

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the Residential Tenancies Act,
R.S.N.T. 1988, C. R-5, as amended;

AND IN THE MATTER OF the ORDER and EVICTION ORDER
in File #15227 made on November 8, 2016 by
Adelle Guigon, Rental Officer;

BETWEEN:

JANE TETLICHICH

Applicant

- and -

RAY KRUEZICH

Respondent

Transcript of the Oral Decision delivered by The Honourable
Justice A. M. Mahar, sitting in Yellowknife, in the
Northwest Territories, on the 26th day of May, 2017.

APPEARANCES:

Ms. J. Tetlichich: For herself, the Applicant

Ms. T. Paradis: Counsel for the Respondent

Official Court Reporters

1 THE COURT: Please have a seat. Is
2 Ms. Tetlichi on the phone?

3 COURT CLERK: She is, Your Honour.

4 THE COURT: Good afternoon, Ms. Tetlichi.

5 MS. TETLICH: Good afternoon.

6 THE COURT: This is an appeal from the
7 decision of a Rental Officer from November the
8 8th, 2016, and it was filed pursuant to Section
9 87 of the Residential Tenancies Act, R.S.N.T.
10 1988, C. R-5, afterwards referred to as "the
11 Act".

12 On May the 20th, 2016, the Respondent in
13 this application, Ray Kruezi, filed an
14 application for eviction on two grounds, under
15 Section 41(4) (a) of the Act, for non-payment of
16 rent and, pursuant to Section 41(4) (c), that he
17 required the unit in question for his personal
18 use. The unit was, at that time, occupied and
19 still is occupied by Ms. Tetlichi.

20 A hearing commenced on August the 24th,
21 2016.

22 There are two key issues. One is whether
23 there was an tenancy agreement in place such that
24 the Landlord and Tenant Act would apply, and the
25 other is whether or not the parties had been in a
26 common-law relationship, in which case the Act
27 would not apply.

1 The Applicant at that time denied signing a
2 rental agreement. I note, not just in passing,
3 that during the course of submissions on this
4 application the Applicant appears to have adopted
5 the fact that she did, in fact, sign the rental
6 agreement but appears to suggest that the
7 agreement was not meant to be taken seriously.

8 On September the 29th, there was a
9 continuation of the hearing and the parties were
10 then given until October the 27th to produce
11 written submissions or further written evidence.

12 The Rental Officer, in a well-reasoned
13 decision, found that Mr. Kruezi had moved out in
14 September of 2015, and that a rental agreement
15 had been signed approximately four months later,
16 in January of 2016. She found a landlord and
17 tenant relationship existed and the Act applied,
18 and she found that there had been non-payment.
19 As well, she found that Mr. Kruezi honestly
20 required the use of the premises for his own use.

21 On questions of jurisdiction and procedural
22 fairness, the standard of review is typically
23 correctness, but I refer to the decision in
24 Huden, which is a decision of the Supreme Court
25 of British Columbia, paragraph 66, dealing with a
26 very similar case, and I quote:

27 A determination as to whether a
 tenancy exists on the facts before

1 the tribunal is surely one that
2 goes to the heart of the
3 tribunal's expertise. It is for
4 the tribunal, under the
5 Residential Tenancy Act, to decide
6 whether the facts before it
7 satisfy the definitions in its own
8 statute. That is not a
9 jurisdictional question, it is an
10 intra-jurisdictional question and
11 falls squarely within the
12 tribunal's jurisdiction.

13 The Rental Officer in this case considered
14 the evidence carefully, she came to a
15 well-reasoned and supported conclusion that she
16 had jurisdiction. Whichever standard applies,
17 correctness or reasonableness, this decision
18 should stand. It is both reasonable and correct.
19 In fact, it was the only reasonable decision that
20 I can see having occurred as a result of the
21 evidence.

22 In terms of procedural fairness, this
23 process was transparent, fair, and accessible.
24 The Applicant was given ample opportunity to
25 present her side of the issue and her position
26 was carefully considered by the Rental Officer,
27 and this decision should be given deference. So
28 the appeal is dismissed.

