

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

THE MUNICIPAL CORPORATION OF THE TOWN OF HAY RIVER

APPLICANT

-and-

GREGORY NESSEL

RESPONDENT

MEMORANDUM OF JUDGMENT

[1] The applicant municipality commenced these proceedings by originating notice on April 29, 2004, seeking an order requiring the respondent to vacate and deliver up possession of certain leasehold land occupied by the respondent. This matter was before this court on four occasions, when the court was sitting in Hay River on circuit. On each occasion the respondent, who is representing himself, appeared pleading various excuses as to why he should be allowed to remain on the property (on which is located the home of the respondent and his family). Finally, I ordered submissions in writing setting out a complete chronology of events. I have now received and reviewed those submissions and this is my decision on the application.

[2] The applicant municipality is the lessee of two unsurveyed parcels of land, located within the municipal boundaries of the Town of Hay River, owned by the Commissioner of the Northwest Territories. One parcel is designated as “residential” by the Town and this is subject to a lease dated September 1, 1986, for a 30-year term. The second parcel, designated for “storage” purposes, is subject to a lease dated July 1, 1974, also for a 30-year term. This lease was renewed for a further 30 years in 2004.

[3] In 1992, the applicant entered into a five-year sublease with one Edward Studney for the residential parcel. The sublease provided that annual rent would be payable at a percentage of assessed value (with a minimum rent of \$500.00) and that the sublessor was responsible for payment of all taxes charged upon the land. This sublease was subsequently renewed for a further term expiring on August 31, 2001. Shortly thereafter Mr. Studney assigned his sublease to one William Beblow. In June, 1997, the applicant municipality subleased the storage parcel to Mr. Beblow on the same terms as the sublease for the residential parcel. This sublease was to expire on June 30, 2002.

[4] On March 13, 1998, William Beblow assigned both subleases to one Steve Beblow. Then, on May 13, 1999, Steve Beblow assigned both subleases to the respondent. These assignments were in writing and consented to by the municipality. The respondent covenanted that he will pay the rent and perform all the conditions required by the sublease. The expiry date for each sublease was unchanged.

[5] At the time that Steve Beblow wanted to assign the subleases to the respondent, he was in arrears with respect to the payments on both subleases. The respondent paid those arrears, totalling \$1,059.45, in order to obtain the applicant's consent to the assignments.

[6] In accordance with the terms of the subleases, the applicant invoiced the respondent for rent on both parcels and for property taxes. The respondent, however, was continually in arrears. The only payments made by the respondent, in addition to the one in 1999 when the assignment was made, were a payment of \$1,600.00 on May 9, 2001, and one of \$2,005.00 on April 19, 2002. As of the end of October, 2004, the arrears, including interest, amounted to \$5,950.84 for unpaid rent and \$1,183.25 in property taxes for both parcels.

[7] The respondent's sublease for the residential parcel expired on August 31, 2001. The sublease for the storage parcel expired on June 30, 2002. The municipality mailed letters to the respondent offering to renew the subleases but with the proviso that all outstanding rent and taxes will have to be paid prior to renewal. There was no right of renewal in the subleases or the assignments. The respondent has never executed renewals for the subleases. He and his wife made some inquiries at Town Hall but nothing was ever finalized.

[8] In the meantime the respondent constructed a house on blocks on the two parcels. He has continued to live there. The applicant has continued to invoice the

respondent for lease rent and property taxes. On October 28, 2002, the applicant served a notice of breach of the subleases on the respondent. A further notice was served on August 7, 2003. Both notices referred to the covenants in the subleases to pay rent (or “lease fees” as they are termed) and property taxes. Nothing was done in response.

[9] On December 4, 2003, the applicant served a Notice of Termination on the respondent, requiring him to vacate the lands by December 15th due to non-payment of rent. The notice also demanded payment of all rent and tax due to the termination date. By that point in time the applicant had decided that it was no longer willing to enter into any further subleases with the respondent under any circumstances (and this was confirmed further at the subsequent court hearings in this matter). In any event, the respondent continues to occupy the parcels.

[10] On January 27, 2004, a Certificate of Tax Arrears was issued showing property tax arrears of \$775.05 with respect to the residential parcel. A Certificate of Tax Arrears was issued on February 3, 2004, showing arrears of \$408.20 with respect to the storage parcel. These steps are necessary so as to comply with the enforcement mechanism provided by s.96 of the *Property Assessment and Taxation Act*, R.S.N.W.T., 1988, c.P-10.

