Date: 2013 03 25
Docket: S 1 CV 2013 000031

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CINDY JESKE

Applicant

-and-

YELLOWKNIFE HOUSING AUTHORITY

Respondent

- and -

HAL LOGSDON – RENTAL OFFICER

Respondent

MEMORANDUM OF JUDGMENT

A) INTRODUCTION AND BACKGROUND

[1] This is an appeal from a decision made by the Rental Officer on February 13, 2013.

[2] The *Residential Tenancies Act* R.S.N.W.T. 1988, c. R-5 ("the *Act*") is the statute that establishes the Rental Officer as the primary decision making authority to resolve disputes that arise between landlords and tenants. The purpose of the *Act* is to provide an accessible, informal and expeditious process to deal with those disputes.

[3] On January 18, 2013, the Yellowknife Housing Authority (YHA) filed an Application with the Rental Officer, seeking termination of Ms. Jeske's lease and

an eviction order. The Application set out the YHA's grounds for seeking this relief:

> Full electricity in unit has been disconnected and the tenant has been placed on a loader limiter since Jan 16, 2013. This poses a health and safety concern to the tenant and surrounding tenants. A previous order #10-12888 was issued for this reason on June 12, 2012 – stating that the tenant was not to breach this obligation again.
>
> An early lease termination was issued to the tenant effective January 29, 2013
>
> We are requesting a termination of lease and an eviction order.

Record of the Rental Officer, Tab 3

[4] Ms. Jeske was given notice of the Application. A hearing date was scheduled. The hearing proceeded on February 13, 2013. At that hearing, the Rental Officer heard evidence from Ms. Newhook, a Programs Officer with the YHA, and from Ms. Jeske herself.

[5] Ms. Newhook explained that the power at Ms. Jeske's unit had been disconnected since January 16, a period of 28 days. She made reference to earlier proceedings before the Rental Officer, in June 2012, that were also initiated because of a failure by Ms. Jeske to pay her electricity bill, resulting in the power being cut off to her unit. That earlier hearing resulted in the Rental Officer's Order #10-12888, referred to in the YHA's Application.

[6] Ms. Newhook testified about another matter which was of concern to the landlord, which arose after the Application was filed. Ms. Newhook explained that on January 29 one of the YHA's inspectors had checked the unit and had found that it was very cold inside. He discovered that the power breaker to the furnace had been turned off.

[7] Ms. Jeske, in her testimony, explained that she had not been aware, until the hearing, of the incident relating to the furnace breaker. She said she was not the one who turned the breaker off. She thought it was possible her 11 year old son might have done so accidentally.

[8] With respect to her failure to pay her electricity bill, Ms. Jeske explained that she had started working for a taxi company in June. There was a conflict at that workplace and she started getting fewer and fewer shifts, and eventually did not get any more. As of October, she was no longer working and this placed her in a difficult financial situation.

[9] She explained that because of the situation in her home she had to give up guardianship of her son to avoid him being apprehended by the Department of Social Services. She also explained the steps that she had taken to deal with her financial situation.

[10] The Rental Officer asked Ms. Jeske a number of questions during her testimony. Ms. Newhook also provided additional information about some of the issues that arose. Matters related to arrears and rent and damages to the unit were referred to during those exchanges. However, Ms. Newhook made it very clear that the YHA was asking for termination of the lease and an eviction order strictly on the basis of Ms. Jeske's failure to pay her electricity bill.

[11] The Rental Officer concluded that the relief sought by the YHA should be granted. He issued an Order that terminated the tenancy agreement effective February 28, 2013, and an eviction order effective March 1.

B) THE APPEAL

[12] The Originating Notice filed by Ms. Jeske to commence this appeal states that the basis for her appeal is that the Rental Officer failed to take into account her disability and the impact that his decision would have on her family.

[13] Ms. Jeske swore an Affidavit in support of her appeal. In that Affidavit she recounts various events that occurred before and after the hearing before the Rental Officer. She does not provide any information about the nature of her disability.

[14] She deposes that financial assistance was provided to her on February 18, that following this her rent and electricity bill debts were paid in full, and that the power was restored at her residence the next day. She contacted the YHA on February 20 to advise them that the power had been restored. She was told that the eviction order was still in force. She filed her appeal of the Rental Officer's decision on February 28, 2013.

