***St. Croix v NWT Housing Corporation*, S-1-CV-2018-000052 2018 NWTSC 72**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**MARINA CLAUDETTE JACQUELINE ST. CROIX**

**Applicant**

**- v -**

**NORTHWEST TERRITORIES HOUSING CORPORATION**

**Respondent**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Transcript of the Reasons for Judgment delivered by The Honourable Judge S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 26th day of October, 2018.

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPEARANCES:**

Ms. M. St. Croix: Self-Represented

Mr. D. McNiven: Counsel for the Respondent

1. THE COURT: This is an appeal from a
2. decision of the Rental Officer made pursuant to
3. the *Residential Tenancies Act*.
4. There is a bit of history to this matter.
5. The Respondent, Northwest Territories Housing
6. Corporation, filed an application with the Rental
7. Officer on January 16th, 2017, claiming that the
8. Applicant, Marina St. Croix, was abusive to the
9. staff at the Yellowknife Housing Authority.
10. A hearing was held on May 11th, 2017,
11. without the Applicant appearing. The application
12. was granted by the Rental Officer, and an order
13. was made.
14. The Applicant appealed that decision to this
15. Court, complaining that she had not received
16. notice of the hearing. On consent, the matter
17. was returned to the rental office for a new
18. hearing.
19. A second hearing was held on January 31st,
20. 2018, following which the Rental Officer granted
21. the Housing Corporation's application in a
22. decision released on February 9th, 2018.
23. The evidence presented by the Respondent at
24. the hearing was based upon an incident which had
25. occurred at the Respondent's office on January 26 13th, 2017.

27 The Applicant had attended the office on

1. that day, and the Respondent Housing Corporation
2. alleged that the Applicant had been verbally
3. abusive to staff.
4. In support of the application, the
5. Respondent had two employees testify, Aya Burshan
6. and Bob Bies, and also referred to the notes of
7. Janet Stephenson, which were on the Applicant's
8. file at the Housing Corporation, and to the
9. evidence of Cameron O'Keefe, who testified at the
10. first hearing.
11. The order of the Rental Officer required the
12. Applicant to comply with her obligation to not
13. disturb the landlord or other tenants' enjoyment
14. of the rental premises or residential complex and
15. not to breach that obligation again.
16. Ms. St. Croix filed an Originating Notice,
17. appealing the decision on February 22nd, 2018.
18. There are a number of grounds raised in the
19. Originating Notice, which can be distilled into
20. two areas: issues of procedural fairness, and
21. bias or lack of impartiality of the Rental
22. Officer.
23. The standard of review for decisions of the
24. Rental Officer has been previously decided by
25. this Court on several occasions. As stated in
26. *Inuvik Housing Authority v Alunik*, 2014 NWTSC 37
27. at paragraph 14:

1

* 1. Where the Rental Officer acts within the scope of his jurisdiction or the appeal
  2. involves a question of fact, the standard is that of reasonableness. Where the issue
  3. is one of law, jurisdiction or procedural fairness, the standard is that of
  4. correctness.

6

1. The issues raised by the Applicant which
2. involve the conduct of the hearing are therefore
3. subject to the standard of correctness.
4. The materials and argument of the Applicant
5. appear to contain three complaints about how the
6. hearing was conducted. There are other
7. complaints in the Applicant's materials and
8. argument which relate to the history of the
9. matter and the Applicant's complaints about the
10. Respondent, which I will address later.
11. The first argument is that the Respondent
12. did not provide her with full disclosure at the
13. hearing, and this appears to be in relation to
14. notations on the Respondent's file system, which
15. were made by Janet Stephenson and read by Aya
16. Burshan at the hearing before the Rental Officer.
17. The notations summarize discussions between
18. Ms. Stephenson and the Applicant in November and

