

# KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 16**

Date: **2024 01 29**  
Docket: KBG-SA-00012-2024  
Judicial Centre: Saskatoon

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IN THE MATTER OF S. 72(1) OF *THE RESIDENTIAL TENANCIES ACT, 2006*

BETWEEN:

JONATHAN LAVENDAR

APPELLANT

- and -

SASKATOON REAL ESTATE SERVICES INC.

RESPONDENT

- and -

DIRECTOR OF THE OFFICE OF RESIDENTIAL TENANCIES

RESPONDENT

**Counsel:**

Jonathan Lavendar  
Tammy Vaadeland  
No one appearing  
Tenancies

the appellant, on his own behalf  
for Saskatoon Real Estate Services Inc.  
for the Office of the Residential

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JUDGMENT ON APPEAL  
January 29, 2024

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DANYLIUK J.

**Introduction**

[1] This is a statutory appeal brought by the tenant under *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001 [RTA]. This appeal engages genuine questions of law.

[2] For the reasons set out below, the appeal must be allowed.

### **Facts**

[3] The RTA hearing was held November 30, 2023 by telephone. Randall King was the hearing officer. The landlord was seeking an order for possession pursuant to ss. 57 and 70(6) of the RTA. Only the landlord's representative participated in that hearing, which was held by teleconference. There is issue taken by the tenant as to whether he received proper notice of the hearing and/or was afforded a proper opportunity to be heard.

[4] It is difficult, almost impossible, to know what occurred at the hearing. The hearing officer's decision (2023 SKORT 3275) [*Decision*] is a scant page and one-half. There is little in the way of facts and evidence. The hearing officer notes he received evidence and submissions from the landlord, but the *Decision* gives next to no indication as to what the evidence and submissions were comprised of. I would repeat what I noted at para. 4 of *Lucier v Saskatoon Real Estate Services Inc.*, 2023 SKKB 259:

[4] ... I fully appreciate these are summary hearings. Hearing officers are not expected to write *War and Peace* on every matter heard. Still, sufficient reasons must be articulated to let the parties know why they won or lost, and to permit meaningful appellate review. See *R v Sheppard*, 2002 SCC 26, [2002] 1 SCR 869.

[5] The hearing officer noted that the tenant had made appropriate prior arrangements to appear via telephone. The *Decision* indicates the tenant could not be

contacted. On this appeal the tenant states he was not called and that he has checked his telephone records and there is no indication that anyone from ORT called him for the purposes of attending the hearing. This is a factual dispute, and on this type of appeal the Court does not resolve factual disputes.

[6] The evidence before the hearing officer apparently satisfied him that the tenant was in arrears for \$825.00 for his November 1, 2023 rent. He found this meant the tenant was 15 days or more in arrears as of the date of the hearing. Also, the tenant paid nothing between the notice re: eviction and the date of the hearing.

[7] The hearing officer determined that an order for possession of the leased premises was appropriate, and granted the landlord that remedy.

[8] Further, at paras. 10 and 11 the hearing officer opined that his order did not preclude the landlord from making a monetary claim against the tenant, and even made a suggestion as to the procedure to follow to pursue same.

[9] Finally, I note that at para. 9 the hearing officer made passing reference to s. 70(6) and made a finding that the order for possession “accords with justice and equity”.

### **Issues**

[10] The tenant’s notice of appeal set out a number of grounds of appeal. Most were incomprehensible, and his amplification at the hearing did not assist. I will deal with those grounds below. However, my own reading of all the material filed on this matter suggests that this case boils down to one ground of appeal:

whether the Hearing Officer erred in law by failing to provide adequate reasons to the parties for his *Decision*.

## Analysis

[11] The tenant's actual grounds in the notice of appeal were difficult to follow. While he repeatedly referred to "the Charter" in his notice of appeal, it became apparent that he was not referring to the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11. His references to certain section numbers did not correspond to the *Charter*. In oral argument he noted he was referring to something he called the "Canadian Charter of Rights, Liberties, Duties and Responsibilities". The tenant could not provide me with a copy of this document, stating it was over 270 pages. He could not provide me with a legal citation for this document, nor even a website or any link which would allow me to locate and peruse same. I have searched for such a document with the attributes the tenant ascribed to it and have been wholly unsuccessful. If the tenant wishes to rely on it, he has the onus of demonstrating that it exists as well as showing what it says.

[12] The tenant's appeal is brought pursuant to s. 72(1) of the *RTA*. The appeal must therefore raise an issue of law or of jurisdiction. This section has consistently been interpreted such that these are appeals of record and are limited to jurisdictional and legal issues. They are not re-hearings, or trials *de novo*. These appeals are not fact-finding expeditions.