[15] The YHA has also filed evidence on this appeal, namely, an Affidavit sworn by Ms. Newhook. She deposes that there are currently 23 families on the YHA's waiting list who are eligible to have access to a three-bedroom unit, which is the type of unit that Ms. Jeske is in. Ms. Newhook deposes that there are also other families currently housed in two-bedroom units who need to be transferred to three-bedroom units to comply with national occupancy standards. Ms. Newhook deposes that Ms. Jeske owes $1,942.65 in arrears for rent as of February 28, 2013. Ms. Jeske is still occupying the unit, because she successfully applied to this Court

for a stay of the Rental Officer's Order. According to Ms. Newhook the market value of the rent for the premises for the month of March amounts to $1,625.00.

[16] Ms. Newhook's Affidavit also exhibits three previous decisions made by the Rental Officer with respect to the tenancy agreement between Ms. Jeske and the YHA. These are decisions dated May 17, 2011, June 15, 2012 and December 14, 2012. Ms. Jeske objects to any reference being made to the May 2011 and December 2012 rulings because she says they are not relevant to this appeal.

[17] I agree with Ms. Jeske's position in that regard. There may be circumstances where reference to decisions involving the same landlord and tenant could be relevant to an appeal, even though they were not referred to at the hearing leading to the decision appealed from. But here, Ms. Newhook made it very clear to the Rental Officer that the YHA was not relying on anything other than the failure to pay electricity in support of its application for termination of the tenancy agreement. Therefore, rent and damages were matters that were entirely irrelevant to the Rental Officer's decision. They are just as irrelevant to this appeal. Therefore, in my deliberations about this appeal, I have disregarded those two earlier decisions.

C) STANDARD OF REVIEW

[18] Sections 87 to 90 of the *Act* govern the appeal process for decisions made by the Rental Officer:

> **87.** (1) A landlord or tenant affected by an order of a rental officer may, within 14 days after being served with a copy of the order, appeal the order by originating notice to a judge of the Supreme Court.
>
> (2) A notice of the appeal and a copy of the notice of appeal must be served
>
> (a) where the appellant is a landlord, to the rental officer and the tenant, and
>
> (b) where the appellant is a tenant, to the rental officer and the landlord, not later than seven days before the appeal.
>
> (3) A judge of the Supreme Court may, before or after the expiration of the time for appeal, extend the time within which the appeal may be made.

> (4) On receiving a notice of an appeal, the rental officer shall file with the Supreme Court all documents in the possession of the rental officer relating to the appeal and a copy of the reasons for the order.
>
> (5) A judge of the Supreme Court hearing an appeal may receive any evidence, oral or written, that is relevant to support or repudiate any allegation contained in the appeal
>
> **88.** A judge of the Supreme Court may order that an order of the rental officer on appeal under section 87 be stayed on such terms as he or she considers appropriate.
>
> **89.** After hearing the appeal, a judge of the Supreme Court may allow the appeal and vary or set aside the order or dismiss the appeal.
>
> **90.** A landlord or a tenant may appeal a decision of a judge of the Supreme Court made under this Act in the same manner as a decision of the Supreme Court.

[19] 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 applies. That is an important question because it determines the level of deference to be accorded to the decision-maker's findings.

[20] There are two standards of review: correctness and reasonableness. If the correctness standard applies, the appellate Court, in its review process, does not have to show deference to the decision-maker findings. The Court is entitled to substitute its view of the matter to that of the decision-maker.

[21] By contrast, the standard of reasonableness requires the Court to show considerable deference to the findings of the decision-maker. Even if the Court concludes that it would have reached a different conclusion on the matter, that is not a basis to intervene. Intervention is only warranted, under that standard, if the Court concludes that the decision-maker's decision is unreasonable.

[22] The jurisprudence has developed a number of factors that must be examined to identify which standard of review applies in any given case. But 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.

[23] This Court has examined the standard of review that applies to decisions of the Rental Officer on a number of occasions, and has consistently held that the applicable standard of review, where the Rental Officer acts within the scope of his jurisdiction, 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; *Vander Ploeg* v. *Stewart*, 2012 NWTSC cor.1, at para 19; *UNW* v. *Kathryn Carriere et al*, 2013 NWTSC 05.