25 December 2014. The file notation was later

1. provided to the Rental Officer and is included in
2. the record at Tab 12.
   1. This evidence was also submitted by the
   2. Applicant at the hearing to the Rental Officer.
   3. An excerpt of the transcript of the evidence of
   4. the first hearing, which included a reference to
   5. this evidence, is part of the record of the
   6. Rental Officer under Tab 11, titled, "Contents of
   7. Evidence for Rental Hearing Submitted By
   8. Respondent at Hearing."
   9. The Applicant was aware of this evidence
   10. prior to the hearing, whether she had receipt of
   11. the actual file notation or not. The same
   12. evidence had been referred to at the first
   13. hearing, and a transcript of the hearing had been
   14. provided to the Applicant.
   15. In my view, this provided the Applicant with
   16. knowledge of what evidence the Respondent might
   17. adduce at the hearing and was sufficient to
   18. constitute disclosure to the Applicant.
   19. The Applicant also argues that the
   20. Respondent relied on the evidence of a witness
   21. who was not present so that she was unable to
   22. cross-examine that witness. This argument is in
   23. relation to Ms. Burshan relying on evidence from
   24. the first hearing, the testimony of Cameron
   25. O'Keefe, who was apparently a witness to the
   26. incident in question. The Applicant objected to
   27. its admission at the hearing, and the Rental
3. Officer accepted the evidence, noting that it was
4. similar to an affidavit and had been made under
5. oath.
6. Section 75 of the *Residential Tenancies Act*
7. requires the Rental Officer to adopt the most
8. expeditious method in dealing with applications
9. and to follow the rules of natural justice. This
10. is consistent with the purpose of the *Act,* which
11. is:

10

1. ... to provide an expeditious, summary, cost-effective means to resolve
2. landlord-tenant disputes.

13

1. *Inuvik Housing Authority v Kendi,* 2005 NWTSC
2. 46, at paragraph 22.
3. This gives the Rental Officer latitude in
4. how hearings are conducted. The rules of
5. evidence are not strictly enforced in rental
6. hearings. Lawyers are rarely involved in the
7. process and most parties represent themselves.
8. Landlords often have an employee represent them
9. at the hearing. Hearsay evidence is often
10. admitted, and the right to cross-examine is not
11. strictly required.
12. Where hearsay evidence plays a central role
13. or is the main evidence in a hearing, rules of
14. natural justice are going to often permit
15. cross-examination on that evidence.
16. At first glance, presenting evidence that
17. was adduced at the first hearing, which was
18. overturned on appeal in which the Applicant
19. appealed on the basis that she had not received
20. notice of the hearing, seems unfair and is not a
21. practice that should be recommended. However, in
22. this case, the evidence of Mr. O'Keefe simply
23. confirmed the evidence of Ms. Burshan and
24. Mr. Bies regarding the incident with the
25. Applicant. Ms. Burshan and Mr. Bies testified at
26. the hearing and were available for
27. cross-examination.
28. The decision of the Rental Officer regarding
29. this incident referred to the evidence of
30. Ms. Burshan and Mr. Bies. The Rental Officer
31. noted that Mr. O'Keefe was present during the
32. incident, but his conclusions do not rely upon
33. Mr. O'Keefe's evidence in coming to a conclusion.
34. Therefore, in the circumstances, permitting
35. cross-examination of Mr. O'Keefe was not
36. required.
37. The Applicant also argues that the Rental
38. Officer refused to accept her affidavit during
39. the hearing, and this appears to be contrary to
40. what occurred during the hearing. The Rental
41. Officer stated during the hearing when this issue

1 was brought up (at page 15):

2

3 Well [indistinct] if you have an affidavit, I'll certainly consider it today.

4

1. In addition to this, the Applicant also
2. testified and provided a number of documents to
3. the Rental Officer which appear in the record,
4. so, in the circumstances, I cannot conclude that
5. she was denied the opportunity to present
6. evidence.
7. The issue of bias or partiality of a
8. decision maker has been considered by this Court
9. and by the Supreme Court of Canada and the test
10. is well-established. The test to determine
11. whether a judge or a decision maker has a
12. reasonable apprehension of bias was stated in the
13. *Committee for Justice and Liberty et al v*
14. *National Energy Board*, [1978] 1 S.C.R. 369 and
15. cited in *Wewaykum Indian Band v Canada,* [2003] 2 20 S.C.R. 259, at 289.