[13] I note *Reich v Lohse* (1994), 117 DLR (4th) 1 (Sask CA), where Jackson J.A. stated at paras. 18 and 20:

**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 and 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** ... 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.

[14] *Reich* sets out the traditional standard of review. There has been something of a shift in this regard as a result of recent decisions of the Supreme Court of Canada, notably *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653. This shift in the standard of review in terms of these statutory appeals was canvassed by Justice Elson in *Lansdowne Equity Ventures Ltd. v Cove Communities Inc.*, 2020 SKQB 113. In particular, I adopt what Justice Elson noted at paras. 25, 26, 30 and 31 thereof:

[25] Recently, the Supreme Court of Canada departed from the approach described in *Dr. Q*. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Court concluded that reviewing courts, hearing statutory appeals from an administrative decision-maker, are required to apply "appellate standards of review" when determining the matter under appeal. As to the nature of these appellate standards, the reviewing court must approach the matter in the same way as an appellate court considers an appeal from a judgment at trial. In this respect, the majority in *Vavilov* expressly adopted the standards and related principles set out in *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235 [*Housen*]. The Court's direction in this regard is set out in para. 37 of *Vavilov*:

37 It should therefore be recognized that, where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision. This means that the applicable standard is to be determined with reference to the nature of the question and to this Court's jurisprudence on appellate standards of review. Where, for example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision-maker's authority, apply the standard of correctness in

accordance with *Housen v. Nikolaisen* .... at para. 8. Where the scope of the statutory appeal includes questions of fact, the appellate standard of review for those questions is palpable and overriding error (as it is for questions of mixed fact and law where the legal principle is not readily extricable): see *Housen*, at paras. 10, 19 and 26-37. Of course, should a legislature intend that a different standard of review apply in a statutory appeal, it is always free to make that intention known by prescribing the applicable standard through statute.

[26] Of course, this direction in *Vavilov* requires meaningful consideration and analysis of the majority judgment in *Housen*, jointly written by Iacobucci J. and Major J. Particular reference must be given to the paragraphs identified in the above passage from *Vavilov*. At para. 8 of *Housen*, the Court stated that pure questions of law require the appeal court to review the subject decision against the standard of correctness. As for questions of fact and questions of mixed fact and law, deference is required. Specifically, an appeal court cannot intervene unless the decision-maker has demonstrated a palpable and overriding error in the finding of any relevant fact. As posited in *Housen*, this deferential standard is designed, at least in part, to serve two principal objectives: 1) to promote the economy and integrity of the proceedings at first instance; and 2) to limit the number, length and cost of appeals. It is also rooted in a presumption that the decision-maker possesses the fitness and the ability to make the required findings of fact without intervention of the court hearing the appeal.

...

[30] Such is the case in the present appeal. In s. 72(1) of the *RTA*, 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.

[15] I now turn to the appeal proper. As I have noted, what this appeal boils down to is two aspects of the same issue. I would pose two questions to highlight what I am deciding:

- Are the hearing officer's reasons sufficiently detailed, in general?
- Are the hearing officer's reasons sufficiently detailed with particular reference to s. 70(6) of the *RTA*?

[16] For the reasons which follow, the answers to both of these questions is "no".

[17] There is also merit in this ground of appeal. At the core of this ground is s. 70(6) of the *RTA*, which states:

**70(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:

- (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;
- (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;
- (c) an order requiring the payment of damages, including the payment of any arrears of rent payable to the landlord;
- (d) subject to section 68, an order granting possession of a rental unit;
- (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.

[18] This Court has spoken to these principles on numerous prior occasions. These decisions set out the obligation of hearing officers to consider what is just and equitable before making any order in an *RTA* matter. These include *Grey v Storozuk*, 2012 SKQB 252, 398 Sask R 312 (paras 14 and 17); *Hart v Hunchak*, 2015 SKQB 117 (paras 11-14); *Eastview Housing Association Ltd. v Gerard*, 2016 SKQB 98 (para 8); *Unwin v Bender*, 2020 SKQB 116 (paras 31-34); *Eagle Heart Centre Inc. v Pratt*, 2021 SKORT 2222; *Williams v Elite Property Management Ltd.*, 2021 SKQB 46 (paras 21-31); *River Bank Dev. Corp. v Pacquette & Anor*, 2021 SKORT 1083 (para 14); and *James v Saskatoon Housing Authority*, 2023 SKKB 135 (paras 10-13). I note there are a great many SKORT decisions wherein these cases, and others, were followed so as to ensure compliance with s. 70(6).