[24] There is no suggestion that the Rental Officer was not acting within the scope of his jurisdiction when he made this decision. The standard of review that applies to Ms. Jeske's appeal, therefore, is reasonableness.

D) WHETHER THE RENTAL OFFICER'S DECISION WAS REASONABLE

[25] The Supreme Court of Canada has explained what "reasonableness" means in the context of appeals from administrative tribunals' decisions:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

New Brunswick (Board of Management) v. *Dunsmuir*, *supra*, at para 47.

[26] Ms. Jeske argues that the Rental Officer's decision was unreasonable, for a number of reasons.

[27] First, she argues that the Rental Officer failed to consider that the *Human Rights Act*, S.N.W.T. 2002, c. 18, applies to tenancy agreements, and the implications that this had on her case in light of her social condition and her disability. There are a number of difficulties with this submission. First, no evidence was adduced before the Rental Officer about the nature of Ms. Jeske's disability and its connection with her having breached the tenancy agreement. Nor were there any submissions made to the Rental Officer on this topic. Under the circumstances, it can hardly be argued that it was unreasonable for the Rental Officer not to take into account something that was not raised before him.

[28] An added difficulty is that no evidence was presented on the appeal either about Ms. Jeske's disability. As I explained during the hearing to Ms. Jeske's

advocate, who was granted leave to assist her on this appeal and make submissions on her behalf, the Court needs an evidentiary basis before it can take alleged facts into account.

[29] But even assuming that there was evidence about Ms. Jeske's disability, and evidence connecting this to her having difficulties maintaining employment, that would not be determinative. As counsel for the YHA noted, the YHA is an agency that provides subsidized housing. Many of its tenants struggle financially. Financial struggles, in and of themselves, do not remove a tenant's obligation to comply with the terms of his or her tenancy agreement.

[30] Ms. Jeske's second argument is that the Rental Officer was unreasonable in his assessment of the seriousness of her breach of the tenancy agreement. There is no doubt that the Rental Officer viewed this breach as a serious one. He was concerned about the consequences of power being cut off, in particular because this has the effect of disabling smoke detectors. He had expressed those concerns at the June hearing, making it clear that repeated breaches of this sort would justify a termination of the tenancy agreement:

> The non-payment of electrical services results in more than just a breach of the tenant's financial obligation when it results in disconnect. The disabling of fire protection devices causes a significant risk to life and property. It is, in my opinion, a serious breach. In my opinion, termination of the tenancy agreement would be a reasonable remedy for repeated breaches of this obligation. As this is the first time this has occurred, a more reasonable remedy and hopefully an effective one, is an order requiring compliance with the obligation and a prohibition from committing the breach in the future.

Reasons for Decision of Rental Officer on File #10-12888, June 13, 2012 (Exhibit "B" to Ella Newhook's Affidavit).

[31] He expressed similar concerns in his Reasons for Decision on this case:

> The tenancy agreement obligates the tenant to pay for electricity during the term of the agreement and the program provides a subsidy to reduce the cost of the utility to the tenant. The disconnection or limitation of electrical service presents a hazard to both life and property. The fire detection devices may become disabled and tenants may use unsafe methods of providing light and cooking facilities. The heat may be disrupted causing frost damage to the property. This is the second time the respondent has failed to maintain her electrical account in good standing causing a disruption in service.

Reasons for Decision of Rental Officer on File #10-13309, Record of the Rental Officer, Tab 10.

[32] Ms. Jeske argues that this is an exaggerated and unreasonable view of the seriousness of these breaches. She notes that there are frequent power outages in the City of Yellowknife, and that as far as risk, those outages have the same effect as electricity being cut off for non-payment of a bill.

[33] I understand the argument, but I do not think it can succeed, given the standard of review that I am required to apply. The Rental Officer viewed this as a serious breach. He explained why. While other circumstances beyond anyone's control may give rise to risks similar to the ones he evoked, that does not mean that it was unreasonable for him to conclude that this particular type of breach of the tenancy agreement is a serious one. The Rental Officer's concerns about the risks associated with the breach cannot be characterized as irrational.

