Date: 19980608
Docket: CV07675

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BORIS MIHOV

Applicant

- and -

ROGER THERRIEN and LISA LANNIN

Respondents

MEMORANDUM OF JUDGMENT

[1] This is an appeal from a decision by a Rental Officer.

[2] The Landlord, Boris Mihov, applied to the Rental Officer for an order under section 41(4)(a) of the *Residential Tenancies Act*, R.S.N.W.T. 1988, c. R-5, requiring the Tenants, Roger Therrien and Lisa Lannin, to pay rental arrears. The Landlord's application to the Rental Officer stated that the Tenants owed the sum of $395.00 for rent for the month of February, 1998, the last month that the Tenants were in the premises.

[3] On the hearing date scheduled by the Rental Officer, the Landlord was out of town and his wife, Anelia Mihova, attended on his behalf. Mr. Therrien attended on behalf of himself and his wife, Ms. Lannin. The Rental Officer heard from both Ms. Mihova and Mr. Therrien.

[4] In his written Reasons for Decision dismissing the Landlord's application, the Rental Officer said:

> A landlord seeking to obtain an order for a tenant to pay rental arrears must demonstrate in part:
>
> 1. The amount of the alleged arrears;
>
> 2. the specific period for which the tenant is in arrears;

> 3. how the amount of the arrears was calculated; and
>
> 4. proof of the tenants' previous payments.
>
> In this case, the landlord has failed to meet these requirements. Based upon the evidence before me, I cannot justify the issuance of the order sought. The respondents may well owe some amount to the applicant, however, without the aforementioned criteria being met, I am unable to even make a determination as to the amount. I am not prepared to arbitrarily set an amount. I must, therefore, deny this application.

[5] On this appeal, the Landlord argued that the Rental Officer erred in finding that the above criteria had not been fulfilled on the evidence put before him.

[6] As to the first of the criteria, the amount of the alleged arrears, the Landlord argues that there was evidence before the Rental Officer in the form of a document signed by Mr. Therrien admitting that the sum of $395.00 was owing for rent for the month of February. Mr. Mihov provided a copy of this document, dated January 30, 1998, to this court on the appeal. He argued that the document was referred to by Ms. Mihova at the hearing and that he was "pretty sure" that it was presented to the Rental Officer.

[7] There is an indication in the transcript of the hearing before the Rental Officer that Ms. Mihova was referring to a document when she spoke at the hearing. On page 3 of the transcript, when asked how much rent was being sought, she replied, "Three hundred ninety-five dollars. Sorry. And he agreed to pay them. I have his signature here".

[8] Near the end of the hearing, at page 12 of the transcript, Ms. Mihova also stated, "But Roger signed for this amount and I guess he was given an explanation that he agreed on at the time".

[9] Nowhere in the transcript is there any indication that Ms. Mihova presented or tried to present the document in question to the Rental Officer. And the Rental Officer clearly sets out in his written decision that some days after the hearing the Landlord delivered to him a document which, "was not presented at the hearing, nor was it referred to" (p. 5, Reasons for Decision). The delivered document forms

part of the record filed by the Rental Officer for the appeal and is the same as that submitted by Mr. Mihov.

[10] The Rental Officer quite properly did not take the document into account in rendering his decision as Mr. Therrien had not been given a chance at the hearing to address or explain it.

[11] I conclude that the document in question was not submitted to the Rental Officer at the hearing. While Ms. Mihova may indeed have intended to refer to it in her presentation, she unfortunately did not make that clear to the Rental Officer.

[12] The Rental Officer was therefore left with Ms. Mihova's testimony, and the statement in the Landlord's application, that the sum of $395.00 was owing. This was disputed by the Tenants.

[13] As to the second item, the specific period for which the Tenant was in arrears, it is clear from what was presented by Ms. Mihova at the hearing that the only rental arrears alleged were for February of 1998.