[19] Here, the hearing officer paid little more than lip service to a s. 70(6) analysis. Clearly, he was alive to the requirement to conduct this analysis. From his *Decision* it is impossible to say if he actually did so, and if he did the basis for same in the evidence. Really, his *Decision* regarding s. 70(6) is nothing more than stating a bald conclusion.

[20] I fully appreciate these are summary hearings, most often held with self-represented parties. I do not expect the parties to be Perry Mason, nor the hearing officers to render decisions akin to those of the Supreme Court of Canada. But out of basic fairness, both the litigants and a reviewing court must be able to understand the hearing officer's path of reasoning.

[21] The controlling authority remains *R v Sheppard*, 2002 SCC 26, [2002] 1 SCR 869. There, the Supreme Court began with the propositions that delivering reasons for judgment is fundamental to the role of an adjudicator of first instance – a

core responsibility. It was also noted that reasons explaining a decision serve several purposes. Of significant importance is that reasons amplify a decision and render it reasonably intelligible to the litigants and the public. They also provide the basis for meaningful appellate review where the correctness or appropriateness of a decision is called into question. In *Sheppard* it was further noted that while inadequate reasons do not necessarily constitute an independent ground of appeal, failure to provide adequate and intelligible reasons for judgment can amount to an error of law in some circumstances, thus may warrant appellate intervention on that issue. At para. 28 the Supreme Court stated:

28 It is neither necessary nor appropriate to limit circumstances in which an appellant court may consider itself unable to exercise appellate review in a meaningful way. The mandate of the appellate court is to determine the correctness of the trial decision, and a functional test requires that the trial judge's reasons be sufficient for that purpose. The appeal court itself is in the best position to make that determination. The threshold is clearly reached, as here, where the appeal court considers itself unable to determine whether the decision is vitiated by error. Relevant factors in this case are that (i) there are significant inconsistencies or conflicts in the evidence which are not addressed in the reasons for judgment, (ii) the confused and contradictory evidence relates to a key issue on the appeal, and (iii) the record does not otherwise explain the trial judge's decision in a satisfactory manner. Other cases, of course, will present different factors. **The simple underlying rule is that if, in the opinion of the appeal court, the deficiencies in the reasons prevent meaningful appellate review of the correctness of the decision, then an error of law has been committed.**

[Emphasis added]

[22] At para. 46 of *Sheppard* the Supreme Court provided further directions. The duty to give reasons flows from the circumstances of a particular case. Sometimes it will be clear from the record why an adjudicator has ruled the way he or she has. For example, at times it is absolutely clear why an accused has been convicted or acquitted. In such cases the absence or inadequacy of reasons provides no significant impediment to the exercise of the right of appeal. An appellate review is not impeded thus appellate intervention is not warranted by the sufficiency (or lack of same) of the reasons alone.

In other cases, the reasons are inadequate, and the adjudicator's path is not clear, sometimes not even apparent. Other times there are significant legal issues to be dealt with, but the trial judge has "circumnavigated" same and has not given any explanation for not dealing with those legal issues. In those cases, appellate intervention on the basis of the paucity of reasons is proper. Those cases support a conclusion that the lack of adequate reasons amount to an error of law, because meaningful appellate review is precluded.

[23] Sometimes the reasons are not detailed but they do disclose the general basis upon which the decision was rendered. Here, we do not even have that much. The hearing officer says he heard some evidence and some submissions, and those items all led him to conclude the equitable considerations inherent in s. 70(6) had been met. What evidence, what submissions, led him to that conclusion? It is impossible to say from the reasons given. There is not even a trail of quasi-judicial breadcrumbs that one might follow. There is not a shred of justification or explanation in the reasons for the granting of relief to the landlord. The *RTA* file discloses some documents. Were any marked as exhibits, or referenced by the hearing officer? There is no way to tell.

[24] At a minimum some recital or summary of the evidence and submissions is required. During the chambers hearing before me, it was evident that not even the landlord's representative understood why the landlord was successful at the original hearing.

[25] This case falls into the category of needing much more explanation than was provided – which, in essence, was no explanation. This case falls into the same category as *R v C.R.C.*, 2009 SKCA 13, 324 Sask R 37 and *Abouhamra v Prairie North Regional Health Authority*, 2016 SKQB 293. From the *Decision* appealed from I have no idea at all why the hearing officer felt it was just and equitable to grant an order for

possession of the leased premises.

**Conclusion**

[26] The appeal is granted. The *Decision* of the hearing officer dated December 4, 2023 and amended December 11, 2023 is hereby quashed and any order or writ of possession issued pursuant to that decision is also quashed. The matter is remitted back to the Office of Residential Tenancies for a new hearing, before a different hearing officer.

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R.W. DANYLIUK J.