KING'S BENCH FOR SASKATCHEWAN

2024 SKKB 76

Date: **2024 05 02**
File No.: KBG-RG-00633-2024
Judicial Centre: Regina

BETWEEN:

ERWIN HEUCK

APPELLANT

- and -

COTY JANZ and EMILY HAASTRUP

RESPONDENTS

Appearing:

Erwin Heuck	self-represented appellant
Coty Janz	self-represented respondent

DECISION ON APPEAL
May 02, 2024

ROBERTSON J.

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INTRODUCTION

[1] This decision addresses an appeal under *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001 [*Act*] against a decision of a hearing officer. The appellant, Erwin Heuck, [Landlord] appeals against the February 29, 2024 decision of hearing officer Tyler J. Young, 2024 SKORT 530, dismissing the Landlord's application for possession of the rental property.

[2] The appeal is primarily dismissed for failure to state grounds of appeal which raise questions of law or jurisdiction. Despite this omission, this decision will consider complaints with the decision under appeal raised by the Landlord at the hearing of the appeal and will also review the reasons for decision.

[3] I conclude that the complaints raised at the hearing of this appeal do not demonstrate error. From my review of the decision, I also conclude that while the Hearing Officer did not apply the test in a straight-forward manner, his decision to dismiss the application was justified both because the Landlord had not satisfied the burden of proof and having regard to the proper application of the statutory test to grant the application. The Hearing Officer was satisfied that while the Landlord intended to move his family into the rental unit, if granted an order for possession. However, the Landlord's stated intent was not in good faith because his real motive or intent was to remove an undesirable tenant.

[4] The evidence supported the Tenants', Coty Janz and Emily Haastrup's, claim that they were being targeted by the Landlord, having regard to:

1. The unsuitability of the one-bedroom rental unit for three adults;
2. The availability of other rental units to the Landlord, who owned other properties, and lack of evidence to show why this particular rental unit was preferred;
3. The repeated prior attempts to evict these Tenants; and
4. The existence of motive in the animosity between Mr. Heuck and Mr. Janz.

[5] The Hearing Officer properly found it would not be just and equitable to grant an order for possession in these circumstances. The Hearing Officer was entitled to come to that conclusion on the facts he found.

[6] The appeal is therefore dismissed. My full reasons follow.

BACKGROUND

[7] The Landlord is owner of an apartment building located at 3323 Garnet Street, Regina, Saskatchewan. Suite 4 of that apartment [Apartment] is occupied by the Tenants. Since 2022, the Landlord has been trying to evict the Tenants from the Apartment.

[8] The history of litigation between the parties is summarized below:

2022

April 5	Hearing Officer Young grants Landlord's application under s. 58 of the *Act* for possession of Apartment: *Heuck v Janz & Anor*, 2022 SKORT 949 [*Young 2022 Decision*]
July 21	Dawson J. grants Tenant's appeal, ordering re-hearing: *Janz and Haastrup v Heuck*, (21 July 2022) Regina, QBG-RG-01087-2022 (Sask QB) [*Dawson Appeal Decision*]
September 9	Hearing Officer Deacon dismisses Landlord's application under ss. 60(7)(b) of the *Act* for possession of Apartment: *Heuck v Janz*, 2022 SKORT 2420 [*Deacon Decision*]
December 13	Hearing Officer Petrescue dismisses Landlord's application under ss. 60(5) of the *Act* for possession of Apartment: ORT file #22491 (unreported) [*Petrescue Decision*]

2023

January 19	Hearing Officer King grants Landlord's application under ss. 60(5) of the *Act* for possession of Apartment: *333 Properties Inc. v Janz & Anor*, 2023 SKORT 127 [*King Decision*]
March 7	Kilback J. grant's Tenant's appeal, ordering re-hearing: *Janz v 333 Properties Inc*., (7 March 2022) Regina, KBG-RG-00436-2023 (Sask KB) [*Kilback Appeal Decision*]
December 29	Hearing Officer Scott hears Landlord's application under ss. 60(5) of the *Act*, however, Landlord withdraws application

December 29 Landlord issues "Notice to Vacate so Owner can Occupy" under ss. 60(4) and (5) of the *Act* stating the following reason:

> This is two month's notice to terminate your tenancy of the above property as of February 29, 2024 OR the last day of the second month after delivery of this notice, whichever is later. You must vacate on or before that time. The reason for giving this notice is as follows.
>
> A landlord that is a family corporation may end a periodic tenancy respecting a rental unit if an individual owning voting shares in the corporation or a close family member or friend of that individual intends in good faith to occupy the rental unit.

