Giroux v. *Yellowknife Housing Authority*, 2014 NWTSC 42

Date: 2014 06 11
Docket: S-1-CV-2013-000193

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Residential Tenancies Act*,
R.S.N.W.T. 1988, c. R-5,

AND IN THE MATTER OF the decisions of the Rental Officer, Nos. 10-13783 and 10-13783B, dated December 10, 2013:

BETWEEN:

ANNE MARIE GIROUX

Applicant

- and -

YELLOWKNIFE HOUSING AUTHORITY

Respondent

Appeal from a decision of the Rental Officer under the *Residential Tenancies Act*.

Heard at Yellowknife, NT, on April 2, 2014.

Reasons filed: June 11, 2014

REASONS FOR JUDGMENT OF THE
HONOURABLE JUSTICE L.A. CHARBONNEAU

The Applicant was self-represented
Teresa Haykowsky and Michelle Thériault, counsel for the Respondent

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REASONS FOR JUDGMENT

(A) INTRODUCTION AND BACKGROUND

1. Circumstances giving rise to the appeal

[1] The Applicant has been a tenant of the Yellowknife Housing Authority (YHA) for many years. On November 27, 2013, following a complaint filed against her with the Rental Officer by the YHA, the Rental Officer ordered the termination of her tenancy agreement and her eviction from her apartment. The Applicant is appealing this decision under section 87 of the *Residential Tenancies Act*, R.S.N.W.T. 1988, c. R-5 (the *RTA*).

[2] The YHA is a corporation that manages 292 social housing rental units in the city of Yellowknife. The YHA owns some of the buildings housing these units, but also leases units in buildings that it does not own, which it then sublets. Access to

YHA social housing depends on potential tenants' income. The amount of the rent varies according to tenants' incomes.

[3] The YHA has a policy prohibiting tenants from keeping pets in their apartments. In accordance with this policy, the Applicant's tenancy agreement includes a provision prohibiting her from keeping pets.

[4] In January 2011, the YHA filed an application with the Rental Officer for the termination of the tenancy agreement and the Applicant's eviction, alleging that she had breached the terms of her tenancy agreement by keeping cats in her apartment. The Rental Officer heard the complaint. He concluded that the Applicant had indeed breached her tenancy agreement, but that since she had got rid of the cats since the incident, there was no reason to terminate the tenancy agreement. He ordered her to comply with the terms of her tenancy agreement from then on.

[5] In September 2013, the YHA discovered that the Applicant was keeping a cat in her apartment and filed a new complaint with the Rental Officer. At the hearing before the Rental Officer, the Applicant did not deny that she was keeping cats in her apartment, but argued that the provision in her tenancy agreement prohibiting her from doing so was unlawful because it was discriminatory and also because it violated the *RTA*.

[6] The Rental Officer concluded that the provision in the tenancy agreement prohibiting pets was reasonable and neither discriminatory nor contrary to the *RTA*. He ordered the termination of the tenancy agreement and the eviction of the Applicant from her apartment.

2. The Rental Officer's record and the evidence filed for the appeal

[7] In accordance with the requirements of the *Rules of the Supreme Court of the Northwest Territories*, once the appeal was filed, the Rental Officer filed his record with the Court. This record includes the hearing transcripts, the Rental Officer's reasons and the orders he awarded to the YHA.

[8] Under section 87 of the *RTA*, the parties may present evidence relating to an appeal. In this case, the Applicant filed an affidavit explaining her personal circumstances, the importance for her and her children of being able to keep pets, and the reasons why she finds the YHA's policy prohibiting pets to be discriminatory.

[9] The Respondent filed an affidavit by Robert Bies, the Chief executive officer of the YHA. In the affidavit, Mr. Bies explains the structure of the YHA, its relationship with the government, and the general operation of the program it administers. He also describes the YHA's policy on pets, explaining as follows:

> (a) This unwritten policy has existed for a long time;
>
> (b) The purpose of the policy is to provide tenants with a safe, clean environment, avoid costs resulting from any damage that might be caused by pets, avoid inconvenience for the other tenants, and make the best use of the YHA's limited resources;
>
> (c) The policy is not absolute; tenants may make an accommodation request if, as a result of a disability, they need a pet on a day-to-day basis. Five YHA tenants are currently allowed to keep a pet in their apartment for this reason.

