KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 71

Date: **2026 03 30**
File No.: KBG-RG-00365-2026
Judicial Centre: Regina

IN THE MATTER OF *S. 72(1)* OF *THE RESIDENTIAL TENANCIES ACT, 2006,* SS 2006, c R-22.0001

BETWEEN:

DARCY SINCLAIR (aka JAY REDWOOD)

APPELLANT

\- and -

MARK JACOBS

RESPONDENT

\- and -

DIRECTOR OF THE OFFICE OF RESIDENTIAL TENANCIES

RESPONDENT

Appearing:

Darcy Sinclair — self represented appellant
Mark Jacobs — self represented respondent
No one appearing — for the Office of Residential Tenancies

FIAT — BERGBUSCH J.
MARCH 30, 2026

I. Introduction

[1] The applicant, Darcy Sinclair [Mr. Sinclair], appeals a decision of the Office of Residential Tenancies [ORT] dated February 5, 2026 [*Decision*].

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[2] In the *Decision*, the hearing officer ordered that the landlord, Mark Jacobs [Mr. Jacobs], be given possession of the rental unit, that a Writ of Possession be issued directing the Sheriff at the Judicial Centre of Regina to place Mr. Jacobs in possession of the rental unit immediately, and that the tenant was to pay Mr. Jacobs the amount of $1,890.00.

[3] I have concluded that the hearing officer erred in law by failing to exercise his discretion to do what is just and equitable in the circumstances. For the reasons which follow, the appeal is allowed and the matter is remitted back to the ORT for a new hearing.

II. Summary of Relevant Facts

[4] I have drawn the relevant facts from the ORT file.

[5] The rental unit is located at 46 Sussex Crescent, Regina, Saskatchewan.

[6] The parties entered into a Fixed Term Tenancy Agreement for Saskatchewan, a standard form rental agreement. The tenant is identified as "Darcy Sinclair 'Jay Redwood'". Confusingly, Mr. Sinclair sometimes goes by the name "Jay Redwood" and he is identified by that name in the *Decision*. I will refer to him as Mr. Sinclair in this decision.

[7] The term of the rental agreement was one year, commencing on October 15, 2025. Rent was $1,600.00 per month, payable on the first day of the month, with $800 payable for October 2025. The standard form agreement sets out the method for paying the rent as follows: "The tenant will deliver the rent to the landlord at the landlord's address OR as follows (describe method of payment)." A box under these words was filled in as follows: "Either cheque or e-transfer."

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[8] Mr. Jacobs served a Notice to Vacate on Mr. Sinclair on December 29, 2025. Next, a Notice of Hearing was served on Mr. Sinclair by posting it to the front door of the rental unit and by ordinary mail.

[9] The ORT hearing took place on January 27, 2026, by telephone. Mr. Jacobs sought an order for possession pursuant to ss. 57 and 70 of *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001 [*Act*], on the ground that rent was unpaid for a period of 15 days or more after the day it was due. Mr. Jacobs sought an Order against Mr. Sinclair in the amount of $240.00 for rent arrears and $50.00 for the fee paid to bring the application.

[10] Mr. Jacobs tendered in evidence a copy of the rental agreement. He also filed three receipts for the October and November rent and for a $600 pet fee. It appears that these payments were made by cheque. Additional documents filed by Mr. Jacobs showed that the tenant paid $700 *via* an ATM on December 3, 2025, and e-transferred a further $659.97 on December 12, 2025.

[11] Mr. Jacobs also filed in evidence a rent ledger, which showed that $240.00 of the December rent was in arrears when the Notice to Vacate was served. By the date of the ORT hearing, the January rent had also not been paid. The cumulative rent owing was $1,840.00.

[12] In the *Decision*, the hearing officer found that Mr. Sinclair had rent arrears of $1,840.00 as of the date of hearing and concluded that an order for possession accorded with justice and equity. The hearing officer also allowed Mr. Jacobs' claim for the $50.00 hearing fee. More will be said about the *Decision* later in these reasons.

[13] Mr. Sinclair filed a Notice of Appeal on February 11, 2026, setting February 24, 2026, as the date for hearing the appeal. Mr. Sinclair also paid one month's rent of $1,600 to the ORT, which issued a certificate of payment of rent pursuant to

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s. 10.1 of *The Residential Tenancies Regulations, 2007*, RRS c R-22.0001 Reg 1. Mr. Sinclair and Mr. Jacobs were present in civil chambers on the hearing date.

