her tenancy.

[40] An expedited hearing was held on December 11, 2024. The Rental Officer delivered her Reasons for Decision on December 17, 2024 and filed her Order on December 19, 2024. The Rental Officer upheld the Respondent's decision to terminate the tenancy and directed that the Respondent reimburse the Appellant for utilities paid by the Appellant after the tenancy was terminated. Based on the evidence before her, she found that the Appellant had paid $565.61 in power costs following the termination of the tenancy and directed that the Respondent reimburse the Appellant for that amount.

[41] The Appellant was served with the Reasons for Decision and Order terminating the tenancy on December 22, 2024.

[42] The Appellant filed her appeal of the Rental Officer's decision on January 17, 2025. In addition to appealing the substantive decision of the Rental Officer, the Appellant sought an extension of the time to appeal because of office closures over the Christmas break.

[43] On January 24, 2025, this Court granted a stay of enforcement of the Rental Officer's order of December 19, 2024. The purpose of the stay was to prohibit the Respondent from renting out the unit until the appeal was decided. Since then, the unit has remained unoccupied, however, the Appellant's and her family's belongings remain in the unit.

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ISSUES ON APPEAL

[44] This appeal raises the following issues:

i) Should an extension of the time to appeal be granted, and

ii) Was the Respondent justified in concluding that the unit had been abandoned and in terminating the tenancy?

LEGAL FRAMEWORK

[45] This appeal is governed by the *Residential Tenancies Act*, RSNWT 1988, c R-5, (the *Act*). The following sections are relevant to the request for an extension of the time to appeal:

> s 87(1) A landlord or tenant affected by an order of a rental officer may, within 14 days after being served with a copy of the order, appeal the order by originating notice to a judge of the Supreme Court.
>
> …
>
> (3) A judge of the Supreme Court may, before or after the expiration of the time for appeal, extend the time within which the appeal may be made.

[46] The following provision is relevant to a landlord's ability to terminate a tenancy based on abandonment:

> s 62(1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to section 5, to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.

[47] The following provision addresses the context in which a landlord may determine abandonment has occurred:

> s 1(3) For the purposes of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in accordance with this Act and
>
> (a) the landlord has reasonable grounds to believe that the tenant has left the rental premises; or
>
> (b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.

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ANALYSIS

Should an extension of the time to appeal be granted?

[48] As noted above, the statutory time frame in which to file an appeal is 14 days. This appeal was filed 11 days after the time for filing an appeal expired.

[49] Vertes J in *Inuvik Housing Authority v Kendi*, 2005 NWTSC 46 [*Kendi*] at para 10, set out the questions to ask in deciding whether to extend the time in which an appeal must be filed:

> (a) Did the appellant exhibit a bona fide intention to appeal while the right of appeal existed?
> (b) Is there at least an arguable case that the decision appealed from is wrong?
> (c) Is there a reasonable explanation for the delay?

[50] As noted by Vertes J in *Kendi*, citing *Corrigan v Scott*, [1990] NWTJ No 42 (NWTSC); 1990 CarswellNWT 69, the decision to extend the time to appeal is a discretionary decision and must be exercised in the interests of justice.

[51] The Appellant urges me to extend the time for filing the appeal. She noted that she was served with the Reasons for Decision and Order just before Christmas and that many offices were closed over the Christmas season. She noted that she attempted to call a number of lawyers and that she was unable to find a lawyer willing to take on the case. In one instance, she found a lawyer but could not afford the retainer. She sought legal information from the free legal service offered by the Legal Aid Commission, however, quickly exceeded the amount of time she was eligible to receive from this service.

[52] The Respondent notes that the Appellant did not file evidence specifically addressing her intention to appeal prior to the expiry of the appeal period and that, without this evidence, there is no basis to extend the time for the Appellant to file an appeal.

[53] I am satisfied that it is in the interests of justice to extend the time for the Appellant to file this appeal. The Appellant is self-represented, and it can be challenging to navigate the court system. Furthermore, the Appellant's submissions, while not before me as sworn evidence, reveal genuine challenges in seeking legal advice. I can take judicial notice of the difficulties of retaining legal counsel in the Northwest Territories and of the fact that the Legal Aid Commission does not provide legal aid for rental appeals. Additionally, in the Appellant's first appearance on January 24, 2025, she advised the court that this was her first time engaging in

this type of process, that she had gone "back and forth" with the Registry with respect to her documents, and that she had trouble "paying for the file" (presumably, meaning the court filing fee).

[54] Given the Appellant's active participation in the hearing before the Rental Officer, the fact that she was a self-represented litigant, and that she was facing the loss of a home she had occupied and raised her family in for more than 16 years, I am satisfied that I can infer from all the material before me an early intention to appeal. It is also evident that her appeal raises a genuine issue for appeal.

[55] I extend the time for the filing of this appeal.

Was the Respondent justified in concluding that the unit was abandoned?

[56] The standard of review in an appeal under the *Act,* where the issue is not a question of law, but is one of fact, or mixed law and fact, is palpable and overriding error: *Mantla v Behchoko Ko Gha K'aodee*, 2024 NWTSC 11 at para 14.

[57] The Appellant argues that the decision of the Rental Officer was not justified by the evidence, which is an issue of mixed law and fact, and, as such, the Appellant must satisfy the court that the Rental Officer made a "palpable and overriding" error in her treatment of the evidence.

[58] The thrust of the Appellant's position is that the unit was never abandoned and was occupied by her children at various times during the period when it is alleged the unit was abandoned. She noted that it was only in September, just prior to the Respondent concluding that the unit was abandoned, that there were no occupants in the residence. She points to the fact that an employee of the Respondent observed her son in the window as proof of occupancy. She also relied on the evidence that there were two inspections, and that the Respondent noted that the unit was dirtier on the second inspection. She submits that is evidence that the unit was occupied.

