

Date: 2010 09 10
Docket: S-1-CV 2010 000 140

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LIRIC CONSTRUCTION LTD

Applicant

- and -

NWT RENTAL OFFICE, PEARL LISKE AND WALDON KOTCHILEA

Respondents

MEMORANDUM OF JUDGMENT

[1] The Appellant seeks to have the Decision of the Rental Officer varied to increase the amount of rent awarded from 10 days to the full 30 days for the month of June 2010 after the Respondents abandoned the premises on June 1st.

[2] The Landlord says that he had not received the power bill for the period from June 11th to July 10th until after the hearing before the Rental Officer on July 7th and that he now has “fresh evidence” that was unavailable to him and to the Rental Officer which clarifies the issues regarding whose name the power bill was in at material times. He says that the new evidence would disclose that the electrical account was not transferred into the name of the new tenants until June 18th. However, at the hearing the Rental Officer asked the Landlord:

“...did they [the new tenants] assume responsibility for the power on June the eleventh?”

Mr. Keppel (representing the Landlord) replied:

“It’s possible. I’m not sure because I haven’t seen the next bill. It’s either Liric Construction or it’s in...”

[3] Given the dialogue as evidenced by the transcript, it’s clear the Landlord was saying the electrical account could have been in the name of the new tenants as early as June 11th. While he had not seen the latest power bill, it would have been a simple matter for him to confirm with the power company, prior to the July 7th hearing, when power was transferred.

[4] Also, the Landlord confirmed at the hearing that he had given over the use of the apartment to the new tenants during the month of June to allow them to store their belongings since they would be away from Yellowknife on July 1st. He did not indicate what day in June they entered the premises.

[5] In his affidavit filed in support of his appeal, Mr. Keppel makes the case that he did what he could to mitigate his loss in justification of his being unable to rent the premises before July 1st. As well, he reiterates that the lease with the new tenants commenced July 1st and that since they were out of town, they did not actually occupy the premises before July 4th. These are the grounds cited by the Appellant in his Originating Notice and Affidavit. He made representations from counsel table but provided no evidence to the Court concerning any confusion over the power bill. Accordingly, although I am entitled to take fresh evidence into account on an appeal of this nature, there is no such evidence to be considered.

[6] In his Decision, the Rental Officer accepted the Landlord’s evidence and position that the premises were abandoned by the Respondents on June 1 and that they were therefore responsible for compensating the Landlord for loss of future rent bearing in mind the onus on the Landlord to mitigate his loss. That the Appellant sought to argue the issue of abandonment on appeal infers that he failed to appreciate that his evidence and argument in this regard had succeeded. At page 8 of the Reasons for Decision the Rental officer stated:

“Although I acknowledge that the applicant took efforts to assist the respondents in finding another tenant when he had no obligation to do so, it appears to me that the applicant could have started to collect rent from his new tenants earlier than July 1 or continue to advertise the premises to find a tenant who would rent the premises before July 1.”

[7] The Rental Officer found that the Landlord had either re-rented the premises as of June 11th or that he could have done so and that accordingly, he was only entitled to 10 days of rent.

[8] Having reference to *Dunsmuir v. New Brunswick*, 2008 SCC 9, and *Inuvik Housing Authority v. Kendi*, 2005 NWTSC 46, I am satisfied that the appropriate standard of review of this Decision is that of reasonableness. The question is not whether I might reach a different conclusion than that of the Rental Officer but rather whether his decision was reasonable.

[9] It is not entirely clear when the new tenants entered into the lease but it appears to have been early in the month of June. Repairs to the premises were completed by June 10th. At the hearing, the Landlord indicated that the electrical account could have been transferred into the names of the new tenants on June 11th. They were allowed to occupy the premises and thereby obtain a measure of control and arguably occupancy during the month of June. This is the evidence that was before the Rental Officer and, that being the case, I am persuaded that his Decision was not unreasonable and, in deference, the Court will not interfere with it. Accordingly, I would dismiss the Appeal. There will be no order as to costs.

D.M. Cooper,
J.S.C.

Dated in Yellowknife, NT,
This 10th, day of September, 2010

Counsel for the Applicant: Self Represented

Counsel for the Respondents: Donald P. Large, Q.C.

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HONOURABLE JUSTICE D.M. COOPER
