Date: 2013 01 29
Docket: S-1-CV-2012000018

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

UNION OF NORTHERN WORKERS

Applicant

- and -

KATHRYN CARRIERE, MICHELE LETOURNEAU
and ANNEMIEKE MULDERS

Respondents

MEMORANDUM OF JUDGMENT

A) INTRODUCTION AND BACKGROUND

[1] This matter involves three appeals brought by the Union of Northern Workers (UNW) against decisions of the Rental Officer following hearings held pursuant to the *Residential Tenancies Act*, R.S.N.W.T. 1988, c.8 (the *Act*).

[2] For reasons that will become apparent in this Memorandum of Judgment, some aspects of the dispute between the UNW and the Respondents that led to this appeal have become largely irrelevant to its disposition. But I will refer to those aspects to the extent necessary to put my decision in context.

[3] The UNW owns a building located on 52nd Street, in the downtown area of the City of Yellowknife. The UNW's offices are housed on the ground floor and basement. The building also includes a total of eight residential rental units, located on the second and third floors.

[4] The building has a main entrance on 52nd Street, which leads directly into the UNW's offices. The tenants do not access their apartments through that entrance. Their access is through two doors that are at the back of the building.

[5] Historically, there had been walkways on the east and west sides of the building. Those walkways were accessible from 52nd Street and could be used to reach the back of the building.

[6] Over the years, there were problems with vandalism to vehicles in a parking lot at the back of the building. The UNW took various measures to reduce the comings and goings through that parking area. One of those measures was to fence off the walkway on the west side of the building. That made it impossible for anyone to use that walkway to access the back of the building.

[7] In March 2011, as a result of an oil spill that occurred on the lot on the east side of the UNW's lot, the walkway on that side also became unavailable. This was because excavation work had to be done on the area contaminated by the spill and that work eroded the walkway. The walkway had to be barricaded for safety reasons.

[8] With both walkways blocked off, tenants could no longer access the doors to the back of the building from 52nd Street. Instead, they had to get there by using a back alley that runs parallel to 52nd Street, behind the building. The back alley is a dead end that leads to a rocky area. Some tenants felt that using that back alley compromised their personal safety. These concerns led to the complaints that were filed with the Rental Officer.

[9] Ms. Carriere was the first to file her complaint. She did so on November 29, 2011. The Rental Officer held a hearing into that complaint on January 11, 2012. At the conclusion of the hearing, he ordered the UNW to provide access to the rental premises from 52nd Street via a temporary walkway on the west side of the building, until the walkway on the east side was repaired. The Order also dealt with snow removal, but that aspect is irrelevant to this appeal.

[10] On February 2, 2012, the UNW filed an appeal of the Rental Officer's decision. The matter was first spoken to in this Court on March 2, 2012. It was adjourned to April 13, 2012, for the parties to submit their availabilities so that a hearing date could be set.

[11] Ms. Letourneau and Ms. Mulders filed their complaints to the Rental Officer on March 18, 2012. Those complaints were also about the lack of access and raised the UNW's failure to comply with the Rental Officer's Order arising out of Ms. Carriere's complaint.

[12] The hearings into those two complaints were initially scheduled to proceed on April 18, 2012. On that day, it was decided that they should be postponed. The hearings proceeded on April 27, 2012.

[13] The Rental Officer issued his decisions on May 3, 2012. He granted relief that was broader in scope than what had been granted to Ms. Carriere: the Orders gave the UNW two alternative ways of providing access to the back of the building from 52nd Street; it also gave the tenants the option to arrange to have the work done themselves if the UNW did not comply. The terms of the Orders dealing with access read as follows:

> 1. Pursuant to sections 30(4)(a) and 83(2) of the *Residential Tenancies Act* the respondent shall restore access to the rental premises from 52nd Street either by
>
> a) providing the applicant twenty-four hour access through the main entrance to the building or,
> b) by providing access to the walkway on the west corner of the building, with or without a locking gate,
>
> until the walkway on the east side of the building is deemed safe. The respondent shall comply with this order within twenty one days after the receipt of the order.
>
> 2. Pursuant to sections 30(4)(c) and 83(2) of the *Residential Tenancies Act,* the applicant shall be authorized, after twenty one days from the service of this order on the respondent, unless this order is stayed or the respondent complies with the order, to have installed by a competent contractor, a locking gate to be the same height as the existing fence giving access to the west walkway and the respondent is ordered to pay the cost of supply and installation of the gate. The total cost of the gate, including installation shall not exceed five hundred dollars ($500.00) without permission of the rental officer.
>
> 3. Pursuant to sections 32(1) and 32(2.1) of the *Residential Tenancies Act,* the applicant shall pay the monthly rent to the rental officer which shall be

> held until this order is satisfied and applied to the cost of the gate as required.

[14] Ms. Mulders, in her complaint, also sought financial compensation for various losses that she claimed to have suffered as a result of the change in access to the building. The Rental Officer dismissed several aspects of her claim but he granted her compensation in an amount of $100.00.

[15] Counsel for the UNW wrote to the Rental Officer on May 16, 2012, advising that the UNW was taking steps to have a locking gate installed on the west walkway and that it intended to have this work completed by May 24, 2012.

[16] On May 17, 2012, counsel for the UNW wrote to the Rental Officer again, advising that he had been instructed to file an appeal of the Orders, but that this would not affect the decision to have a locking gate installed on the west walkway. The Originating Notices initiating the appeals were filed the same day.

[17] On May 24, 2012, counsel for the UNW sent a further letter to the Rental Officer, enclosing a quote and timeline for the installation of the gate. The letter indicated that the work could not be completed within the timeline specified in the Order, and that the UNW would be applying for a stay of the Orders.

[18] On June 1, 2012, the Mulders and Letourneau appeals were spoken to in this Court for the first time. The UNW explained that steps were being taken to have a locking gate installed, without prejudice to its appeal, but that there had been delays beyond its control in getting this work done. The UNW sought an interim stay of the Orders. Ms. Letourneau and Ms. Mulders expressed concern about the delays in implementation of the Rental Officer's decisions and opposed the stay application. The Court granted an interim interim stay and adjourned the matters to June 22nd.

[19] On the June 22nd appearance, both matters were adjourned to July 6th by consent. It was hoped, at that point, that the work would be completed by the next Court date.

[20] By July 6th, the work was still not completed. The UNW sought a continuation of the interim stay. Ms. Letourneau and Ms. Mulders were strenuously opposed. They argued the delay was unacceptable and that they should

be permitted to take steps to have a gate installed, in accordance with the Rental Officer's Orders. The Court granted the extension of the stay. The Court also set a number of filing deadlines with a view of moving the appeals along. The two matters were adjourned to July 20, 2012.

[21] On July 20, 2012, the UNW advised that the locking gate would be in place the following Monday. The Court ordered that the stay of the Rental Officer's Orders continue until the appeals were disposed of, granting leave to Ms. Letourneau and Ms. Mulders to bring the matter back before the Court on five days notice if they were not satisfied with the gate.

[22] Meanwhile, there had only been one other Court appearance on Ms. Carriere's matter. After the original appearance on March 2, 2012, a hearing date had been set, but that date was cancelled on the following appearance, on April 13, once it became apparent that there would be two other hearings before the Rental Officer dealing with the same issue.

[23] In August, the UNW filed a motion seeking to consolidate the three appeals. That application proceeded on August 19, 2012, with all parties present. By this point Ms. Carriere had retained counsel. All parties consented to the matters being consolidated. It was agreed that the timelines that had been set on the Letourneau and Mulders matters would be maintained, with some minor adjustments. Counsel for the UNW advised that the hearing of the appeal could take up to three days. The parties were directed to provide their availabilities so that a hearing date could be set.

[24] On August 22, 2012, a docket issued, scheduling the hearing of this matter to proceed on November 5, 6 and 7, 2012.

[25] On September 28, 2012, the matter was back before the Court because the UNW was asking to change some of the filing deadlines. The Court granted the application and adjusted other filing deadlines accordingly.