21

1. ... the apprehension of bias must be a reasonable one, held by reasonable and
2. right minded persons, applying themselves to the question and obtaining thereon the
3. required information. In the words of the Court of Appeal, that test is, "what would
4. an informed person, viewing the matter realistically and practically - and having
5. thought the matter through - conclude. Would he think that it is more likely than
6. not that [the decision maker], whether consciously or unconsciously, would not

1 decide fairly." 2

1. The onus is on the person alleging bias, and
2. the threshold for finding real or perceived bias
3. is high. A real likelihood or probability of
4. bias must be shown and mere suspicion is not
5. enough.
6. There is also a presumption of regularity,
7. that a decision maker in the absence of evidence
8. to the contrary has acted properly and in
9. accordance with the law. The presumption is that
10. a decision maker will act fairly and impartially.
11. The Applicant argues that the Rental Officer
12. was good friends with Aya Burshan because: 1)
13. they shared personal, inside jokes after the
14. hearing; 2) they were in the room together with
15. Bob Bies prior to the hearing and were talking
16. and sharing stories prior to the hearing; and 3)
17. they are both employed by the Government of the
18. Northwest Territories.
19. The Applicant also argues that the Rental
20. Officer was not impartial because he made
21. comments about, "how he had been doing this for
22. years and that I should Google him," and he made
23. a comment about the Applicant should feel lucky
24. that she was chosen for a unit.
25. The Applicant also added that following the
    1. hearing, the Rental Officer had expressed his
    2. disgust when she asked to change her baby
    3. following the hearing in the hearing room.
    4. Dealing first with the comment that the
    5. Applicant has referred to, during the hearing the
    6. Rental Officer stated:

7

I know -- I know how to do it, okay?

1. If you -- you want, if you want to see how many times I've done it, go on the Internet
2. and see how many cases have been before me.

10

1. In reviewing the transcript of the hearing,
2. it is apparent that it was a challenging hearing.
3. Ms. Burshan, who appeared on behalf of the
4. Respondent, the Applicant and the Rental Officer
5. were the main participants in the hearing. Both
6. Ms. Burshan and the Applicant appeared to
7. repeatedly talk over each other and talk over the
8. Rental Officer, and cross-examination was more in
9. the form of an argument at times.
10. The Rental Officer, at different points, had
11. to chastise both the Applicant and Ms. Burshan.
12. At the point in the hearing when the Rental
13. Officer made the comment, it is not clear who the
14. Rental Officer was speaking to as immediately
15. before this, both the Applicant and Ms. Burshan
16. were speaking and interrupting each other and
17. interrupting the Rental Officer. This comment
18. suggests, perhaps, that by this point in the
19. hearing, the Rental Officer was losing patience
20. with Ms. Burshan and/or the Applicant. However,
21. I cannot conclude, in the circumstances, that the
22. comment demonstrates any bias or partiality.
23. The other points that the Applicant makes
24. reference to are not apparent on the record,
25. events that allegedly happened before the hearing
26. began and after it concluded. The only evidence
27. on this point is that of the Applicant, and there
28. is no corresponding evidence or explanation for
29. Ms. Burshan, Mr. Bies or the Rental Officer.
30. With respect to people being employed by the
31. Government of the Northwest Territories, the GNWT
32. is a large employer in this jurisdiction, and the
33. capital is Yellowknife, which means that there
34. are many offices and departments of the GNWT
35. here. It is possible that the GNWT is the
36. largest employer in the NWT and in Yellowknife.
37. Being employed by the same, large organization
38. without more cannot substantiate a claim of bias.
39. The conversation that allegedly occurred
40. between Ms. Burshan and Mr. Bies and the Rental
41. Officer involve sharing stories. That the Rental
42. Officer and representatives of an organization
43. who participate in rental hearings might have
44. some familiarity with each other and would talk
45. before or after a hearing is not surprising. It
46. is not clear what stories they might have been
47. sharing, or to what extent those stories might
48. reveal a friendship or other connection which
49. might establish a reasonable apprehension or
50. bias.
51. In some situations, particularly in a small
52. jurisdiction, a decision maker may become too
53. familiar with people or parties who appear before
54. them regularly. However, the evidence that has
55. been presented is not sufficient to establish a
56. friendship or a reasonable apprehension of bias.
57. The other points that the Applicant raised
58. were about the Rental Officer's treatment of her.
59. These were not witnessed by another individual.
60. The description of what occurred as well as the
61. comment alledgedly made by the Rental Officer
62. about the Applicant being lucky to get a unit are
63. subject to interpretation.
64. The recollection of them by the Applicant