2024

February 29 Hearing Officer Young dismisses Landlord's application under ss. 60(5) of the *Act* for possession of Rental Premises: *333 Properties Inc. v Haastrup*, 2024 SKORT 530 [*Young 2024 Decision*]

March 26 Hearing Officer Young issues Clarification under s. 76 of the *Act*, 2024 SKORT 797

April 16 Hearing Officer Coupal dismisses Landlord's application under ss. 58(1)(d) and(e) of the *Act* for possession of Rental Premises*: 333 Properties Inc. v Janz*, 2024 SKORT 960

April 25 Robertson J. hears Landlord's appeal against *Young 2024 Decision*, with decision reserved

ISSUES

Grounds of Appeal

[9] The grounds of appeal stated in the Notice of Appeal are reproduced below:

> The appeal is brought to have determined the following question of law:
>
> > Tyler Young committed palpable and overriding errors in fact that take on the quality of an error in law
>
> AND/OR the following question of jurisdiction of the Office of Residential Tenancies:
>
> > Same as above

[10] The appeal raises the following questions:

1. Does the notice of appeal disclose a proper ground of appeal?

2. If so, should the appeal be allowed or dismissed?

JURISDICTION AND STANDARD OF REVIEW ON APPEAL

Appeal on question of law or jurisdiction only

[11] Section 72 of the *Act* provides a right of appeal from a decision of a hearing officer to this Court on a question of law or jurisdiction only.

> **Appeals**
>
> **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.

[12] The Court of Appeal, in *Reich v Lohse*, (1994) 123 Sask R 114 (CA), described the jurisdiction of the courts in hearing appeals from decisions of the Rentalsman (now the Office of Residential Tenancies):

> [18] Our jurisdiction and that of the Queen's Bench on an appeal from the rentalsman is simply a supervisory one with respect to the interpretation of the law land the rentalsman's jurisdiction. It is not our task to pass judgment on the behaviour of either tenants or

> landlords as it relates to the exercise of their right. That is the function of the rentalsman.
>
> …
>
> [20] … Where the application is made to the rentalsman, the appellate jurisdiction of the Queen's Bench is restricted to finding error of law or jurisdiction. The jurisdiction previously given to the Rent Appeal Commission has not been given to the Queen's Bench. There is no longer a full re-hearing on an appeal from the rentalsman's decisions. On this basis some deference must be shown to those aspects of the rentalsman's decisions which reflect an exercise of discretion.

Standard of review on appeal

[13] Elson, J., in *Landsdowne Equity Ventures Ltd. v Cove Communities Inc.*, 2020 SKQB 113, considered the standard of review on appeals, in light of the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653, concluding his analysis at paras. 30 and 31:

> [30] Such is the case in the present appeal. In s. 72(1) of the *RTA* [*Residential Tenancies Act, 2006*], the Legislature has expressly limited the scope of an appeal to "questions of law or jurisdiction". As such, questions of fact or questions of mixed fact and law are beyond this Court's jurisdiction to review. In this respect, it is not simply a question of greater deference than that applied to a question of law. Even if a hearing officer makes a palpable and overriding error in a finding of fact, this Court cannot intervene unless the error of fact takes on the quality of an error of law. As observed by Cameron J.A., in *P.S.S. Professional Salon Services Inc. v Saskatchewan (Human Rights Commission)*, 2007 SKCA 149, 302 Sask R 161 [*P.S.S.*], a finding of fact will constitute an error of law where it is made on the basis of: 1) no evidence; 2) irrelevant evidence; 3) disregarded relevant evidence; 4) mischaracterized relevant evidence; or 5) an unfounded/irrational inference.
>
> [31] This analysis necessarily presumes a distinction, at least in theory, between an error of fact that discloses a palpable and overriding error, and an error of fact that actually constitutes an error of law as identified by Cameron J.A. in *P.S.S.* How a court describes that distinction in a practical way is an issue that, thankfully, does not arise on this appeal.