B) MOOTNESS

[26] On October 26, 2012, the UNW filed a motion seeking a declaration from the Court that certain aspects of the appeal could be proceeded with even if other aspects were discontinued. The tenants' access to the west walkway had been

restored and the UNW was prepared to discontinue that aspect of the appeal. But the UNW wanted to ensure that this would not prevent it from pursuing its challenge of the other remedy granted by the Rental Officer in the Letourneau and Mulders matters (that they be provided 24-hour access through the main entrance of the building).

[27] I granted the declaration that the UNW was seeking, giving brief oral reasons, and advising the parties that I would address the issue in more detail in my Memorandum of Judgment on the merits of the appeal. I will do so now.

[28] The UNW sought the declaration that it did because it recognized that the doctrine of mootness may be engaged if it sought to pursue the second aspect of the appeal after having discontinued the first aspect. The doctrine of mootness stems from the general policy that courts do not generally entertain questions that have become merely hypothetical or abstract. Where the outcome of a case will have no practical effect in resolving a live controversy between parties, the court will generally decline to hear it. *Borowski* v. *Canada (Attorney General)* [1989] 1 S.C.R. 342, at paras 15-16.

[29] There are a number of reasons why this policy has developed. First, the courts' competence to resolve disputes is rooted in the adversary system; a basic tenet of that system is that in arriving at decisions, courts benefit from having been presented arguments by parties who have a stake in the outcome of the proceedings. *Borowski* v. *Canada (Attorney General)*, *supra*, at paras 31-33.

[30] The second reason is a concern for judicial economy. There are many competing pressures on judicial resources, and those resources should be used to resolve actual disputes, rather than theoretical ones. Delaying some litigants' access to the courts while others are using judicial resources to resolve theoretical debates is not fair or desirable. *Borowski* v. *Canada (Attorney General)*, *supra*, at paras 34-39.

[31] The third reason is that the courts' fundamental role in our political framework is adjudicative. If parties ask the court to entertain a case in the absence of a live controversy with a view of filling a real or perceived legislative gap, and the court does so, this may be viewed as an intrusion in the role of the legislative branch. *Borowski* v. *Canada (Attorney General)*, *supra*, at para 40.

[32] Despite these concerns, in rare circumstances, a court may decide to hear a case that is moot. In the exercise of that discretionary power, courts must keep in mind the underlying reasons for the existence of the doctrine. *Borowski* v. *Canada (Attorney General)*, *supra*, at paras 29-30.

[33] Here, the UNW acknowledged that by abandoning its appeal of the first branch of relief ordered by the Rental Officer (restoring access through the west walkway), the second branch of relief (proving 24-hour access through the main entrance of the building) lost any significance from a practical point of view. In fact both Ms. Letourneau and Ms. Mulders made it clear that as long as they had access through the west walkway, they had no need, desire or intention to insist on access through the main entrance. They said that they were prepared to waive any right to such access in writing.

[34] This meant that for all intents and purposes, there was no longer any live controversy about whether the Respondents could access their rental units by using the main entrance of the building. Hence, the outcome of the challenge of that aspect of the Rental Officer's Order would have no impact on the parties. Ordinarily, this would be reason enough for this Court to refuse to entertain that aspect of the appeal.

[35] I concluded, however, that this was one of those rare cases where it was appropriate for this Court to hear the matter. As already mentioned, the three main reasons why courts do not generally hear moot matters are to ensure that decisions are rendered by courts who have had the benefit of full arguments made by parties who have a stake in the proceedings; concern for judicial economy; and the importance for courts not to usurp the legislative branch's role. After consideration of those factors, I concluded that the benefits of hearing the matter outweighed the potential concerns.

[36] It was clear that the proposed discontinuances would fully dispose of the appeal on Ms. Carriere's matter. As for Ms. Letourneau and Ms. Mulders, they could hardly be expected to be particularly engaged in an appeal that was not going to have any impact on them. This was essentially the point that Ms. Letourneau made when she explained that she would not participate in the appeal if it pertained only to a jurisdiction question. She said that she had already spent a lot of time and energy on this case and did not feel it was her responsibility to defend the

Rental Officer's jurisdiction. The effect of this was that no one responded to the position advanced by the UNW about the jurisdiction question.