[10] Mr. Bies also refers to information he obtained from other landlords in the city of Yellowknife regarding their pet policies. Some landlords have an absolute no-pets policy; others allow pets in only some of their apartments or allow only certain types of pets.

[11] At the hearing of the appeal, the Applicant, in her arguments, referred to certain facts that were neither discussed at the hearing before the Rental Officer nor mentioned in the affidavits she filed.

[12] The Applicant represented herself in the appeal. It is understandable that she is not proficient in all the proedural and substantive legal rules that govern an appeal such as this one. But, as I explained to her at the hearing, there is a distinction between what is in evidence and what is said in the parties' submissions at the hearing of the appeal. The Court's decision must consider the facts that are part of the Rental Officer's Record (including the testimony presented at the hearing) or that are established by the evidence adduced on the appeal. The Court cannot consider facts that are alleged during the parties' submissions but that are not part of the evidence. I abided by these principles in my deliberations and my analysis of the issues raised by this appeal.

(B) ANALYSIS

1. Standard of Review – General Principles

[13] There are two standards of review for appeals and judicial review: correctness and reasonableness. In any appeal or judicial review of a decision of an administrative tribunal, the court must begin by determining which standard of review applies. The level of deference owed by the court to the decision of the administrative tribunal depends on the standard of review.

[14] To determine which standard of review applies, certain factors must be considered:

> A consideration of the following factors will lead to the conclusion that the decision maker should be given deference and a reasonableness test applied:
>
> - A privative clause: this is a statutory direction from Parliament or a legislature indicating the need for deference.
>
> - A discrete and special administrative regime in which the decision maker has special expertise (labour relations for instance).
>
> - The nature of the question of law. A question of law that is of "central importance to the legal system . . . and outside the . . . specialized area of expertise" of the administrative decision maker will always attract a correctness standard [citation omitted]. On the other hand, a question of law that does not rise to this level may be compatible with a reasonableness standard where the two above factors so indicate.
>
> If these factors, considered together, point to a standard of reasonableness, the decision maker's decision must be approached with deference in the sense of respect discussed earlier in these reasons. There is nothing unprincipled in the fact that some questions of law will be decided on the basis of reasonableness. It simply means giving the adjudicator's decision appropriate deference in deciding whether a decision should be upheld, bearing in mind the factors indicated.

Dunsmuir v. *New Brunswick*, 2008 SCC 9, paragraphs 55 and 56.

[15] The factor concerning the nature of the question raised by the appeal or the judicial review may be determinative. For example, it is trite law that the correctness standard applies to constitutional issues. This standard also applies to decisions of an administrative tribunal regarding the scope of its jurisdiction, for example, when it comes to drawing jurisdictional lines between two or more competing specialized tribunals. It is also relatively clear that reasonableness is the standard that applies to

issues related to facts, or to a decision that involves the exercise of a discretionary power, the interpretation of an enabling statute, or relates to other issues that fall within a tribunal's area of expertise. *Smith* v. *Alliance Pipeline Ltd*, 2011 SCC 7, paragraph 26.

[16] Lastly, if the Court has already determined the applicable standard of review in another case, the Court can simply rely on that analysis.

[17] The standard of review applicable to the issues raised in this appeal must be established in light of these general principles. Obviously, when several issues are raised, the standard of review is not necessarily the same for every issue. This is the case here: some of the issues raised in this appeal are subject to the correctness standard, others, to that of reasonableness.

2. Applicable standards of review

(a) The Rental Officer's decision regarding the Applicant's argument based on section 15 of the *Canadian Charter of Rights and Freedoms* (the *Charter*)

[18] The Applicant submits that the Rental Officer erred in determining that the YHA's policy on pets did not violate section 15 of the *Charter*, which guarantees any individual the right to equality before and under the law and protection against discrimination.