[11] The applicant also commenced proceedings pursuant to the *Residential Tenancies Act*, R.S.N.W.T. 1988, c.R-5. However, on February 25, 2004, the Rental Officer dismissed the proceedings on the ground that he did not have jurisdiction because this was not a “residential tenancy” as that term is used in that statute.

[12] The respondent offered no evidence challenging these facts.

[13] Once these proceedings were commenced, there were further discussions between representatives of the applicant and the respondent but nothing has changed. The respondent has made no payments; the subleases have not been renewed; and, the municipality is not interested in renewing them.

[14] Part of the concern that led to the request for written submissions was to clarify the basis for this application. This counsel for the applicant has done in a thorough summary of the facts and applicable law.

[15] The request to vacate the lands is based on common law principles. Once the subleases expired the respondent became an overholding tenant occupying the lands at

the will of the Town. An unequivocal Notice of Termination was served on the respondent in 2003. The demand for vacant possession was made clear at the time and, at that point, the respondent was obligated to deliver up possession of the lands: see Rhodes, ed., *The Canadian Law of Landlord and Tenant* (5th ed.) Chapters 12 and 13.

[16] The applicant is also seeking the removal of the fixtures, specifically the respondent's house, located on the land. Generally, fixtures that become permanently affixed become the property of a landlord upon termination of a lease. In this case, however, the sublease for each parcel provided that, on termination of the sublease, the lessee may sever and remove from the land all structures, fixtures and improvements which were affixed to or placed upon the land by the lessee.

[17] Counsel for the applicant submitted that the respondent has lost the right to remove fixtures because of his breach of the covenants to pay rent and taxes. Whether that is the case, however, the applicant is willing to give the respondent time to remove the house and other things from the property.

[18] In answer to all of this the respondent asks this court to do something that it simply cannot do, that being, to order the municipality to renew or give him a new sublease. Whatever one may think about the attitude of the town's officials in not wanting to deal with the respondent anymore — and I think they may have good reason for that — there is no legal impediment to the town getting the relief it requests. The respondent had obligations and he did not fulfill them.

[19] The respondent made the point several times about the applicant refusing to accept payments on the arrears. But there is no evidence of that happening prior to the expiry of the subleases. There is no evidence that the respondent, or anyone on his behalf, was ever ready and willing to make those payments. The respondent provided a letter from the regional supervisor of the Income Support programme confirming that a note had been placed on the respondent's income assistance file, prior to the start of these proceedings, to the effect that the town is not accepting payment of the respondent's lease fees. But there is no evidence that Income Support or anyone else was prepared to make the necessary payments to the town.

[20] Finally, the respondent made an argument that he should be entitled to stay on the land since he took steps to have power supplied to the property. But, there is no evidence that he was the one who paid for the work done to supply power. The evidence showed an invoice to the Northwest Territories Housing Corporation, not to

the respondent. In any event, there was no statutory or contractual obligation on the part of the applicant to provide power to the property so this issue is irrelevant.

[21] As harsh as the result may be, I see no legal reason why the relief sought should not be granted. The only question is the length of time that is reasonable to require the respondent to move off the land having regard to the time of year and his limited resources.

[22] An order will issue as follows:

1. The respondent shall vacate and deliver up possession, on or before the 31st day of March, 2005, of the two unsurveyed parcels of land, leased by the applicant from the Commissioner of the Northwest Territories, and formerly subleased to the respondent as assignee (the "Premises").
2. The Sheriff of the Northwest Territories and any peace officer are empowered to assist in the removal of the respondent from the premises should the respondent not voluntarily surrender them.
3. The respondent shall have until the 31st day of March, 2005, to remove any fixtures or structures which were affixed to or placed on the Premises by the respondent, failing which such fixtures or structures shall become the property of the applicant and the applicant may remove them at the cost of the respondent and dispose of them by sale or otherwise (the proceeds of any sale to be applied in satisfaction of any amounts owing by the respondent to the applicant).
4. The applicant shall have judgment against the respondent in the sum of \$5,950.84 for unpaid lease fees and compensation for use and occupation of the Premises after expiry of the subleases.
5. The applicant shall have judgment against the respondent in the sum of \$1,183.25 for property tax arrears and interest.
6. The applicant shall recover costs of these proceedings which I hereby fix in the sum of \$2,000.00 (all inclusive).

[23] I ask that counsel for the applicant prepare a formal Order for my review (which need not be approved by the respondent as to form and content). Once filed, the Order is to be personally served on the respondent.

J.Z. Vertes
J.S.C.

Dated this 11th day of February, 2005
at Yellowknife, NT.

Counsel for the Applicant: Michelle Staszuk
The Respondent Appeared on his own Behalf