III. Jurisdiction and Standard of Review

[14] The appeal is brought pursuant to s. 72 of the *Act*, which reads, in relevant part, as follows:

> 72(1) Subject to subsections (1.1) and (1.3), any person who is aggrieved by a decision or order of a hearing officer or the director, whether or not the decision or order is made without notice, may appeal the decision or order on a question of law or of jurisdiction to the Court of King's Bench within 30 days after the date on which the decision or order is signed and dated by a hearing officer.
>
> (1.1) The Court of King's Bench may extend the time for appeal for up to two years from the date on which the decision or order is signed and dated by a hearing officer if the proposed appellant can establish that the proposed appellant did not receive notice of the decision or order.
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> (1.2) An appeal pursuant to subsection (1) must be made at the judicial centre nearest to the location of the rental unit with respect to which the decision or order was made.
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> (1.3) A tenant may only appeal an order that includes a writ of possession pursuant to subsection 70(13) with respect to a failure to vacate a property in accordance with a notice served pursuant to subsection 57(1) or (5) or clause 58(1)(b) if the tenant files with the Court of King's Bench a certificate of payment of rent issued pursuant to the regulations. …
>
> (3) The appellant shall serve the notice of appeal or the application for leave to appeal pursuant to this section on the respondent and the director. …
>
> (5) The director shall be made a party to any appeal pursuant to this section.
>
> [Emphasis added]

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[15] An appeal to the Court of King's Bench from a decision of a hearing officer or the director of the ORT may be made on a question of law or jurisdiction: ss. 72(1) of the *Act*. When an appeal alleges errors of law or jurisdiction, the decision is reviewed on the standard of correctness: *Lansdowne Equity Ventures Ltd. v Cove Communities Inc.,* 2020 SKQB 113 at para 26 [*Lansdowne*]; *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 at para 37 [*Vavilov*].

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[16] If the appeal challenges the hearing officer's findings of fact, this Court cannot intervene unless the findings of fact amount to an error of law: *P.R. Investments Inc. v Amos*, 2018 SKQB 127 at para 22. A finding of fact will constitute an error of law where it is made on the basis of no evidence, irrelevant evidence, disregarded relevant evidence, mischaracterized relevant evidence, or an unfounded/irrational inference: *Lansdowne* at para 30.

IV. Issue

[17] As is often the case in these appeals, Mr. Sinclair's Notice of Appeal misses the mark for what can be challenged in a statutory appeal to this Court. The stated ground of appeal reads:

> I am appealing the Decision of my eviction due to the fact that my landlord wants us out of the house, saying I didn't pay rent. I still have Januarys rent and have always had the rent. He refuses to accept the rent.
>
> [Errors in original]

[18] From my review of the ORT file and the *Decision*, I have determined that this appeal turns on the following issue:

(a) Did the hearing officer make an error of law or jurisdiction by failing to exercise his discretion to do what is just and equitable in the circumstances?

V. Applicable Law

[19] In this case, Mr. Jacobs sought orders under ss. 57 and 70 of the *Act*. Subsection 57(1) authorizes a landlord to end a tenancy immediately by service of a notice on the tenant if rent is unpaid for a period of 15 days or more after the day it is due. Subsection 57(4) authorizes a landlord to apply for a writ of possession pursuant to s. 70 if a tenant fails to vacate residential property after being served with a notice under ss. 70(1).

[20] Section 70 governs applications for orders respecting residential tenancy disputes. Subsection 70(6) specifies the orders that a hearing officer may make after holding a hearing:

> (6) After holding a hearing pursuant to this section, a hearing officer may make any order the hearing officer considers just and equitable in the circumstances, including all or any of the following:
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> (a) an order directing any person found contravening or failing to comply with a tenancy agreement, this Act, the regulations or an order made pursuant to this Act to stop that contravention or failure and to so comply;
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> (b) an order requiring a tenant to pay to the director all or any part of any instalment of rent otherwise payable to the landlord;
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> (c) an order requiring the payment of damages, including the payment of any arrears of rent payable to the landlord;
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> (d) subject to section 68, an order granting possession of a rental unit;
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> (e) an order determining the disposition of a security deposit and any accrued interest pursuant to section 33;
>
> (f) an order determining the validity of a notice of rent increase pursuant to sections 53.1 or 54. to the director.

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[Emphasis added]

[21] The authority to make any order that a hearing officer considers just and equitable gives the hearing officer considerable leeway to do what is "just, fair and right" in the circumstances: *Williams v Elite Property Management Ltd.*, 2012 SKQB 215 at para 28.