29 I am going to order costs in the action on a
30 party-and-party basis.

31 Counsel, maybe you can assist me. I wanted
32 to give Ms. Tetlichy a little bit of time to get

1 out of the residence. Do you believe that I have
2 the jurisdiction to order that the original order
3 for eviction that was made by the Rental Officer
4 be withheld for approximately 30 days or am I
5 simply in a position of either dismissing or
6 accepting the application?

7 MS. PARADIS: Your Honour, without a little
8 bit more time to consider the issue, I would say
9 it would depend on which, which standard you're
10 going by. Reasonableness would uphold the
11 conviction and I would say that you can't impose
12 any, any order on top of that. Correctness would
13 allow you to.

14 THE COURT: Well, since the standard of
15 review is somewhat amorphous in our dealings with
16 this under the correctness standard, I will
17 impose a condition that the eviction order that
18 was originally made by the Rental Officer take
19 effect on July the 1st, this year.

20 MS. PARADIS: Your Honour, might I make a
21 suggestion that it is less than 30 days. It is
22 now May 26th. Bringing it to July 31st would
23 then have --

24 THE COURT: July 1st, I meant to say.

25 MS. PARADIS: July 1st?

26 THE COURT: Yes.

27 MS. PARADIS: Mr. Kruezi filed this

1 application May 20th of 2016. It has been one
2 year and six days since the commencement of this
3 application and he's waited that long to get back
4 into his home. So that is as long as
5 Ms. Tetlichi has had to look for further
6 accommodation as a backup plan.

7 THE COURT: That's true.

8 MS. PARADIS: This appeal was filed several
9 months ago, with many adjournments to allow her
10 to respond.

11 THE COURT: I am not as much concerned
12 about what is fair as what is practical.

13 MS. PARADIS: What's practical is my client
14 is in his 70s. He had a heart attack at the end
15 of March. There is no insurance on the home
16 right now and he's not able to gain insurance
17 while she's --

18 THE COURT: There is no insurance?

19 MS. PARADIS: There is no insurance. And
20 there was also a fire there the Thursday before
21 the hearing.

22 THE COURT: Ten days from today's date.

23 MS. PARADIS: Thank you, sir.

24 THE COURT: I am going to order that the
25 \$1900 cheque be returned to Ms. Tetlichi given
26 that it was produced by the Income Support
27 office. Mr. Kruezi is certainly within his

1 rights to sue Ms. Tetlichi for the outstanding
2 amounts with respect to rent. Rather than get
3 into how much should be offset, how much was paid
4 and the particulars of it, I am going to order
5 that that cheque be returned.

6 MS. PARADIS: Thank you.

7 THE COURT: Ms. Tetlichi, did you
8 understand that?

9 MS. TETLICH: I understand. The part that
10 -- I couldn't hear the other party talking.

11 THE COURT: The other party was simply
12 making suggestions with respect to what my
13 jurisdiction was.

14 What I have done, which may or may not be
15 entirely within the scope of this hearing, is I
16 have given you an additional ten days before this
17 Order takes effect just to give you a little bit
18 of breathing room so you can find another place
19 to live, and I have also ordered the \$1900 cheque
20 that was held in this matter be returned to you
21 so that you have some funds to find somewhere
22 else to live. Okay?

23 MS. TETLICH: Hmm-hmm.

24 THE COURT: All right. Anything further,
25 counsel?

26 MS. PARADIS: Just to confirm that ten days
27 would allow Mr. Kruezi to move into the rental

1 unit on June the 5th, or would ten days expire
2 and he could move in on the 6th?

3 THE COURT: Let's make it the 6th.

4 All right. I will await a transcript for
5 revision and then issue a judgment. Thank you.
6 Thank you, Ms. Tetlich.

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10 Certified Pursuant to Rule 723
11 of the Rules of Court

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Jane Romanowich, CSR(A)
Court Reporter

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