

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LONA HEGEMAN

Applicant

-and-

TRACY CARTER AND JACK CARTER

Respondents

-and-

HAL LOGSDON

Second Respondent

RULING ON COSTS

[1] This Memorandum deals with the question of whether costs should be awarded as a result of the adjournment of this appeal. It is necessary to refer to some of the background of the case to put this issue in context.

[2] Lona Hegeman has filed an appeal pursuant to section 87 of the *Residential Tenancies Act*, R.S.N.W.T. 1988, c. R-5. She appeals an Order made by the Rental Officer directing her to return a security deposit of \$992.30, together with interests, to John and Tracy Carter. Mr. and Ms. Carter are Ms. Hegeman's former tenants. The Order was issued on March 22, 2007 following a hearing held on March 20.

[3] Ms. Hegeman's appeal was first spoken to in this Court on May 25, 2007. The Clerk's notes show that Ms. Hegeman and Ms. Carter were present on that date, as was counsel for the Attorney General of the Northwest Territories. The notes also show that the appeal was adjourned, not to a specific date, but *sine die*. This was so the parties could provide their availabilities to the registry, so that a Special Chambers date could be set for the hearing.

[4] By letter from the Clerk of the Court dated October 17, 2007, the parties were advised that the case was scheduled to be heard January 8, 2008.

[5] On January 8, 2008, counsel appeared with Ms. Hegeman and applied for an adjournment. He advised that he had met with Ms. Hegeman a few days earlier, that he had originally understood from her that the case was to be spoken to on January 11 to set a hearing date. It only came to his attention on January 7 that the appeal was scheduled to proceed the next day. As a result, he did not have sufficient time to prepare and this was the reason for the adjournment request.

[6] The Attorney General of the Northwest Territories took no position on Ms. Hegeman's adjournment application.

[7] Ms. Carter opposed the adjournment. She and her husband are anxious to have this matter proceed. The matter has gone on for some time, the Order appealed from dating back to March 2007. This Order, made in their favor, is stayed by the filing of the appeal, so they are concerned about any further delays. Ms. Carter also talked about wages she lost because of her two attendances in Court for this case. She also explained that but for the January 8 hearing date, she would have travelled with Mr. Carter to attend a funeral of a close family member.

[8] Having taken into account that this is Ms. Hegeman's appeal and that this was the first adjournment application on this matter, I granted her application. I invited submissions on the question of whether there should be any costs consequences arising from the fact that this application was made at the very last minute.

[9] Ms. Hegeman argues that no costs should be ordered against her at this time. She argues that she was honestly mistaken about the date set for the hearing, and in thinking that the next appearance was only for the purpose of setting a hearing date. She acknowledges she could have taken steps earlier to retain counsel, but argues that the costs of the adjournment application should be left to be determined at the conclusion of the case because there was no malice or bad faith on her part, nor any deliberate attempt to delay matters.

[10] I reserved my decision because I wanted an opportunity to review the Court file, in particular materials related to the setting of the January date and how the information about that hearing date was conveyed to the parties. I have now had an opportunity to review those materials.

[11] The first paragraph of the letter sent to Ms. Hegeman and to Mr. and Ms. Carter on October 17, 2007, reads as follows:

Enclosed is a court docket setting the above-mentioned matter for a 1 day Special Chambers application to be heard on January 8, 2008, at 10:00am in the 3rd floor Courtroom at the Yellowknife Courthouse.

[12] The court docket enclosed with that letter shows the date and time for hearing. It also shows that one day of Court time is set aside for the case. The letter to Ms. Hegeman was sent to 8 Glick Court, which is the address that appears on the Originating Notice that she filed.

[13] On December 21st, 2007, a Brief of Law was filed by the Attorney General of the Northwest Territories. This Brief includes submissions about the Attorney General's standing to appear on this matter and about the interpretation of certain provisions of the *Act*. It also includes copies of several cases. A copy of this Brief was provided to all the parties.