THE *ACT*

[14] The purpose of the *Act* is to strike a balance between the interests of landlords and tenants in residential tenancies. This purpose was recognized by the then Minister of Justice, Frank Quennell, Q.C., in his second reading speech for Bill No. 56, being *The Residential Tenancies Act, 2006*:

> Residential tenancy legislation in Saskatchewan has always sought to maintain the necessary balance between a tenant's need for secure and affordable accommodations and a landlord's reasonable and legitimate expectation of profit from their rental properties. This Bill, Mr. Speaker, will not only maintain that balance but it will enhance the position of both tenants and landlords by lending clarity and predictability to the legal relationships with each other.
>
> (Saskatchewan, Legislative Assembly, *Debates and Proceedings* (*Hansard*), 25th Leg, 2nd Sess (19 April 2006) at 1225)

[15] Minister Quennell went on to review the provisions of Bill 56 pertaining to eviction of tenants and the right of a tenant to challenge their proposed eviction:

> Part V of the Act outlines the circumstances under which the tenancies can be ended. Although the Rentalsman has generally relied on precedents established in court decisions that have . . . [inaudible] . . . in some restrictions on a landlord's ability to evict, the current Act does not require that the landlord demonstrate a valid reason for terminating a tenancy. As a result certain landlords have sought to terminate tenancies for inequitable reasons or for reasons extraneous to the tenancy agreement. The new legislation follows the lead of legislation in British Columbia and Alberta by requiring that landlords provide reasons for termination of the tenancy that are based upon the provisions outlined in the Act.
>
> Under the new legislation, tenancies can be terminated by appropriate notice being given by the tenant or by a landlord's notice for non-payment of the rent. A landlord can also provide notice of termination of the tenancy for cause where a tenant has not fulfilled the obligations under the tenancy agreement or engaged in misconduct or neglect of the property. Although the reasons outlined in the new legislation in this regard do not differ widely from the statutory conditions in the existing Act and the common law precedents currently used by the Rentalsman in making determinations, these provisions nevertheless provide a concise and easily understood guide.

> One new provision in this regard applies to landlords who have tenants in their principal residence, typically a rental suite in their basement. The Bill provides that a tenant who smokes in contravention of a written notice from their landlord cannot be evicted without further notice. Specific provisions deal with the termination of tenancies for tenants employed by their landlord, as well as new provision detailing circumstances under which a landlord is entitled to terminate a tenancy due to the plans the landlord has for the use of the property.
>
> [15:00]
>
> Although these provisions again outline circumstances generally accepted as valid reasons for termination of a tenancy, the new legislation once again provides clarity and predictability to an area that has given rise to many disputes. The specific reasons for termination under this section include the sale or demolition of the property; conversion to condominiums, a housing co-operative, or non-residential use; renovations requiring vacancy of the rental unit; or rental of the unit to a close family member or friend.
>
> Mr. Speaker, the new termination provisions will lend more certainty and predictability for both tenants and landlords regarding the termination of tenancies. Currently there is some question as to whether the Act requires landlords to provide a warning to tenants in breach of certain statutory duties e.g., to refrain from creating a nuisance or disturbance to others in adjacent residential premises. Landlords have expressed difficulty with tenants who, having received a warning, create further nuisance and disturbance prior to vacating the premises.
>
> (Saskatchewan, Legislative Assembly, *Debates and Proceedings* (*Hansard*), 25th Leg, 2nd Sess (19 April 2006) at 1226-1227)

[16] In closing, Minister Quennell repeated the intent to strike a balance between the needs of both landlords and tenants:

> Mr. Speaker, the enactment of a new residential tenancies Act will modernize the law relating to residential tenancies in Saskatchewan. This Bill offers landlords as well as tenants more clarity in understanding their respective rights and obligations, and both tenants and landlords will be afforded more certainty and predictability in making decisions regarding tenancies.
>
> This legislation will strike the important balance between the needs of tenants for safe, secure, and affordable living accommodations with a legitimate need for landlords to obtain reasonable profits from their rental properties. In so doing, this legislation will help maintain a viable and profitable residential housing industry in Saskatchewan

> that will benefit landlords and tenants alike. Mr. Speaker, I am pleased to move second reading of The Residential Tenancies Act, 2006.
>
> (Saskatchewan, Legislative Assembly, *Debates and Proceedings* (*Hansard*), 25th Leg, 2nd Sess (19 April 2006) at 1227)

[17] The *Act* requires a landlord who wishes to gain possession of an occupied rental unit to obtain an order of possession. The *Act* also provides various reasons which may justify an order for possession, including eviction for cause under s. 58, such as significant bad behaviour of a tenant or eviction without cause under s. 60, such as requiring the rental unit for renovation or for occupancy by the landlord's own family. The following provisions were at play in the applications heard with respect to the Apartment:

> **Landlord's notice: cause**
>
> **58**(1) Subject to subsection (2), a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> …
>
> (d) the tenant or a person permitted on the residential property by the tenant has:
>
> (i) significantly interfered with or unreasonably disturbed another tenant or another occupant of the residential property, the landlord or any persons in any adjacent property;
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of another tenant or another occupant of the residential property, the landlord or any persons in any adjacent property; or
>
> (iii) put the landlord's property at significant risk;
>
> (e) the tenant or a person permitted on the residential property by the tenant has engaged in a noxious, offensive or illegal activity that:
>
> (i) has caused or is likely to cause damage to the landlord's property;

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another tenant or another occupant of the residential property, the landlord or any persons in any adjacent property; or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another tenant or another occupant of the residential property, the landlord or any persons in any adjacent property;

…

Landlord's notice: landlord's use of property

60 …

(4) A landlord who is an individual may end a periodic tenancy respecting a rental unit if the landlord or a close family member or friend of the landlord intends in good faith to occupy the rental unit.