[19] As both parties acknowledge, the standard of review that applies to this issue is that of correctness, since this is a constitutional issue.

(b) The Rental Officer's decision regarding the Applicant's argument under the *Human Rights Act*, S.N.W.T. 2002, c.18

[20] The *Human Rights Act* lists a certain number of grounds on which it is prohibited to discriminate in the Northwest Territories. Section 12 prohibits discrimination respecting tenancy:

> 12 (1) No person shall, on the basis of a prohibited ground of discrimination and without a *bona fide* and reasonable justification,
>
> (a) deny to any individual or class of individuals the right to occupy as a tenant any commercial unit or self-contained dwelling unit that is advertised or otherwise in any way represented as being available for occupancy by a tenant; or

> (b) discriminate against any individual or class of individuals with respect to any term or condition of occupancy of any commercial unit or self-contained dwelling unit.
>
> (2) In order for the justification referred to in subsection (1) to be considered *bona fide* and reasonable, it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.
>
> (3) It is not a contravention of subsection (1) for an owner of a commercial unit or self-contained dwelling unit to give preference in the occupation of a commercial unit or self-contained dwelling unit or with respect to a term or condition of such an occupancy, on the basis of family affiliation, to a member of his or her family.

Human Rights Act, *supra*, section 12.

[21] Section 12 is not part of the Rental Officer's enabling statute. The Respondent nonetheless submits that the standard of review that applies to this issue is reasonableness. The Respondent argues that this standard of review is justified because section 5 deals specifically with tenancies, and is therefore closely linked to the Rental Officer's area of expertise, even if this provision is not part of the *RTA*. The Respondent also submits that the decision does not involve a pure question of law, but rather a situation in which the Rental Officer must apply the law to certain facts. It also points out that the Rental Officer's decision does not involve an issue that is of sufficient general legal importance to attract the correctness standard.

[22] Section 5 does indeed apply to tenancies, and the Rental Officer has undeniable expertise in this area. However, in my opinion, section 5 first and foremost concerns discrimination, a concept the Rental Officer is not called upon to interpret on a regular basis. It is not a subject that is central to his expertise.

[23] This Court has previously held that the standard of reasonableness applies to decisions made by an adjudicator appointed under the *Human Rights Act* to deal with discrimination complaints. *WCB* v. *Mercer et al.*, 2012 NWTSC 57 (affirmed on appeal, 2014 NWTCA 01). But this decision was based on the expertise of adjudicators appointed under that statute, thereby recognizing the specific nature of this field. The decision of an administrative tribunal that is not called upon to interpret the *Human Rights Act* on a regular basis does not necessarily attract the same standard of review.

[24] The *Human Rights Act*, and the protection it offers to citizens, is of great importance to the legal system of the Northwest Territories as a whole. Like any

human rights legislation, this enactment has a quasi-constitutional status. It is of considerable public interest that the concept of discrimination be interpreted in a consistent and uniform manner in any situation in which it is raised.

[25] I therefore conclude that this issue, like the *Charter* issue, is reviewable on a standard of correctness.

(c) The Rental Officer's decision regarding the compliance of the no-pets provision with the spirit of the *RTA* and his interpretation of section 14.1 of the *RTA*

[26] This question is clearly related to the Rental Officer's interpretation of his enabling statute. This Court has held many times that as long as the Rental Officer does not exceed his jurisdiction, this type of decision is reviewable on the standard of reasonableness. *Inuvik Housing Authority* v. *Kendi*, 2005 NWTSC 46, at paragraphs 15-28; *Yeadon* v. *Northwest Territories Housing Corporation*, 2008 NWTSC 39, at paragraphs 24-31; *Friesen* v. *Catholique*, 2009 NWTSC 37, at paragraphs 5-7; *Vander Ploeg* v. *Stewart*, 2012 NWTSC cor.1, at paragraph 19; *UNW* v. *Kathryn Carriere et al*, 2013 NWTSC 5, at paragraph 45; *Jeske* v. *Yellowknife Housing Authority*, 2013 NWTSC 17, at paragraphs 22-23.