[37] On the other hand, considerations for judicial economy weighed heavily in favour of allowing the UNW to proceed with its appeal on the jurisdictional issue. I say this for a number of reasons.

[38] First, the jurisdictional issue raised in this appeal is an important one. There is merit in having that issue decided now, for the benefit of the Rental Officer, other landlords and other tenants. Situations where conflict arises with respect to rental premises located in a building that houses both rental and non-rental premises are bound to occur again. Clarifying the scope of the Rental Officer's jurisdiction in those circumstances will be useful if similar issues arise in the future. It may well avoid other parties having to expend the resources to have this question resolved in the context of another appeal.

[39] In addition, it was clear that if the UNW was successful in obtaining the declaration that it sought, it would discontinue portions of its appeal. This would reduce the scope of the appeal and immediately put an end to the uncertainty that had already prevailed for some time on the issue of access. The Respondents' primary concern - securing their ability to access their units safely and without being forced to use the back alley - would be settled, since the part of the Rental Officer's decision that led to the erection of the locking gate on the west walkway would be certain to remain undisturbed.

[40] In addition, an appeal dealing primarily with the jurisdiction issue would be much more streamlined and straightforward. Oral evidence would no longer be necessary. Only a small portion of the extensive affidavit material filed by the parties would be relevant. As it turned out, instead of the three days that had been set aside for it, the hearing of the appeal took less than half a day.

[41] I am mindful that considerable time and resources had already gone into this matter by the time the UNW indicated that it was prepared to discontinue part of its appeal. Several months went by and numerous Court appearances took place between the time the Rental Officer's Orders and the partial discontinuance. But that is not relevant to the application of the doctrine of mootness.

[42] Finally, this is not a case where this Court is being asked to intrude into the role of the legislative branch. The jurisdiction of the Rental Officer is set out in the *Act.* From time to time, this Court is called upon to interpret the scope of that jurisdiction, as it is with several other decision-making authorities created by various statutes. This is not a situation where the UNW's appeal is intended to have the Court fill a legislative gap.

[43] Those were the reasons why I granted the declaration that the UNW was seeking.

C) RENTAL OFFICER'S ORDER THAT ACCESS BE PROVIDED TO THE TENANTS THROUGH THE UNW'S OFFICES

[44] Whenever a Court is called upon to review the decision of an administrative tribunal or decision maker, the first question that arises is what standard of review must be applied. There are two possible standards of review: correctness and reasonableness. A number of factors must be examined to identify which one applies. If the analysis has previously been conducted in another case, it can be relied upon in determining the standard of review in subsequent cases. *New Brunswick (Board of Management)* v. *Dunsmuir*, 2008 SCC 9, at paras 55-57.

[45] This Court has determined on a number of occasions that the standard of review of the decision of the Rental Officer is reasonableness. *Inuvik Housing Authority* v. *Kendi*, 2005 NWTSC 46, at paras 15-28; *Yeadon* v. *Northwest Territories Housing Corporation*, 2008 NWTSC 39, at paras 24-31; *Friesen* v. *Catholique*, 2009 NWTSC 37, at paras 5-7. There is no basis for reaching a different conclusion in this case.

[46] However, administrative bodies must be correct in their determination of true questions of jurisdiction. In this context, "jurisdiction" means whether the tribunal has the authority to make the inquiry and decision that it has made. Such a question arises when a tribunal has to determine whether the legislation that grants it its power gives it the authority to decide a particular matter. *New Brunswick (Board of Management)* v. *Dunsmuir*, *supra*, at para 59.

[47] The UNW claims that the Rental Officer acted outside his jurisdiction when he ordered that Ms. Letourneau and Ms. Mulders be provided 24 hour access to their rental units through the main entrance of the building, because that Order

related to premises that were completely outside the scope of the tenancy agreement. This engages a true issue of jurisdiction. It must be reviewed on a standard of correctness.