[22] In *Bell v Mainstreet Equity*, 2024 SKKB 68 at paras 28-41 [*Bell*], Elson J. explained at length the factors informing a hearing officer's obligation to consider whether an order is just and equitable in the circumstances. This is a discretion that must be exercised judicially and in keeping with the rule of law: *Bell* at para 29. The hearing officer is required to do more than passively acknowledge that the discretion exists: *Bell* at para 40. Exercise of this discretion calls for inquiring into the circumstances of the tenancy and, in light of the facts, deciding what would be a just and equitable result. In *Bell* at para 4, Elson J. set out a non-exhaustive list of matters that the hearing officer might be expected to ask about:

> [41] Without prescribing an exhaustive or all-inclusive list, the hearing officer might reasonably be expected to inquire about such matters as:
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> a. the length of the tenancy;
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> b. the history of previous rent arrears;
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> c. the circumstances causing the arrears of rent;
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> d. the source of the tenant's income;
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> e. possible impediments to the receipt of income from the source;
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> f. the possibility that rent could be paid from the source directly to the landlord;
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> g. the circumstances of any family members living with the tenant;

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> h. whether the arrears continue to the date of the hearing; and
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> i. whether a practice had developed between the parties for the payment of past arrears.

In *Bell*, Elson J. could not determine whether the hearing officer had made any of these inquiries. The hearing officer had not explained why he did not take into account the fact that the arrears had been paid by the date of the hearing. The appeal was allowed.

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VI. Analysis

[23] In the *Decision* at paras 5 and 6, the hearing officer briefly reviewed Mr. Sinclair's obligation to pay rent under the rental agreement and Mr. Jacobs' evidence that the rent was in arrears. He concluded Mr. Jacobs had established, on a balance of probabilities, a basis for an order pursuant to s. 57 of the *Act* – i.e., the non-payment of rent.

[24] The hearing officer then turned to his duty to consider whether it was just and equitable to make an order for possession. In this part of the *Decision*, he included the following four paragraphs:

> [7] Subsection 70(6) of the Act requires me to consider whether it is just and equitable to issue an order for possession. Recent decisions issued by the Court of King's Bench for Saskatchewan, and in particular *Bell v. Mainstreet Equity Corp. and The Office of Residential Tenancies*, 2024 SKKB 68 (CanLII), have provided a framework for factors I should take into consideration, and I follow that guidance.
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> …
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> [11] Justice and equity do not demand that the Landlord carry the Tenant through difficult financial times or provide free accommodation for those who have contracted to pay for accommodation and then do not abide by the contract. Justice

> and equity do not demand that the Landlord endure repeated breaches of the Act, the regulations or the rental agreement.
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> [12] At paragraph 58 of *Heuck v Janz*, 2024 SKKB 76 (CanLII), Robertson J. writes:
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> > [58] I pause to note that the "just and equitable" criteria as a residual criterion ensures that the law is applied to achieve justice and not injustice. The purpose of law in our constitutional democracy is to promote justice. That is its proper purpose. Laws, like any tool, can be employed for improper purpose. When that occurs, the result may be lawful, but unjust. To avoid that perverse result, the Act gives hearing officers a residual discretion to decline to make an order if it would not be just and equitable.
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> [13] With consideration to the factors discussed above and with regard to section 42 of the Act, I am satisfied that an order for possession in this case accords with justice and equity in that it is not a perverse result but is lawful and just. Given this, I will also allow the Landlord's claim for the $50.00 fee paid to bring this application.

[25] These are standardized paragraphs, reproduced word-for-word in hundreds of ORT decisions. There is nothing inherently objectionable about this. Use of tools such as template paragraphs can encourage consistency in decisions, provided doing so does not fetter decision-making: *Vavilov* at para 130. Using boilerplate wording to express principles that often arise in ORT hearings is appropriate, as long as the hearing officer performs his duty to apply those principles to the proven facts and the parties' submissions. I will undertake a closer examination to determine if the hearing officer meaningfully applied the guidance from the Court decisions he cited.

[26] After referring at para. 7 of the *Decision* to the requirement that he consider what is just and equitable, the hearing officer reviewed the submissions of the parties and the facts in this case at paras. 8 – 10. These paragraphs read:

> [8] The Landlord provided oral evidence that the Tenant made only a partial payment for December and had $240.00