[27] In her additional written submissions, the Applicant stated that because the prohibition against keeping pets stems from an unwritten YHA policy, the issue should be reviewable against the correctness standard and not that of reasonableness. I disagree. Whether or not the policy is written does not change the fundamental nature of the decision to be examined. The impugned decision concerns the Rental Officer's interpretation of his enabling statute and how he applied that statute to the facts in the case. In accordance with previous decisions of this Court, the applicable standard of review is reasonableness.

(d) The Rental Officer's decision to terminate the tenancy agreement and to order the Applicant's eviction

[28] As for the previous issue, and for the same reasons, the applicable standard of review is reasonableness: at issue is a decision that is central to the Rental Officer's duties under the *RTA*.

3. Review of the Rental Officer's decisions in light of the applicable standards of review

(a) The Rental Officer's decision regarding the Applicant's argument based on section 15 of the *Charter*

[29] The Applicant submits that the YHA policy prohibiting pets violates section 15 of the *Charter*, which provides that every individual is equal before and under the law and has the right not to be discriminated against.

[30] At the hearing before the Rental Officer, the Applicant raised the right to equality under section 15 of the *Charter*. However, the Applicant presented very little evidence and few arguments that could have allowed the Rental Officer to examine the issue properly, given the applicable legal framework.

[31] When the *Charter* is raised with respect to an organization that is not the government, the first issue is whether the *Charter* applies to this organization. The party that asserts a right must therefore first establish that this right exists.

[32] Moreover, even if one assumed that the *Charter* applies to the YHA, the argument the Applicant submitted to the Rental Officer was fatally flawed: she neither established nor clearly identified on which ground of discrimination she was relying. She also did not identify it in her notice of appeal or her written submissions. It was not until her oral submissions at the hearing of the appeal that she said that the alleged ground of discrimination was her being a social housing tenant.

[33] It is clear that the Applicant is not relying on any of the grounds listed in section 15 (race, national or ethnic origin, colour, religion, sex, age or mental or physical disability). Her application therefore had to be based on an analogous ground. She had to identify this ground and satisfy the Rental Officer that it was an analogous ground that meets the tests developed by the case law. *Corbiere* v. *Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, at paragraph 13. She did not do so before the Rental Officer, nor did she do it for the purposes of the appeal.

[34] Be it on appeal or on judicial review, a court may only examine the issues that were properly raised before the administrative tribunal. *Alberta (Information and Privacy Commissioner)* v. *Alberta Teachers Association*, 2011 SCC 61. *Jeske* v. *Yellowknife Housing Authority*, to which I referred in paragraph 26, illustrates this principle. In *Jeske*, the applicant, on appeal, criticized the Rental Officer for failing

to consider her disability under the *Human Rights Act*. Yet she had not raised this issue at all at the hearing before the Rental Officer, nor had she presented any evidence about her disability. The court therefore refused to examine the issue on appeal.

[35] The situation is somewhat different here, as the Applicant did raise section 15 of the *Charter* at the hearing before the Rental Officer. However, as I have already mentioned, she did not present any evidence or make any submissions on how the *Charter* applies to the YHA, or specify on which ground of discrimination she was relying. Consequently, the Rental Officer was not called upon to rule on these issues. An argument that was not substantiated before the administrative tribunal cannot be raised on appeal or judicial review. This approach is essential in order to respect the legislature's intention to assign administrative tribunals the role of primary decision-maker in certain areas. *Alberta (Information and Privacy Commissioner)* v. *Alberta Teachers Association*, *supra*, at paragraph 24.

[36] Another basic principle is that the courts should only rule on a constitutional issue if a sufficient factual basis has been established to analyse the legal issue:

> *Charter* cases will frequently be concerned with concepts and principles that are of fundamental importance to Canadian society. For example, issues pertaining to freedom of religion, freedom of expression and the right to life, liberty and the security of the individual will have to be considered by the courts. Decisions on these issues must be carefully considered as they will profoundly affect the lives of Canadians and all residents of Canada. In light of the importance and the impact that these decisions may have in the future, the courts have every right to expect and indeed to insist upon the careful preparation and presentation of a factual basis in most *Charter* cases. The relevant facts put forward may cover a wide spectrum dealing with scientific, social, economic and political aspects. Often expert opinion as to the future impact of the impugned legislation and the result of the possible decisions pertaining to it may be of great assistance to the courts.