[34] Ms. Jeske's third argument is that irrelevant matters were brought up during the hearing and that this contributed to an unreasonable decision being ultimately made. In my respectful view, the transcript of the hearing does not bear this out. There was a relatively free flowing exchange between Ms. Jeske, the Rental Officer, and Ms. Newhook towards the end of the hearing. But Ms. Newhook, fairly, made it very clear that she was only relying on the failure to pay the electricity bill in support of the relief she was seeking. There is nothing in the Rental Officer's decision itself that suggests that those extrinsic matters had any bearing on his decision. He made no mention of damages or rental arrears in his decision. He specifically stated that he was attaching no weight to the incident involving the furnace breaker.

[35] Finally, Ms. Jeske argues that the Rental Officer's approach was unreasonable because he failed to examine the specific circumstances of her case. She argues that instead, he relied on a predetermined rigid policy whereby a second breach of this sort would automatically lead to an order terminating the tenancy agreement. She argues that by adopting this approach, he acted unreasonably because he did not assess and weigh the specific circumstances of her case. She points to various comments that the Rental Officer made which, she says, suggest he applied a rigid pre-determined approach instead of weighing the circumstances that were before him on this specific case.

[36] I have considered this submission carefully, and reviewed the Rental Officer's comments that were underscored during the submissions made on behalf of Ms. Jeske. Taken in isolation, those comments could be interpreted in the way suggested by Ms. Jeske. But when considered in the context of the transcript of the hearing as a whole, I conclude that they simply reflect a concern on the Rental Officer's part to be consistent in his decisions. The Rental Officer listened to Ms. Jeske's evidence about the circumstances that she faced. He considered her

situation and considered whether it warranted a different decision from decisions he had made on other cases involving a similar breach. It is apparent from the transcript that there had been other hearings the same day where the Rental Officer had to deal with similar issues.

[37] The decision to terminate a tenancy agreement and to order eviction is never a happy one. It has very serious consequences for the tenant who is evicted. Having reviewed the transcript of this hearing, I conclude that the Rental Officer was conscious of those consequences and that he did not reach his decision lightly.

[38] It is understandable that Ms. Jeske feels that the decision to evict her is harsh. She did not fail to meet her obligations under the tenancy agreement because she wanted to: she found herself in a very difficult financial position. She later took steps to attempt to rectify the situation with her landlord; she was obviously struggling, and was even forced to make the heart wrenching decision to give up guardianship of her child. The Court is not without empathy for her situation. At the same time, the YHA has the right to enforce the terms of the tenancy agreement.

[39] As I have already stated, this Court is required, in law, to show deference to the findings of the Rental Officer. The question on an appeal like this one is not whether he could have made another decision, or whether this Court, faced with the same situation, would have made a different decision. The question for this Court is whether the Rental Officer's decision was unreasonable.

[40] The record of the hearing shows that Rental Officer gave Ms. Jeske a full opportunity to present her side of the story, and to explain the circumstances that she faced at the time the breach occurred. He was alive to her situation. But he was concerned about the seriousness of the breach; about his orders being meaningful and seen to be meaningful; and about being consistent in his decisions. Those were not unreasonable or irrational concerns for a decision-maker to have.

[41] For those reasons, given the standard of review that applies in this case, I regret that I am unable to grant the relief sought by Ms. Jeske.

[42] Ms. Jeske will need some time to vacate the premises. Again, the Court is not unsympathetic to her difficulties. On the other hand, the Rental Officer's eviction order was issued in the middle of February, and Ms. Jeske has been advised throughout the proceedings before this Court that she should have a contingency plan in the event that her appeal was dismissed. There is evidence before the Court that a number of families are on the YHA's waiting list at this time. Those families may be facing very difficult circumstances too while they are

waiting for a unit to become available. Under the circumstances, the YHA's request to have the eviction order effective on April 2nd, 2013 is not unreasonable.

[43] The appeal is dismissed, the Rental Officer's decision to terminate the tenancy agreement is confirmed. The eviction order will be effective April 2, 2013, at noon.

L.A. Charbonneau
J.S.C.

Dated in Yellowknife, NT this
25th day of March, 2013.

Appearing for the Applicant: Norman Smith, with leave of the Court, on behalf of Cindy Jeske

Counsel for the Respondent
Yellowknife Housing Authority: Edward Gullberg

The Rental Officer did not appear

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MEMORANDUM OF JUDGMENT OF
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