[14] I accept that Ms. Hegeman made an honest mistake about the January date. However, based on the materials I have referred to, she ought to have known that the January 8th date was for the arguing of the appeal. In any event, if she intended to retain counsel for this matter, she should have taken steps much earlier than she did. This, after all, is her appeal, and there was an onus on her to be reasonably diligent in advancing it, keep track of dates, and be ready to proceed on the scheduled date. She did not do so. As a result, the case had to be adjourned although everyone else involved was ready to proceed.

[15] An issue that was not raised by counsel but that I have considered, is the appropriateness of making a costs order in favor of a self-represented litigant such as Ms. Carter. Traditionally, costs were intended to partially indemnify successful litigants for some of the expenses incurred to retain legal counsel. But the law has evolved on this subject, and there are many cases that now recognize that in certain circumstances, it is appropriate to make orders for costs in favor of litigants who are not represented by counsel. There continues to be some debate about the extent to which such orders should be made and how the amounts should be assessed, but the notion that costs orders can be made in favor of unrepresented litigants has been accepted in several cases. See Orkin, *The Law of Costs*, 2nd Edition, at 2-139 to 2-145.

[16] This Court had the opportunity to consider the issue in *Clark v. Taylor* [2003] N.W.T.J. No.67. In that case, Vertes J. referred to a number of authorities that recognize that self-represented litigants are entitled to recover costs. He also commented about the objectives of modern cost rules, which go beyond mere indemnification:

Modern costs rules are designed with three objectives in mind: (a) to indemnify successful litigants for the costs of litigation; (b) to encourage settlements; and, (c) to discourage and sanction inappropriate behavior by litigants.

Clark v. Taylor [2003] N.W.T.J. No.67, at para. 5.

[17] To say that self-represented litigants can be entitled to costs orders is not to say that it is appropriate to treat them exactly the same as represented litigants who have spent money on legal fees. Costs are always in the discretion of the Court. How that discretion is exercised depends on the circumstances of each case, and this is especially true in cases involving self-represented litigants. In exercising their discretion, courts should seek an equitable result between the parties while balancing the general policy objectives of costs. *Dechant v. Law Society of Alberta* 2001 ABCA 81, at para. 18.

[18] All litigants, whether represented by counsel or not, spend time and energy to advance their case. They often spend time attending court hearings even when they have legal representation. Inevitably, there are financial impacts to being involved in litigation. Given this, the objective of a costs order for unrepresented litigants cannot be to compensate them for all of the financial consequences of being involved in the litigation. An unrepresented litigant, however, may be entitled to some compensation for the time spent preparing for a case.

[19] Applying those principles to the circumstances of this case, I have taken into account that the hearing date was set several months ago, that the parties were notified in writing of this date, that Ms. Hegeman retained counsel only a matter of days before that date, and that the need for the adjournment was the direct consequence of this eleventh hour decision. I have also taken into consideration that Ms. Carter came to Court on January 8th expecting to argue her case. I infer that it took her some time to review the documents included in the Rental Officer's Record and the Attorney General's Brief of Law. It is not unreasonable to expect that reviewing these types of

documents would have taken more time and effort for a person who is not legally trained. While I do not find that she is entitled to be fully compensated for the lost wages of the work shift she gave up to attend Court, I am satisfied she is entitled to some compensation for having to prepare for a hearing that ultimately did not proceed.

[20] Accordingly, there will be an award for costs to Ms. Carter in an amount of \$100.00, payable by Ms. Hegeman. This award relates solely to the January 8th appearance. Other costs issues can be dealt with at the conclusion of the case. These costs shall be payable forthwith.

L.A. Charbonneau,
J.S.C.

Dated at Yellowknife, NT
this 11th day of January, 2008.

Counsel for Applicant: Douglas G. McNiven
Tracy Carter and Jack Carter were self-represented
No one appearing on behalf of Second Respondent

S-1-000CV2007000080

IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES

BETWEEN:

LONA HEGEMAN

Applicant

-and-

TRACY CARTER AND JACK CARTER

Respondents

-and-

HAL LOGSDON

Second Respondent

RULING ON COSTS