McKay v. *Manitoba*, [1989] 2 S.C.R. 357, at paragraph 8.

[37] This principle has been reiterated many times by the Supreme Court of Canada, and applied by the courts nationwide. See, for example, *British Columbia (Attorney General)* v. *Christie*, [2007] 1 S.C.R. 873, at paragraph 28; *Cunningham* v. *Alberta (Minister of Aboriginal Affairs and Northern Development)*, 2009 ABCA 239, at paragraph 72.

[38] In the case at bar, such a factual basis was not established before the Rental Officer or in the evidence presented by the Applicant on appeal. In the

circumstances, given the significance of the legal issues in question, the Court should not examine them in the absence of a complete, sufficient factual record.

[39] I hasten to add that these comments are not intended to be critical of the Applicant. I understand that she represented herself before the Rental Officer and on this appeal and that she put a lot of time and effort into this case. But the Court is bound by the same legal principles regardless of whether the parties represent themselves or not.

[40] In the circumstances, this ground of appeal must fail.

(b) The Rental Officer's decision regarding the Applicant's argument under the *Human Rights Act*

[41] Subsection 5(1) of the *Human Rights Act* sets out the prohibited grounds of discrimination for the purposes of that statute. These grounds include social condition. *Human Rights Act*, *supra*, section 5.

[42] The term "social condition" is defined in section 1:

> "social condition", in respect of an individual, means the condition of inclusion of the individual, other than on a temporary basis, in a socially identifiable group that suffers from social or economic disadvantage resulting from poverty, source of income, illiteracy, level of education or any other similar circumstance;

Human Rights Act, *supra*, section 1.

[43] Section 12, quoted above, at paragraph 20, prohibits discriminating against a particular class of individuals with respect to any term or condition of a tenancy agreement on the basis of a prohibited ground. The Applicant submits that the YHA policy discriminates against the YHA's tenants on the basis of their social condition and that it is therefore contrary to section 12.

[44] The Applicant argues that underlying the prohibition to keep pets is the assumption that people who have a low income are not responsible pet owners. She submits that it is discriminatory to impose a complete pet ban on them as a result of their social condition.

[45] I accept outright that for people who wish to have a pet, not being able to keep one is a serious disadvantage. I do not underestimate the impact this may have, as the Applicant's affidavit and her testimony before the Rental Officer confirm. However,

in my opinion, the evidence does not establish that this disadvantage is imposed in a discriminatory manner.

[46] Poverty and income level are clearly factors that are part of the concept of social condition, given the manner in which this term is defined in the *Human Rights Act*. However, the Applicant did not present any specific evidence about her own income or about the incomes of other YHA tenants. The only evidence relating to the income of YHA tenants is set out in Mr. Bies' affidavit. This evidence establishes that the social housing program managed by the YHA is available to families with an annual income of no more than $102,996.00.

[47] Mr. Bies states that while some YHA tenants are low-income individuals and families, others are individuals and families of moderate income. This evidence was not challenged. Mr. Bies's statement seems reasonable if a household with an annual income of $102,996.00 can be eligible for this program. That level of income can hardly be characterized as low income.

[48] On this evidence, the Applicant has not established that the persons who are subject to the discrimination she alleges are part of an identifiable group as far as their social condition is concerned. It cannot be said that the members of the group she identified (YHA tenants) all necessarily have the same social condition and belong to an identifiable group that may be the victim of prohibited discrimination.

[49] It must be pointed out that since the YHA policy applies to all tenants, regardless of their income, the situation in this case is quite different from that in *Campbell et al.* v. *Yukon Housing Corporation*, October 5, 2005, Yukon Human Rights Commission, cited by the Applicant. In that matter, the same landlord applied different rules to social housing tenants than to the rest of its tenants. This is not the case here.