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> remaining in arrears for that month. The Landlord added that, as of the hearing date, the Tenant had not paid January rent and was now $1,840.00 in arrears. The Landlord stated that the Tenant's failure to pay rent has resulted in the Landlord paying for two units, causing financial hardship, and that the Landlord now seeks possession of the rental unit. The Tenant, who was present at the hearing, acknowledged the arrears and stated that although the payment was late, they placed a cheque in the unit mailbox and asked the Landlord to pick it up. The Tenant stated that the Landlord had attended the unit multiple times and could have retrieved the cheque. The Tenant also stated that they currently have the funds to cover the arrears. The Landlord stated that they no longer wish to continue the tenancy.
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> [9] Based on the evidence before me, I find on a balance of probabilities that the Tenant is in rent arrears. During the hearing, I asked the parties how rent is normally paid, and both agreed that rent is typically paid by e-transfer. I then asked the Tenant why, in this instance, they chose to pay by cheque instead. The Tenant responded, "Why can't I pay via cheque," but did not provide any substantive reason for changing the payment method. At the time the cheque was placed in the mailbox, the rent was already late. If the Landlord requested that rent be paid by e-transfer, I do not find that request unreasonable. I was looking for an explanation as to why payment by cheque was necessary for example, if a third party had issued a cheque directly to the Landlord, but no such explanation was provided. On the evidence before me, it appears that placing a cheque in the mailbox was not done out of necessity but instead created further delay rather than remedying the arrears.
>
> [10] The Tenant remains $1,840.00 in arrears, and I do not find that it would be just or equitable to require the Landlord to continue the tenancy given the current arrears and the Tenant's lack of urgency in addressing them. For these reasons, I grant the Landlord a writ of possession for the rental unit and award the Landlord the monetary amount of $1 ,840.00.

[27] In these three paragraphs, the hearing officer repeated several times his finding that the tenant was in arrears of his duty to pay rent. The fact that rent payable under a rental agreement is more than 15 days overdue does not mean that an order for possession must inevitably issue: *Hart v Hunchak*, 2015 SKQB 117 at para 14.

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[28] The hearing officer reviewed the parties' evidence and submissions briefly:

(a) Mr. Jacobs stated that he was having to pay for two units, causing financial hardship.

(b) Mr. Sinclair acknowledged his arrears but had placed a cheque in the unit mailbox and asked Mr. Jacobs to pick it up. According to Mr. Sinclair, Mr. Jacobs had attended the unit multiple times and could have picked up the cheque. Mr. Sinclair also said he had the funds to pay the arrears.

(c) In reply, Mr. Jacobs said he did not wish to continue the tenancy.

[29] Two facts appear to have been undisputed: Mr. Sinclair had attempted to pay the December rent arrears in full during that month by placing a cheque in the mailbox of the unit for Mr. Jacobs to pick up and Mr. Jacobs came to the unit regularly.

[30] The hearing officer reviewed the parties' evidence concerning how rent was normally paid. He said both admitted the rent was typically paid by e-transfer. The hearing officer said he did not find the landlord's request that the rent be paid by e-transfer unreasonable. He also found that the tenant paying by cheque left in the unit's mailbox was not done out of necessity and created further delay. The hearing officer held that it would not be just or equitable to require the landlord to continue the tenancy given the current arrears and the tenant's lack of urgency in addressing them.

[31] The undisputed evidence before the hearing officer was that the rent for October and November had been paid by cheque. Mr. Sinclair made one payment in December *via* an ATM and a second by e-transfer. The rental agreement allowed for payment by either cheque or e-transfer. The hearing officer disregarded this relevant evidence. While it may have been reasonable for Mr. Jacobs to wish to be paid by e-

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transfer, the hearing officer did not address whether Mr. Jacobs was entitled to insist upon this payment method, given the terms of the rental agreement. The hearing officer did not turn his mind to whether it would be just, fair and right for Mr. Sinclair to be evicted when he had tried to pay the rent arrears by a means permitted in the rent agreement.

[32] The hearing officer's conclusion that the tenant's attempt to pay by cheque created delay and showed a lack of urgency was not grounded in any evidence. Mr. Sinclair had paid the October and November rent by cheque. Further, Mr. Sinclair's evidence, which was not contradicted, was that Mr. Jacobs had attended the unit many times and could have picked up the cheque for the balance of the December rent from the mailbox. Mr. Sinclair also testified that he could pay all the arrears.

[33] Mr. Sinclair failed to pay the December rent in full on time, but by the date of the ORT hearing, the arrears could have been cleared up if Mr. Jacobs had not insisted on payment by e-transfer rather than by cheque. The hearing officer's superficial review of the circumstances disregarded this entirely.

[34] Overall, the hearing officer was fixated on the fact that Mr. Sinclair had fallen into arrears. He cited the *Bell* decision in one of the template paragraphs inserted in his *Decision* but he failed to consider the provisions of ss. 70(6) or to conduct the sort of inquiry discussed in *Bell.*

[35] In my view, the hearing officer erred in law by failing to exercise judicially his discretion under ss. 70(6) to consider what was just and equitable in the circumstances.

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VII. Conclusion

[36] The tenant's appeal is allowed. The *Decision* of the hearing officer dated February 5, 2026, is set aside along with the Writ of Possession. The matter is remitted back to the Office of Residential Tenancies for a new hearing before a different hearing officer.

__________________________________ J.
P.T. BERGBUSCH

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