(5) A landlord that is a family corporation may end a periodic tenancy respecting a rental unit if an individual owning voting shares in the corporation, or a close family member or friend of that individual, intends in good faith to occupy the rental unit.

…

(9) A tenant may dispute a notice pursuant to this section by giving written notice of that fact to the landlord within 15 days after the date the tenant receives the notice.

…

Tenant's compensation: section 60 notice

62 A tenant may apply for an order pursuant to section 70 for compensation from the landlord, or the purchaser, as applicable pursuant to section 60, for compensation for the tenant's losses resulting from both of the following circumstances:

(a) the landlord has given the tenant notice to end a tenancy pursuant to section 60; and

(b) either:

(i) steps have not been taken to accomplish the purpose for ending the tenancy stated in the notice pursuant to section 60 within a reasonable period after the effective date of the notice; or

(ii) the rental unit is not used for the purpose stated in the notice for at least six months beginning within a reasonable period after the effective date of the notice.

…

When landlord may regain possession of rental unit

65 No landlord shall regain possession of a rental unit unless:

(a) the tenant has vacated or abandoned the rental unit; or

(b) the landlord obtains an order for possession, and a writ of possession has been directed to a sheriff, pursuant to subsection 70(13).

…

When landlord may apply for order to end tenancy and to gain possession

67(1) If a tenant gives notice pursuant to subsection 58(5), 59(5) or 60(9), the landlord may apply for an order pursuant to section 70 ending the tenancy.

(2) The onus is on the landlord in an application made for the purposes of subsection (1) to demonstrate that the landlord is entitled to end the tenancy.

(3) A landlord may apply for an order of possession of a rental unit in any of the following circumstances:

(a) a notice to end the tenancy has been given by the tenant;

(b) a notice to end the tenancy has been given by the landlord;

(c) the tenancy agreement is a fixed term tenancy agreement;

(d) the landlord and tenant have agreed in writing that the tenancy is ended;

(e) any other circumstances exist in which a hearing officer considers it just and equitable to end the tenancy and give the landlord an order of possession of the rental unit.

(4) On an application made pursuant to subsection (3), a hearing officer may grant an order of possession before, on or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

…

Application to director

70(1) An application for an order respecting any residential tenancy dispute between a landlord and a tenant must be made in the form and manner that the director may direct.

…

(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:

…

(d) subject to section 68, an order granting possession of a rental unit;

…

Rules of evidence do not apply

75 A hearing officer may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the hearing officer considers to be:

(a) credible and trustworthy; and

(b) relevant to the dispute.

ANALYSIS

No proper question of law or jurisdiction

[18] The grounds of appeal as stated do not raise a question of law or jurisdiction. The appeal can be dismissed on this basis. See: *Pri Management v Parent*, 2018 SKQB 269 (McMurtry J.).

[19] In case I am wrong and recognizing that the Landlord is self-represented, I will first review what I understand to be the Landlord's complaints with the *Young 2024 Decision* and then review the decision.

Landlord's complaints with 2024 Young Decision

[20] I asked the Landlord to explain in what way the *Young 2024 Decision* might show an error of law or jurisdiction. I understand his complaints with the decision under appeal to be that the Hearing Officer:

i. Erred in jurisdiction by considering evidence from the prior decisions;

ii. Erred in law by misapprehending the evidence. The Hearing Officer misinterpreted the Landlord's statement that "I would make it work" as showing an intent to remove the Tenant by any means. This error was compounded by imputing a bad faith motive to the Landlord in his application to evict the Tenant; and

iii. Erred in jurisdiction by a lack of impartiality in deciding the application. The Landlord was influenced by the prior decisions and selective in his statement of evidence to support his decision to dismiss the application.

[21] I will therefore address those complaints as the crux of the appeal.