[50] Another problem with the Applicant's position arises from the fact that many tenants in Yellowknife who are not eligible for the YHA program are also prohibited from keeping pets in their rental units. The YHA restriction is a restriction that is imposed by many other landlords. This disadvantage is therefore not imposed exclusively on tenants of the YHA; it is also imposed on many tenants in the private market.

[51] The Applicant argues that the discrimination arises from the fact that people benefitting from the social housing program are not free to seek housing elsewhere, while people renting in the private market have the option of finding a tenant who allows his or her landlords to keep pets. In my opinion, however, this does not make

the YHA policy discriminatory, given that all YHA tenants are treated in the same manner and that the restriction imposed on them is also imposed on many other tenants in the city of Yellowknife.

[52] For these reasons, I find that the Rental Officer's conclusion that the YHA policy is not contrary to the *Human Rights Act* is correct.

(c) The Rental Officer's decision regarding the compliance of the no-pets provision with the spirit of the *RTA* and his interpretation of section 14.1 of the *RTA*

[53] The Applicant acknowledges that she signed a tenancy agreement containing a provision prohibiting her from keeping pets, but argues that she did not have to comply with this provision, as this condition is unreasonable, inconsistent with the spirit of the *RTA* and, consequently, of no force and effect.

[54] The Applicant argues, among other things, that the impugned provision is in direct conflict with section 14.1 of the *RTA*, which sets out what landlords may require in terms of a pet security deposit. Section 14.1 reads as follows:

> 14.1 (1) A landlord shall not require or receive a pet security deposit from a tenant other than
>
> (a) in the case of a weekly tenancy, an amount equal to 50% of the rent for a period not exceeding one week; or
>
> (b) in the case of a tenancy other than a weekly tenancy, an amount equal to 50% of the rent for a period not exceeding one month.
>
> (2) A landlord of subsidized public housing, or a landlord who is an employer that provides his or her employees with rental premises at a subsidized rent, may require a pet security deposit that is calculated on the market-value rent of the rental premises.
>
> (3) A landlord shall not require or receive a pet security deposit from a tenant:
>
> (a) unless the tenant keeps or intends to keep a pet on the rental premises; or;
>
> (b) in respect of a service animal used by a person with a disability to avoid hazards or to otherwise compensate for the disability.

> (4) A landlord shall not require or receive from a tenant more than one pet security deposit in respect of the rental premises, regardless of the number of pets that the landlord has agreed the tenant may keep on the rental premises.
>
> (5) A landlord shall not require or receive a pet security deposit from a tenant who has continuously occupied the rental premises for a period commencing before September 1, 2010, if the tenant had been permitted to have a pet under the terms of the tenancy agreement in effect immediately before that day.

[55] According to the Applicant, this provision must be interpreted as prohibiting landlords from including in a tenancy agreement a provision preventing tenants from keeping pets. She also argues that a total ban on pets is contrary to the spirit of the *RTA*.

[56] In his decision, the Rental Officer referred to sections 10 and 45 of the *RTA*. Both were relevant to the analysis he was called upon to perform. Section 10 stipulates that a tenancy agreement is deemed to include the provisions of the form of a tenancy agreement set out in the regulations and that any provision that is inconsistent with the provision of the form of tenancy agreement set out in the regulations has no effect. Section 45 establishes the tenant's duty to comply with any conditions of the tenancy agreement that are reasonable.

[57] The Rental Officer concluded that, in itself, a provision prohibiting pets was not inconsistent with the *RTA*. He noted out that he had examined this issue on many occasions and that this Court had upheld one of his orders in a similar case:

> The written tenancy agreement between the parties clearly prohibits pets in the rental premises. The provision is not inconsistent with the Act and has been determined to be reasonable in a number of cases before this tribunal including one termination order which was appealed and upheld by the NWT Supreme Court [*Martha Porter and Yellowknife Housing Authority, S0001-CV2006000034, February 20, 2006*].
>
> *Rental Officer's Reasons for Decision*, Record of the Rental Officer, Tab 10, page 3.