[48] There is no provision in the *Act* that deals specifically with the situation of property that has both a rental and non-rental use. But section 6 states that the *Act* applies to rental premises and to tenancy agreements. This suggests that the powers conferred to the Rental Officer by the *Act* also are over rental premises and tenancy agreements only.

[49] The term "rental premises" is defined at section 1. "Residential complex" and "common areas", concepts also potentially relevant to this dispute, are defined as well:

> 1. (...)
>
> "common areas" includes yards, walkways, steps, driveways, alleys and corridors
>
> (...)
>
> "rental premises" means a living accommodation or land for a mobile home used or intended for use as rental premises and includes a room in a boarding house or lodging house
>
> "residential complex" means a building, related group of buildings or mobile home park, in which one or more rental premises are located and includes all common areas, services and facilities available for the use of tenants of the building, buildings or park.
>
> (...)

[50] It is undisputed that nothing in the tenancy agreements gives the tenants any access to the UNW's offices. There is no suggestion that the main entrance, or the office space on the first floor of the building, are "common areas" within the meaning of the *Act*.

[51] There is nothing in the definition of "rental premises" that can be interpreted as extending the status of "rental premises" to areas of a building that are not intended for use by the tenants.

[52] The evidence filed by the UNW, and in particular the Affidavit sworn by Patty Ducharme on November 2, 2012, explains the nature of the activities of the UNW and underscores the importance of its ability to conduct those activities in a setting that protects confidentiality. The UNW also made much of its obligation to ensure that its employees work in a safe environment, and how that makes it untenable for it to give access to its offices to tenants 24 hours a day.

[53] Legitimate as these concerns may be, I do not find that they are relevant to the question of jurisdiction. The answer to that question would be the same regardless of the use that the UNW may make of the space. The point is, those parts of the building are not part of the rental premises. The presence of rental units in a section of a building does not turn the entire building into "rental premises" within the meaning of the *Act*.

[54] The powers of the Rental Officer, in the event of a breach by the landlord of its obligations under the *Act*, are set out at Paragraph 30(4) of the *Act*:

> 30. (...)
>
> (4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order
>
> (a) requiring the landlord to comply with the landlord's obligation;
> (b) requiring the landlord to not breach the landlord's obligation again;
> (c) authorizing any repair or other action to be taken by the tenant to remedy the effects of the landlord's breach and requiring the landlord to pay any reasonable expenses associated with the repair or action;
> (d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or
> (e) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.

[55] These powers are reasonably broad, but they do not include the power to compel a landlord to make available for the use of its tenants space that is

completely outside the scope of the lease. Very specific language would be required in the legislation to give the Rental Officer such powers.

[56] The Rental Officer, evidently, accepted the tenants' position that the access to their rental units was not adequate. It is also apparent that he viewed the installation of a locking gate on the west side of the building as the best solution to the problem. In his Reasons for Decision on Ms. Letourneau's matter, he wrote that he was "unable to understand" why this was not a reasonable approach to the resolution of the dispute. He also noted that his decision following the hearing into Ms. Carriere's complaint had been to order the UNW to provide access via a temporary walkway on the west side of the building, and that this order had neither been stayed nor complied with. *Record of the Rental Officer (Letourneau appeal)*, Tab 14, pp. 7-8.

[57] He expressed the same puzzlement in his Reasons for Decision on Ms. Mulders' matter:

> I remain somewhat perplexed as to why the installation of a temporary locking gate on the west side of the building is not acceptable to the landlord as a solution which reasonably serves both parties. In my opinion it addresses the landlord's concerns regarding security of the building and vehicles as well as the concerns of the applicant regarding her personal security at a minimal cost.

Record of the Rental Officer (Mulders appeal), Tab 14, p. 7.