[14] As to how the amount of the arrears was calculated, the Landlord's evidence on that point at the hearing was not altogether clear. At page 5 of the transcript, Ms. Mihova agreed with the Rental Officer that, based on monthly rent of $450.00, if $395.00 was alleged to be owing, that meant that $55.00 had been paid. However, after Mr. Therrien testified that he had paid $250.00 or $300.00 for rent for February, the Rental Officer asked Ms. Mihova if she knew how much he had paid and she replied that she did not.

[15] In his argument on the appeal, Mr. Mihov agreed that his wife could not provide details of how the alleged arrears were calculated because she did not have that information, but relied on the document alleged to have been signed by Mr. Therrien. As I have already indicated, however, I am satisfied that document was not before the Rental Officer. He therefore had no evidence from Ms. Mihova as to how the $395.00 was calculated other than her initial indication that only $55.00 must have been paid. He also had to consider Mr. Therrien's evidence that more had been paid.

[16] The final item listed by the Rental Officer as part of what a Landlord must demonstrate was proof of the tenants' previous payments. Mr. Mihov argued that the Rental Officer did have proof of the tenants' previous payments in the form of

a receipt book. But the Rental Officer considered the receipt book and found it lacking as evidence of payments, saying on page 4 of his Reasons for Decision that the Landlord apparently did not issue receipts for each payment received from the Tenants and citing as evidence of that the fact that both parties referred to payment for the month of February, although in different amounts, yet no such payment was supported by the receipt book. While the receipt book may have provided some evidence of previous payments made by the Tenants, it did not assist the Rental Officer in determining whether the amount claimed by the Landlord was owing.

[17] It is clear to me from the Rental Officer's Reasons for Decision that in his view the Landlord had not proved his case. There was conflicting evidence from Ms. Mihova and Mr. Therrien as to how much the Tenants had in fact paid for the February rent. Mr. Therrien also raised issues about charges for vehicle plug-in and arrangements that Ms. Mihova indicated had been made by her husband and she could not address. With that conflicting evidence, there being nothing before him to substantiate either version of what had been paid and what was owing, the Rental Officer was entitled to find that the Landlord had not proved the amount of the arrears owing.

[18] I had considered whether I should treat this matter as a *trial de novo* and allow the parties to present their evidence again in this court (which would give them the opportunity to address the document submitted to the Rental Officer after the hearing) but to do so would, in my view, as stated by de Weerdt J. in *Galtee Mountain Hldg. Ltd. v. Wilson*, [1991] N.W.T.R. 230, be "contrary to the plain intention of the Legislative Assembly in providing for the speedy and informal disposition of residential tenancy disputes before a rental officer pursuant to the Residential Tenancies Act".

[19] Although the intention is clearly that residential tenancy disputes be disposed of in a speedy and informal fashion before a rental officer, landlords and tenants appearing before a rental officer must still be fully prepared to present and prove their case and answer questions about it. It may well be that the Landlord's case in this instance would have been presented differently had Mr. Mihov himself attended the hearing or sought an adjournment to another date so that he could attend. The appeal process should not, however, be used as a second chance to present the case.

[20] Section 87(5) of the *Residential Tenancies Act* says that the judge hearing the appeal <u>may</u> receive evidence on the appeal, not that he or she <u>must</u> do so:

Greenway Realty Ltd. v. N.C. Roy, April 3, 1998, CV 07484, unreported. In the circumstances of this case, I am not prepared to exercise my discretion to hear evidence and conduct a *trial de novo*.

[21] In conclusion, I find no error in the Rental Officer's decision to dismiss the Landord's application. While Ms. Mihova presented some evidence on each of the four criteria referred to above, that evidence was not sufficient, in the Rental Officer's view, to outweigh the conflicting evidence presented by Mr. Therrien. The Rental Officer was entitled to make that assessment and come to that conclusion.

[22] It follows that this appeal is dismissed.

[23] Dated at Yellowknife, this 8th day of June, 1998.

V. A. Schuler
J.S.C.

To: Boris Mihov appearing in person

Roger Therrien appearing in person
and for Lisa Lannin

CV 07675

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