[58] The Rental Officer then noted that many landlords include such a provision in their tenancy agreements, because of the disturbance and damage often created by pets. *Rental Officer's Reasons for Decision*, Record of the Rental Officer, Tab 10, page 3.

[59] He then explained why, in his opinion, section 14.1 did not affect the validity of such a provision:

> In my opinion, the pet deposit provision does not make a "no pets" provision unreasonable. If the pet deposit provision was intended to further limit section 45, those limitations would be specifically set out in the Act as is done in section 13 prohibiting accelerated rent. The Ontario statute does exactly that by prohibiting any restrictions on keeping pets.
>
> *Rental Officer's Reasons for Decision*, Record of the Rental Officer, Tab 10, page 3.

[60] As I noted above, this decision is reviewable against a standard of reasonableness. It is important to remember what this standard of review means. It is a standard that requires the Court to show deference to the decision of the administrative tribunal. The Supreme Court of Canada explained this in the following manner:

> 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.

[61] The question, therefore, is not whether the Court agrees with the Rental Officer's conclusion but rather whether his decision meets these criteria of justification, transparency and intelligibility and whether it falls within a range of possible, acceptable outcomes which are defensible in respect of all the circumstances.

[62] Here, the Rental Officer explained the reasons that led him to his conclusion that the provision of the tenancy agreement was reasonable and valid. His decision meets the requirements of justification, transparency and intelligibility.

[63] He noted that this type of provision was nothing out of the ordinary and that other landlords in the city of Yellowknife resort to it. He said that, in his opinion,

such provisions were used to prevent damage and costs for the YHA. He considered his experience in such matters. Indeed, during the hearing, he made reference to cases that he dealt with where substantial damage had been caused by pets.

[64] One can agree or disagree with the Rental Officer's decision. He could have concluded that such a restriction, applicable to all tenants and to any kind of pet, was not justified. He could have chosen to give more weight to the fact that for people who keep or who would like to keep a pet, such a provision is a serious disadvantage. He could have agreed with the Applicant's arguments and concluded that the YHA policy was disproportionate in light of its purpose. There is no doubt that for people who, like the Applicant and her children, have pets to which they are attached, having to get rid of these pets to avoid losing their home can be a very painful decision.

[65] But as I have noted a number of times, at issue is not whether another decision-maker would have reached a different conclusion. Read as a whole, the Rental Officer's decision, in the words of the Supreme Court of Canada, falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law". The decision is transparent since the Rental Officer explained the reasons for his decision, and his reasoning, in an intelligible manner.

[66] I conclude that, in light of the applicable standard of review, the intervention of this Court is not warranted on this issue.

[67] Despite this conclusion, I find it necessary to make a few additional comments.

[68] The first concerns the scope of the February 20, 2006, decision of this Court in *Martha Porter* v. *Yellowknife Housing Authority* S-0001-CV2006000029, to which the Rental Officer referred in his decision. The Respondent also referred to it for the purposes of this appeal.

[69] The decision in *Porter* is not a reported decision, but the Court's file contains a transcript of the short hearing that led to the Court's dismissal of the appeal of the Rental Officer's decision. In *Porter*, the YHA had filed a complaint with the Rental Officer, requesting the termination of Ms. Porter's tenancy agreement on the ground that she had contravened the provision of this agreement prohibiting her from keeping pets. Ms. Porter did not attend the hearing before the Rental Officer, and the hearing was held in her absence. At that hearing, the YHA established that Ms. Porter had indeed contravened her tenancy agreement.

[70] Ms. Porter then filed an appeal. Among other things, she challenged the Rental Officer's decision to hold the hearing in her absence. On February 17, 2006, Ms. Porter appeared before the Court and argued that she had not been informed of the date of the hearing before the Rental Officer. She also argued that she no longer had any pets in her apartment and that the eviction order was unnecessary. No submissions were made to the Court regarding the validity of the provision of the tenancy agreement forbidding her from keeping a pet in her apartment. After hearing Ms. Porter's submissions, the Court simply concluded that the Rental Officer had been correct to hold the hearing in her absence. The Court also stated that the Rental Officer's decision was reasonable.