[59] The Appellant also addressed the allegation that she had not communicated with the Respondent for many months. The Rental Officer concluded in her decision that the Appellant had not communicated with the Respondent since January 2024. The Appellant disputed this, indicating that she had come to the office of the Respondent in May 2024 and that her mother, who worked with the Respondent, knew where the Appellant was and that she had not abandoned her unit.

[60] The Appellant did acknowledge that she had no direct contact with the Respondent from the end of May until after the Respondent terminated the tenancy

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but indicated that she had sent her son to the Respondent's office to pay rent on two occasions.

[61] The Rental Officer's decision relied on the evidence from the Respondent that there had been no response to any communications sent from February 2024 onwards, whereas there was some evidence led by the Appellant through an affidavit sworn by the Appellant's mother, that the Appellant had been in the office of the Respondent in May 2024. However, the Appellant's mother was also clear in her evidence that she did not deal with matters involving her daughter's tenancy as she was in a conflict of interest. Additionally, the evidence is that the Appellant's mother retired from her position with the Respondent in May 2024.

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[62] Even if the Rental Officer was wrong in her assessment of the evidence on this point, the question to be asked is whether it would have made a difference in the Rental Officer's decision. First, the Appellant's mother was not in a position to address any tenancy issues involving her daughter, and was very clear on that point, therefore, arguably the mother's evidence of the Appellant being in the Respondent's office in May, is not relevant. The Appellant's mother does not testify as to why her daughter was there or whether it was even tenancy related. Moreover, it is uncontradicted that following the Appellant's mother's retirement in May, there was no direct contact by the Appellant until October 25, 2024, a period of approximately five months.

[63] In my view, if there was an error on the date of the last contact, it was not so significant as to have affected the Rental Officer's decision regarding the reasonableness of the Respondent's conclusion that the unit had been abandoned.

[64] With respect to the Appellant's absence from the unit over the summer months, the Appellant noted that it was not unusual for her to be away for period of time, either camping or doing seasonal work. She also asserted that it was not unusual for her to be behind on her rent, because of the unpredictable nature of her employment and her general financial status, and that once the Respondent adjusted her rent, she historically had been able to keep her rent relatively current.

[65] The challenge with the Appellant's position is that the Rental Officer grappled with all of this evidence. She noted that the Respondent had attempted to communicate with the Appellant on many occasions, through voice mail, notices left at the premises and by mail and that the uncontradicted evidence was that the Appellant had not responded to these communications.

[66] With respect to the evidence that the Respondent's employee had observed an adult son through the window, the Rental Officer noted during the hearing that even

if her son was living there, he was not the tenant and that it was the Appellant's responsibility to communicate with the Respondent.

[67] The Rental Officer also noted that the lease agreement between the Appellant and the Respondent required the Appellant to notify the Respondent if they are going to leave the rental premises for longer than seven days.

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[68] The Rental Officer concluded that the combined effect of not hearing from the Appellant for many months, despite attempts to communicate with the Appellant, coupled with the inspections which appeared generally to show no-one in the unit, was sufficient to find that the Respondent's conclusion that the unit was abandoned was a reasonable one. She found that the Respondent had satisfied the test required for abandonment under s 1(3)(a) of the *Act*. As noted above, even if the Rental Officer was wrong on the date that the Respondent last heard from the Appellant, this error is not sufficiently material to constitute a "palpable and overriding error".

[69] The Rental Officer also concluded that the evidence that the rent had not been paid in full for many months, coupled with the lack of communication and evidence that the Appellant was not residing in the unit, was sufficient to meet the test for abandonment under s 1(3)(b) of the *Act*.

[70] Additionally, the Rental Officer concluded that, on the evidence, the Respondent would have been justified in terminating the tenancy based on the rental arrears alone. The evidence before the Rental Officer was that while some payments had been made towards the rent, at no time was the rent current nor was there any evidence of a plan to bring the rent current.

[71] On the issue of the Respondent sending two termination letters in September and October for failure to pay rent, and providing that the tenancy would not be terminated if rental arrears were paid by specified dates, in addition to sending a letter on October 21, 2024 advising of their decision on the unit being abandoned, the Rental Officer noted that this dual process understandably caused some confusion. In particular, it is unfortunate that the second termination letter in October was sent, as it suggested that the tenancy might be saved if rent was brought current by November 29, 2024, however, I also note that even as of November 29, 2024, the Appellant still had rental arrears. In my view, there was no error in how the Rental Officer treated this evidence.

[72] The Appellant's circumstances are very sympathetic. She was dealing with health and family challenges in 2024. She has resided in this unit since at least 2009, and likely earlier than that, and raised her family in this unit. She understandably

struggles with having adequate financial resources to meet her commitments. As sympathetic as the Appellant's circumstances are, I must decide this appeal based on the law. The decision of the Rental Officer is owed deference absent a palpable and overriding error. I cannot find any such error.

CONCLUSION

[73] The appeal is dismissed. I recognize that the Appellant has significant personal effects in the unit and direct that the Appellant be given until the end of January 2026 to remove her personal effects from the unit. As acknowledged by the parties during the hearing of the appeal, I also expect that the Respondent will be reasonable with respect to granting the Appellant time in which to remove items located outside of the unit, such as vehicles, if the winter weather poses challenges with their removal.

Sheila M. MacPherson
J.S.C.

Dated in Yellowknife, NT this
11th day of December, 2025

Counsel for the Appellant: Self-represented

Counsel for the Respondent,
Inuvik Housing Authority: Christopher D. Buchanan

NWT Housing did not participate.

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