21 may be coloured by her perception of what

1. occurred. They could be the result of a
2. misunderstanding. The Rental Officer noted in
3. his decision that the Applicant was easily
4. agitated by simple conflicts and
5. misunderstandings.
6. In reviewing the documents and transcripts
   1. that constitute the record, that conclusion is
   2. one that is reasonable. I am not certain if the
   3. comments were made or if they occurred as
   4. described by the Applicant, but I am not prepared
   5. to conclude on the basis of them given the
   6. standard required to establish a reasonable
   7. apprehension of bias that the Rental Officer
   8. acted partially in this matter.
   9. In reviewing the transcript, the Rental
   10. Officer attempted to explain his role and the
   11. decision he had to make to the Applicant. He
   12. asked her questions to ascertain her position,
   13. and he intervened on her behalf on at least one
   14. occasion when dealing with Ms. Burshan. His
   15. decision, while granting the Respondent's
   16. application, avoided making any overly negative
   17. findings about the Applicant or her credibility.
   18. Overall, the treatment of the Applicant by the
   19. Rental Officer was reasonable.
   20. I am not satisfied that the standard has
   21. been met to establish that there was a reasonable
   22. apprehension of bias on the part of the Rental
   23. Officer.
   24. At the hearing before the Rental Officer,
   25. the Applicant referred to a number of things that
   26. she had said occurred while she was a tenant of
   27. the Respondent and a number of problems and
7. complaints that she had, some of which were
8. ongoing.
9. In the Applicant's materials, there are
10. other complaints which relate to the history of
11. the matter and the Applicant's complaints about
12. the Respondent. Those are not in issue before
13. me.
14. It is clear that the Applicant and the
15. Respondent have a history together, and the
16. Applicant is upset about a number of things which
17. occurred in the past, and some of which are still
18. ongoing.
19. The Applicant is also upset about the unit
20. she is living in. One of the items of relief she
21. sought in her pre-hearing brief was to have the
22. Yellowknife Housing Authority transfer her family
23. to a four-bedroom unit. This appeal is not about
24. that. This appeal is about the decision of the
25. Rental Officer. If the Applicant wants to pursue
26. her grievances against the Yellowknife Housing
27. Authority, then she is free to lodge her own
28. complaint with the Rental Officer.
29. In conclusion, for these reasons, the appeal
30. is dismissed.
31. Thank you. Mr. McNiven, if you could submit
32. an order to that effect.
33. MR. MCNIVEN: Yes, I will.
34. THE COURT: Okay. All right.
35. MS. ST. CROIX: Thank you.
36. THE COURT: All right. Thank you. We
37. will adjourn.

# 5 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6 **PROCEEDINGS CONCLUDED**

7 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

8

9

# 10 CERTIFICATE OF TRANSCRIPT

11

1. I, the undersigned, hereby certify that the
2. foregoing transcribed pages are a complete and
3. accurate transcript of the digitally recorded
4. proceedings taken herein to the best of my skill and
5. ability.
6. Dated at the City of Sault Ste. Marie, Province
7. of Ontario, this 9th day of November, 2018. 19
8. Certified Pursuant to Rule 723
9. Of the Rules of Court 22

23

24

25

1. Kerri Francella
2. Court Transcriber