[71] Given the context of this decision, the Court's dismissal of Ms. Porter's appeal shall not be interpreted as an approval by this Court of the YHA policy. When the standard of review is that of reasonableness, the dismissal of an appeal does not mean that the court is in complete agreement with the decision of the administrative tribunal. Administrative tribunals must be aware of this nuance.

[72] My second comment regards the fact that the YHA policy is an unwritten one.

[73] Mr. Bies' affidavit, which describes the policy and how it works, contains very few details. The limited amount of information concerning the policy raises, in my opinion, many questions that need to be clarified. For example, how and when are potential tenants informed of the possibility of claiming an exemption from this policy? What information are they given in this regard? Which disabilities are considered to warrant an exemption from the policy? What is required of tenants in terms of supporting documentation to establish that they should benefit from the exemption? Who, ultimately, decides whether a tenant should be granted the exemption? How does the YHA define the concept of "disability" in this context?

[74] As I noted at paragraphs 45 and 64, the YHA policy imposes a prohibition on tenants that represents a serious constraint for some. It seems to me that, in the circumstances, it would be important for everyone to have clear information on the terms and conditions of this policy, including the parameters according to which tenants may be granted an exemption. A written policy would provide clarity and transparency, and ensure fairness and consistency in its implementation.

(d) The Rental Officer's decision to terminate the tenancy agreement and to order the Applicant's eviction

[75] As mentioned in paragraph 4, the Applicant had appeared before the Rental Officer previously, in 2011, because she had failed to comply with the provision of

the tenancy agreement forbidding her to keep pets. At that time, the Rental Officer denied the YHA's request to evict the Applicant from her apartment, but ordered her to comply with the conditions of her tenancy agreement in future.

[76] At the second hearing, the Applicant did not deny that she was still keeping pets in her apartment. She asked the Rental Officer to conclude that the provision in question was invalid. She also explained that, regardless of the outcome of the hearing, she was planning to move.

[77] Since the Rental Officer concluded that the provision of the tenancy agreement was valid and that the Applicant had contravened it a second time, it was not unreasonable for him to terminate the tenancy agreement and to order her eviction. Again, these decisions clearly fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

(C) CONCLUSION

[78] For these reasons, and in light of the standards of review applicable to the issues raised by this appeal, I conclude that there is no reason to set aside the Rental Officer's decision. The appeal is dismissed.

[79] The Applicant has requested that, in the event her appeal is dismissed, she be allowed sufficient time to find new housing. This is a reasonable request, especially considering that she has children. However, the Court must also consider the fact that the Rental Officer's decision was issued on November 27, 2013. Since the Applicant's appeal is dismissed, the YHA is entitled to enforce the Rental Officer's decision. It has the right to recover the apartment to make it available for another family who needs it. Moreover, as the Applicant already stated at the hearing before the Rental Officer, she was intending to move regardless of the outcome of the proceeding. She reiterated this at the hearing of the appeal. All of this suggests that she started looking for new accommodations some time ago.

[80] In the circumstances, the Applicant will have until August 3, 2014, to leave the rental unit. An eviction order shall be effective as of August 4, 2014.

[81] The parties shall have until June 20, 2014, at 4 p.m., to notify the Clerk whether they wish to make submissions to the Court regarding the costs of the appeal and whether they wish to do so orally or in writing. If necessary, I will set a hearing date or, where applicable, establish guidelines for the filing of written submissions.

L.A. Charbonneau
J.S.C.

Signed at Yellowknife, NT, this
11th day of June 2014.

The Applicant was self-represented.
Teresa Haykowsky and Michelle Thériault, counsel for the Respondent

S-0001-CV 2013000193

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ANNE MARIE GIROUX

Applicant

- and -

YELLOWKNIFE HOUSING AUTHORITY

Respondent

REASONS FOR JUDGMENT OF THE HONOURABLE L.A. CHARBONNEAU