Error in considering prior decisions

[22] Both parties referred to the history of applications to the Office of Residential Tenancies [ORT] in their arguments at the hearing of the application and on this appeal. The full history is set out below:

Date	Decision	Section of Act	Reason given by Landlord in application for possession
April 5, 2022	*Young 2022 Decision*	s. 58	Eviction for cause for noise disturbance complaints
September 9, 2022	*Deacon Decision* (re-hearing)	s. 58	Eviction for cause for noise disturbance complaints
December 13, 2022	*Petrescue Decision*	ss. 60(7)(b)	For renovation work, requiring vacant Apartment
January 19, 2023	*King Decision*	ss. 60(5)	For occupancy by Landlord's mother
December 29, 2023	Scott hearing (re-hearing)	ss. 60(5)	Application withdrawn at hearing, after hearing officer declined to allow change in family members from mother to Landlord, wife and son
February 29, 2024	*Young 2024 Decision*	ss. 60(5)	For occupancy by Landlord, wife, and adult son
April 16, 2024	Coupal Decision	ss. 58(1)(d), (e), (n) & (p)	Eviction for cause for Tenant's alleged bad behaviour

*While I include the Coupal Decision for completeness, it was obviously not considered.

[23] There is no error in law or jurisdiction in considering the history of the case and record of prior decisions, provided the application is decided on the evidence presented at the hearing. I find that to be the case.

[24] In this case, the record of prior applications was relevant to whether the reason for eviction put forward by the Landlord on his application for possession was genuine (ss. 60(5) of the *Act*: "intends in good faith to occupy the rental premises"). The Tenants claimed they were being targeted for eviction because of the Landlord's animosity towards them. The application for possession was a disguised attempt to evict them, rather than to meet the needs of the Landlord and his family to occupy the Apartment.

[25] The Hearing Officer found that to be the case, in the *Young 2024 Decision,* stating at paragraph 34 "That is operating principle here in play: the Landlord wants to get rid of these Tenants and will 'make it work'"; and at paragraph 35 "Regardless of the Landlord's preparedness to occupy the property, there is still an abuse of process in using that application to 'make it work' in order to remove an undesirable tenant".

[26] It is not apparent to me that the Hearing Officer made any error in these findings. They were supported by evidence and argument presented at the hearing.

[27] First, the Hearing Officer made little comment in the *Young 2024 Decision* on the changing reasons for successive applications for possession. He referred in paragraph 13 only to the two decisions which had been remitted for re-hearing. In doing so, he referred to the reason given in the last application to provide a residence for the Landlord's 95-year-old mother. In paragraph 28, the Hearing Officer refers to "the series of applications, with their varying bases for possession", but then distinguishes between the Landlord's "intent" and "knowledge". Whatever that means, the Hearing Officer went on at paragraph 30 to accept that the Landlord intended to occupy the Apartment. So, nothing seems to turn on the changing reasons given in the Landlord's successive applications for possession.

[28] Second, the Landlord had the onus of proof. The Hearing Officer expressed doubt in paragraph 15 about the Landlord's intent to move into a one-bedroom apartment with his wife and their adult son.

> [15] In short, the Landlord submitted that he and his wife intended to move-into this suite. Additionally, his son, who will be attending post-secondary schooling, will also be residing in the property. The suite is a one-bedroom unit**.** I found this proposed situation implausible and asked the Landlord for elaboration: the Landlord insisted that this property was the best suited for his family needs on both a location and a financial basis and that his family intended to make this work.
>
> [Emphasis added]

[29] Appeal courts generally defer to the trier of fact on credibility findings because the trier of fact had the opportunity to hear the evidence first-hand and is in the best position to determine credibility and reliability of witness evidence. I defer to the Hearing Officer in this regard.

Misapprehension of the evidence

[30] The Landlord argued that the Hearing Officer misapprehended some of the evidence, in particular the Landlord's statement that he will "make it work". The Landlord said he meant he would make living in the Apartment work, in reply to the Hearing Officer's question about the implausibility of three adults living in a one-bedroom suite. The Landlord believed the Hearing Officer took these words as making the application work to remove an undesirable tenant.

[31] Even if the Hearing Officer misinterpreted the Landlord's statement, which is entirely speculative, the key point is that the Hearing Officer did not believe the Landlord in respect of the true reason for seeking to evict the Tenants. He believed the Tenants' claim that the real reason was to remove them, not to obtain living quarters for the Landlord's family.

[32] It was open to the Hearing Officer to decide between conflicting evidence and prefer that of the Tenant, keeping in mind that the burden of proof was on the Landlord, as applicant. I also note in this regard the Hearing Officer's contrasting comment on the materials filed by the parties. The Hearing Officer comments at paragraph 16 on the "good organization of his [Tenants] written submission". The Hearing Officer states at paragraph 33 "The Landlord provided no comment in his written submission or initial oral submission as to why he needed this specific unit, so I had to ask the question" (During the hearing of this appeal, the Landlord conceded that the Tenants did a better job of presenting at the ORT hearing).