[58] It is obvious from the transcript of these hearings and from the Rental Officer's Reasons for Decision that he was of the view that something needed to be done about access. It is equally obvious that he was trying to find a workable solution to the problem that he was being presented with. He had already issued one Order, and it had not resolved the problem. In the next two cases, he adopted a different approach, trying to provide the UNW with a few options to restore safe access for the tenants. He picked up on a possibility that had been alluded to by Ms. Mulders in her submissions, namely, that the tenants be given access through the 52nd Street entrance.

[59] Under the circumstances, I certainly understand the conundrum that the Rental Officer faced and what he was attempting to achieve. But he simply did not have the jurisdiction to make an order that would compel the UNW to make its private offices accessible to the tenants. The fact that the UNW was given the

choice as to which part of the Order to implement does not remove the requirement that each component of the Order be within the Rental Officer's jurisdiction.

[60] For those reasons, Paragraph 1(a) of the Orders issued on the Letourneau and Mulders cases cannot stand.

D) COMPENSATION ORDER

[61] Paragraph 30(4)(d) sets out the Rental Officer's power to order compensation:

> 30. (...)
>
> > (4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order
> >
> > > (d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; (...)

[62] Ms. Mulders sought a compensation order pursuant to this provision. At the hearing on April 28, 2012, she relied on a document that she had prepared, detailing the various items that she was seeking compensation for. She also gave evidence about those matters.

[63] The document prepared by Ms. Mulders identifies "expenses" and "non pecuniary damages". The "expenses" include amounts assigning a value to time she spent preparing for the hearing and extra time it took her to walk to and from work after the access changed. They also include costs associated with having to use her car, or taxis, to avoid using the back alley. Finally, they include the cost of handing out cigarettes or money to some of the people who frequent the back alley. In her evidence she explained that she felt this was a way to prevent having problems with them. She testified that she did not feel it was always possible or safe to simply ignore people who accosted her in the back alley, asking for money or cigarettes.

[64] Under the heading "non-pecuniary damages", she sought to be compensated for the inconvenience to her caused by the loss of access to the

walkways, the risks it forced her to take, and the emotional impact that the whole situation had on her.

[65] The total amount of compensation that she claimed was $8,602.00. The Rental Officer dismissed most of the claims. He concluded that persons who make a complaint to the Rental Officer are expected to bear the costs of preparing for the case, and that those costs are not costs contemplated by Paragraph 30(4)(d). He rejected the notion that he could order compensation for value that Ms. Mulders had assigned to her time. He rejected the claim based on the costs of her having used her car or taken taxis because the figures were based on an assumed average number of trips per month at an assumed average cost. He felt that without receipts, the evidence was insufficient to support that claim.

[66] The Rental Officer also rejected the claim for "non pecuniary damages". He concluded that these types of damages were not monetary losses directly related to the breach, noting that the remedies available under the *Act* were intended to be remedial, not punitive.

[67] Dealing with the claim for compensation for money and cigarettes that Ms. Mulders gave to people who frequent the back alley, the Rental Officer wrote:

> The applicant sought compensation for money and the cost of cigarettes she felt obliged to give to persons in the laneway to ensure her protection for harm. This compensation is based on an average of 8 incidents per month and an average cost per incident of $5. Although in my opinion, the costs are directly related to the landlord's breach, the frequency of incidents do not coincide with the applicant's testimony that she was harassed at least weekly. I also accept that the costs are difficult to substantiate with evidence such as receipts. In my opinion, compensation of $100 is reasonable.

[68] The UNW argues that the Rental Officer erred in ordering any compensation at all. It argues that the power set out at Paragraph 30(4)(d) is limited to ordering compensation for damages that have been ascertained clearly, and does not vest in the Rental Officer the power to assess damages. The UNW argues that where an assessment of damages is required, the matter must be pursued separately through an ordinary civil claim.

[69] I agree with the UNW's submission that Paragraph 30(4)(d) does not to vest the Rental Officer with the power to dispose of any and all claims for damages that

may arise between a landlord and a tenant. The power should not be used to assess damages better left to be dealt with in a civil action for damages. *Campney* v. *Valiant Property Management*, (1997) 37 O.T.C.75 (Ont.C.J.)