[33] While I am not satisfied the Hearing Officer erred in the manner alleged by the Landlord, even if he did, it would not affect the result.

Impartiality

[34] A failure to conduct the hearing in an impartial manner is a valid ground for appeal. See: *Knapp v ICR Commercial Real Estate*, 2019 SKQB 59, 58 Admin LR (6th) 205.

[35] The Landlord suggested the Hearing Officer showed a lack of impartiality by his selective statement of evidence and in being influenced by the history of prior decisions. I have already addressed the latter point.

[36] The Hearing Officer's statement of evidence is explained in paragraph 16 in referring to the Tenants' "good organization of his written submission" which the Hearing Officer then used "to present the Tenant's arguments". There was nothing wrong with doing that.

[37] The presumption of judicial impartiality applies to both judges and quasi-judicial tribunals. There is no evidence to displace that presumption in this case. On the contrary, the Hearing Officer went out of his way to assist the Landlord to present his case.

[38] The Landlord, at the hearing of this appeal, said the ORT hearing was scheduled for half an hour, but lasted two and a half hours. This was presumably because the Hearing Officer went out of his way to elicit evidence and arguments. Rather than dismiss the appeal as deficient, as he might have done, the Hearing Officer asked the Landlord questions to try to bring out the reasons for and evidence in support of the application.

Conclusion on Landlord's complaints

[39] The Landlord's complaints with the hearing process and *Young 2024 Decision* are rejected as being not well-founded.

Review of *Young 2024 Decision*

[40] While the appeal is dismissed, I recognize that the decision under appeal is not without fault. In making the following comments, I do not intend gratuitous criticism. Rather, I wish to show that I did a critical review of the reasons for decision to satisfy myself whether there were errors in reasoning amounting to an error of law or jurisdiction and, if so, whether they resulted in an erroneous decision. While the reasons are open to some criticism, the decision still withstands appellate review because the ultimate decision to dismiss the Landlord's application was justified.

[41] The *Young 2024 Decision* was the re-hearing of the application granted in the *King Decision*, which was reversed on appeal by the *Kilback Appeal Decision*. The *Kilback Appeal Decision* at para. 23 provided clear direction on the legal test to be applied and a path to decision:

> [23] Under s. 67(2) of the *Act*, the onus was on the Landlord to demonstrate that it was entitled to end the tenancy. In these circumstances, the hearing officer was required to consider whether the elements in s. 60(5) – including whether Mr. Hueck's [*sic*] mother intends in good faith to occupy the rental unit – were established by the Landlord on the whole of the evidence before him. Instead, the hearing officer applied the wrong legal test by considering whether the Landlord's previous applications were brought in bad faith.

[42] That path to decision was not followed, at least not directly.

[43] While I conclude that the application was properly dismissed, the *Young 2024 Decision* does go off on tangents and addresses irrelevancies which makes the reasoning difficult to follow.

[44] The *Young 2024 Decision* is organized as follows:

Paragraphs	Content
1 - 2	Nature of application and onus
3 - 5	Hearing details
6 - 7	Participants and manner of hearing
8	Service of documents
9 - 10	Relevant provisions of the *Act*
11	Relevant court decisions
12	Rental unit at issue
13	Previous ORT decisions
14 - 15	Landlord submissions
16 - 27	Tenant submissions
28	“the real issue here”
29-30	Landlord’s intention to occupy Apartment
31 – 35	Whether an order for possession is just and equitable
36 - 41	Eviction for cause under ss. 58(1)(d) and (e)
42	Inconvenience to Landlord from his own decisions
43	Order

[45] In terms of form, the *Young 2024 Decision* reproduces portions of the Tenant's submissions as screen shots within the decision. These screenshots are illegible unless viewed through a magnifying glass. Decisions issued by a court or administrative tribunal should be readable.

[46] On a substantive note, the *Young 2024 Decision* goes off-track at paragraph 10 when the Hearing Officer refers to ss. 70(11) as providing the Tenant with a defence against the application for eviction:

> [10] Section 70(11) allows the Tenant a defense against the application for eviction in the event the Tenant can show the Landlord is acting in bad faith with respect to certain defined instances …

[47] There are a few problems with this statement. First, it seems to shift the onus of proof from the applicant Landlord to the respondent Tenants. Second, ss. 70(11) does not mention "bad faith". Third, none of the four scenarios for application of ss. 70(11) apply to the facts of this case. Clauses 70(11)(a) and (b) apply where the landlord's application was given because of a tenant's complaint to the Director or attempt to secure the tenant's rights under the *Act*. In other words, where the application to evict is retaliatory. Clause 70(11)(c) applies where the landlord has contravened the tenancy agreement or any standard condition. Clause 70(1)(d) applies where there has been non-payment of rent. None of these scenarios (or "instances") applied to this case.

[48] This erroneous reference is significant in that this may be where the Hearing Officer invokes the residual "just and equitable" ground for relief provided in clause 70(11)(d)(ii). The *Young 2024 Decision* at paragraph 31 identifies that as the test for granting an order for possession.

> [31] I must now proceed to consider whether an order for possession is just and equitable in the circumstances.

[49] But that is not the primary test. As Kilback J. clearly stated in the *Kilback Appeal Decision*, the test for granting an order of possession is whether the Landlord,

on the whole of the evidence, has established the necessary elements in ss. 60(5), in particular whether the landlord "intends in good faith" for his family to occupy the rental unit. The residual criteria of "just and equitable" found in ss. 70(6) need only be considered if the ss. 60(5) test is already satisfied. It is the last step in decision-making.

[50] The decision goes off-track again at paragraphs 18, 28, and 36 when the Hearing Officer discusses the *Young 2022 Decision*.

[51] In paragraph 18, the Hearing Officer refers to the successful appeal of the *Young 2022 Decision*, stating that the *Dawson Appeal Decision* did not question the Hearing Officer's findings about "the irreconcilable nature of the parties' tenancy" nor "the authority for a hearing officer to decide to end the tenancy under subsection 70(6) and clause 67(3)(e) in circumstances of an irreconcilable or frustrated tenancy".

[52] At paragraph 28, the Hearing Officer identifies the suggestion that the Landlord could evict the Tenant on these other grounds as "the real issue here":

> [28] ... I do not think the Landlord understands the Act and the legal regime in place with respect to residential tenancies in this province. As I noted above, he was not precluded from pursuing an application based on the Tenant's conduct towards himself by the initial Court of King's Bench decision. That is, frankly, the real issue here and as I determined in the first hearing, there was, at that time, sufficient evidence to allow for that as a basis for possession. Instead, the Landlord has persisted in a series of convoluted and varying applications. This series of applications, with their varying bases for possession, but the fixation on the recovery of this rental property is explicable only by accepting the Landlord's is not acting with intention, but rather without knowledge.
>
> [Emphasis added]

[53] At paragraph 36, the Hearing Officer returns to this irrelevant subject.

> [36] I will return to a comment which I made above: when I first heard these parties two years ago, I made a determination that the parties' relationship was fractured and the tenancy effectively frustrated by this state. Although the Court remitted the decision, the basis for the error was not this finding.

[54] The Hearing Officer then embarks in paragraphs 37-38 on a review of video evidence from 2022, concluding with an acknowledgement that "The video, therefore, has limited relevance to the present situation, other than demonstrating that the conduct has been potentially ongoing for years". The Hearing Officer continues in paragraphs 39-40 to suggest that the Landlord might in future pursue an application under s. 58. He concludes this discussion with an acknowledgement that "The Landlord should only pursue such an application if he has sufficient evidence". The discussion of this irrelevant subject finally concludes at paragraph 41 with a comment on the inter-personal conflict between Landlord and Tenant stating, "It does not justify this misconduct".

[55] It is not apparent what purpose was served by these parts of the *Young 2024 Decision*, beyond identifying the animosity between the Landlord and Tenants.

[56] Turning then to the remaining reasons for decision, the question is whether the Hearing Officer properly dismissed the Landlord's application for possession of the Apartment. As discussed above, to succeed in his application for possession, the Landlord had the onus of proving that:

1. The eviction was allowed by the *Act* (ie. specific statutory authority, in this case ss. 60(5));

2. The Landlord had a "good faith" intent, as required by ss. 60(5), to move his family into the Apartment; and

3. It would be "just and equitable" to make the order, as required by ss. 70(6)(d).

[57] Failure by a hearing officer to consider whether it is "just and equitable" to make an order may be grounds to allow an appeal against an ORT decision. See:

Lavendar v Saskatoon Real Estate Services Inc., 2024 SKKB 16 at para 18; and *Unwin v Bender*, 2020 SKQB 116 at paras 31-34.

[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. While it applied here under ss. 70(6), the "just and equitable" criteria is found in other provisions of the *Act*: ss. 22.1(3); 54(5); 67(1)(e); 70(11)(b)(ii); and 81(11.1)(iii)(A) and (B).