[70] At the same time, it is clearly the Legislature's intent that the Rental Officer be able to order compensation for certain losses that arise directly from a breach of the landlord's obligation. In order to exercise this power, the Rental Officer must necessarily engage in a form of assessment of the alleged loss. In fact that is the only way that the provision giving the Rental Officer the authority to order compensation for a *future* loss can make any sense. No such compensation could ever be ordered without some measure of assessment on the part of the Rental Officer.

[71] The type of compensation ordered here, it seems to me, is exactly what the *Act* contemplates ought to be dealt with by the Rental Officer. The whole point of the Rental Officer having the power to grant compensation is to streamline proceedings and have as much as possible of the disputes between tenants and landlords dealt with in a single process.

[72] The desirability of avoiding a multiplicity of proceedings when dealing with disputes between landlords and tenants was underscored by Sharpe J. in *Phillips* v. *Dis-Management*, (1995) 24 O.R. (3d) 435. In that case the landlord was opposing a compensation claim made by a tenant for damages to her property following a flooding in her apartment. The landlord argued that the claim should be pursued in a civil suit, not under the scope of the landlord and tenant legislation. Sharpe J. concluded that the matter could properly be dealt with under the auspices of the landlord and tenant legislation:

> (...) The balance of procedural convenience favours permitting the claim to proceed. The amount claimed here and in most claims of this nature falls within the jurisdiction of the Small Claims court where no discovery is available and where the proceedings are similarly summary in nature. It is true, as was argued before me, that the Landlord and Tenant Act accords the landlord no right to bring third party proceedings but the landlord is certainly to bring a subsequent claim against the party he asserts to be responsible for any loss. The procedural inconvenience of the lack of the availability of third party proceedings to the landlord does not, in my view, outweigh the preponderance of convenience and procedural simplicity which favours permitting the tenant to bring all claims in one proceeding.

Phillips v. *Dis-Management*, *supra*, at para. 12.

[73] I conclude that the compensation order that the Rental Officer made in this case was well within the jurisdiction given to him under Paragraph 30(4)(d) of the *Act*. That being so, his decision is to be reviewed on the standard of reasonableness. This is a standard that requires the reviewing court to show considerable deference to the Rental Officer's findings.

[74] It is apparent from the Reasons for Decision that the Rental Officer was mindful of the limited scope of the compensation powers he had under to the *Act*. He concluded that much of what was claimed was outside that scope because it could not be said to be directly related to the breach. For other aspects, he concluded that the evidence presented was not convincing or reliable enough.

[75] The Rental Officer's Reasons for Decision show that with respect to the items for which he did order compensation, he weighed the evidence carefully. He noted that the figures provided in the document that Ms. Mulders submitted did not entirely coincide with her evidence. At the same time, he recognized that the costs in question were of a kind that would be difficult to substantiate with receipts. It was as a result of this assessment and weighing of the evidence that he decided how much compensation should be ordered. I fail to see how his analysis of the matter could be characterized as unreasonable.

[76] I conclude that the compensation ordered in this case fell well within the parameters contemplated by the provision, and that the manner in which the Rental Officer dealt with this claim was reasonable. I see no reason to interfere with that aspect of his Order.

[77] For those reasons:

A) The appeal is allowed with respect to Paragraph 1(a) of the Rental Officer's Orders in Ms. Letourneau's matter and Ms. Mulders' matter, and that Paragraph of each Order is hereby vacated;
B) The appeal is dismissed with respect to Paragraph 4 of the Rental Officer's Order in Ms. Mulders' matter.

[78] If the parties wish to present submissions as to costs, I will entertain those submissions. The parties are directed to advise the Registry in writing, within fourteen days of the filing of these Reasons, as to whether they wish to present submissions as to costs, and if so, to provide their availabilities for a hearing.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
29th day of January, 2013

Counsel for the Applicant: Austin Marshall
Counsel for Respondent Kathryn Carriere: Amy Groothuis
Respondent Michele Letourneau represented herself
Respondent Annemieke Mulders represented herself

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