[59] The *Young 2024 Decision* at para 8, found that the Landlord's application was properly served in compliance with the *Act*.

[60] The form of application was deficient in not specifying the reason given for eviction, other than referring to a landlord's right under ss. 60(4) or (5) to end a tenancy if the landlord, "or a close family member or friend, intends in good faith to occupy the rental unit". At the hearing of the application, under questioning by the Hearing Officer, the Landlord said he intended to occupy the Apartment himself, along with his wife and adult son. That reason is recognized as valid in ss. 60(4) and (5) of the *Act*.

[61] Although the Hearing Officer, at para. 15, had found that plan to be "implausible", given the Apartment was a one-bedroom suite, he nonetheless went on at para. 30 to accept that the Landlord did intend to occupy the Apartment: "I am satisfied that the Landlord intends to occupy the property". However, the motive or reason behind that intent remained in question. The Hearing Officer put that issue in

terms of whether the Landlord's needed this rental unit or was using the application to remove the Tenants "potentially in bad faith".

[62] The next step was to decide whether the Landlord was acting in good faith. Here again, the reasoning becomes muddled.

[63] In paragraph 29, the Hearing Officer correctly identified the good faith criteria, writing: "At this point, it is important to consider the wording of 60(5): the provision of good faith is made with regard to the Landlord's *intention to occupy* the property, not in their choice of the property" [Emphasis in original]. But in paragraph 30, the Hearing Officer put the issue in terms of "bad faith", and then in paragraph 31 changes the focus to the question of "whether an order for possession is just and equitable in the circumstances". The Hearing Officer concludes at paragraph 32 that it "would not be just and an order should not be made".

> [30] I am satisfied that the Landlord intends to occupy the property. Whether they *need to* occupy this specific property or are using this application as an option, potentially in bad faith, to remove a tenant which they believe that they cannot otherwise remove, is a question which I will address below. However. For the purposes of subsection 60(5), I am satisfied on the evidence that the basis for possession is proven.
>
> [31] I must now proceed to consider whether an order for possession is just and equitable in the circumstances.
>
> [32] Material to this question is why the Landlord wants to occupy this suite: if this suite is the primary and best option for the Landlord to occupy, notwithstanding it contains Tenants who the Landlord would also like to evict, then an order may still be warranted. However, if the primary purposes is to evict the Tenants, regardless of the fact that the Landlord will occupy the property after the eviction, then, in my view, this would not be just and an order should not be made.
>
> [Emphasis added]

[64] The Hearing Officer states the correct question in the first sentence of paragraph 32 as "why the Landlord wants to occupy this suite". The Hearing Officer's

ultimate conclusion, as I understand it is that the Landlord's primary purpose or intent was to evict these Tenants. While he phrases that intent in paragraph 32 as "this would not be just" and in paragraph 35 as "an abuse of process", it would equally be an application not made in good faith.

[65] While not expressly stated in the precise terms of "good faith", despite the clear direction from the *Kilback Appeal Decision*, I am satisfied that was the basis for the dismissal of the Landlord's application for possession. This is apparent from following paragraphs in the decision:

> [33] The Landlord provided no comment in his written submission or initial oral submission as to why he needed this specific unit, so I had to ask the question. The Landlord's response was that there were "more amenities", it is a "better" suite, and that it made sense for them from a financial basis. They further submitted that they expected their son to live in the property while attending post-secondary education. I inquired as to these responses and returned to my question repeatedly, but the Landlord's response was very limited. I further inquired how they intended to use the property, given it is a one bedroom suite, both as their residence and their son's. They provided a response that they would "make it work".
>
> [34] I think that last statement was telling: "make it work". That is operating principle here in play: the Landlord wants to get rid of these Tenants and will "make it work". The Landlord has several other properties. I have no evidence as to whether this is the only property that has "more amenities" or qualifies as "better", but I have to assume that it cannot be *sui generis* among the Landlord's holdings, nor did the Landlord argue this or provide evidence to support this assertion.
>
> [35] Regardless of the Landlord's preparedness to occupy the property, there is still an abuse of process in using that application to "make it work" in order to remove an undesirable tenant. On this basis, I am not satisfied that an order is just and equitable in the circumstances and the application is dismissed.
>
> [Emphasis added]

[66] In short, the Landlord failed to establish that his application was made in good faith. There was no need to turn to the residual criteria of "just and equitable".

But if that were done, the same decision would result. Either way, the Landlord's application would be – and was – properly dismissed.

CONCLUSION

[67] I find no error of law or jurisdiction on which this Court could interfere on appeal. I must therefore dismiss the appeal.

J.
D.N. ROBERTSON