

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Residential Tenancies Act*, RSNWT 1988, c-R-5, as amended;

AND IN THE MATTER OF the Decision of the Rental Officer No. 16524

BETWEEN:

MARINA ST CROIX

Appellant

-and-

YELLOWKNIFE HOUSING AUTHORITY

Respondent

- and –

NORTHWEST TERRITORIES HOUSING CORPORATION

Respondent

MEMORANDUM OF JUDGMENT

[1] This is a statutory appeal of a Rental Officer's decision.

[2] The Respondent, the Northwest Territories Housing Corporation, did not make submissions or otherwise take a position.

PROCEEDINGS BEFORE THE RENTAL OFFICER

[3] In 2013 Ms. St. Croix and the Yellowknife Housing Authority (the “Landlord”) entered into a tenancy agreement.

[4] On April 30, 2019, Ms. St. Croix filed an application with the Rental Officer seeking, among other things, an order requiring the Landlord to transfer her to another unit. Her specific concerns were potential health risks associated with mould and asbestos in her housing unit. It was also her position that the unit she was in was too small, that it was improperly constructed, and that it could not accommodate her children’s special needs.

[5] The Landlord’s position was that it had no other units available to which it could immediately transfer Ms. St. Croix and her children; however, it had placed Ms. St. Croix on a priority list for another unit. It also took the position that there was no risk posed to Ms. St. Croix and her children by reason of mould or asbestos.

[6] The Rental Officer conducted a hearing over the course of two days. The evidence he considered included his observations from attending the rental premises in person with Ms. St. Croix and the Landlord’s representatives at which time Ms. St. Croix showed him the items of concern.

[7] The Rental Officer found he did not have jurisdiction to make an order requiring the Landlord to give Ms. St. Croix another unit.

[8] With respect to the asbestos concern, the Rental Officer received evidence that prior to Ms. St. Croix moving in, her unit had drywall replaced as part of a renovation. Because of the possibility of this creating an asbestos hazard, signs were posted at the unit during the renovations about it and this came to Ms. St. Croix’s attention. Further, she provided evidence that there had been a house fire in the area about a month before Ms. St. Croix moved in and she was concerned about asbestos fibres being released. She presented a copy of a study published by the Workers’ Safety and Compensation Commission (WSCC) to support her concerns about the fire. Finally, Ms. St. Croix produced letters from physicians about one of her children’s respiratory problems. The letters both recommended a transfer to other accommodation. The recommendations were based on “reported exposed asbestos” and “notices indicating the presence of asbestos in the building”.

[9] The Landlord presented evidence about the procedures it followed in undertaking the renovations. Specifically, it had complied with the WSCC's guidelines. It also produced the results of asbestos testing on the unit following the renovations which showed there was no asbestos risk.

[10] The Rental Officer concluded that there was no significant risk of asbestos exposure. He found that the WSCC study Ms. St. Croix presented did not support her allegations and that she was applying the words out of context. He rejected the physicians' notes because neither physician had any direct knowledge of whether or not there was an asbestos risk in the unit. Finally, he found Ms. St. Croix's argument about the effects of the fire in 2017 was exaggerated and inconsistent with the conclusions reached in the WSCC study.

[11] The Rental Officer found there was insufficient evidence to conclude if there was or was not mould in the unit; however, he found that a wall that Ms. St. Croix thought contained mould in her laundry room was nevertheless in need of repair. This was among the repairs the Rental Officer directed the Landlord to carry it out.

[12] Ms. St. Croix gave evidence about her children's needs. She said they are predominantly related to mental health, but they include respiratory issues as well. Other than the two notes from physicians, however, she did not tender evidence which clearly connected the health issues with housing, nor was there any specific evidence from the children's physicians about how those needs could be accommodated. The Rental Officer found that the disabilities Ms. St. Croix described could not be accommodated or addressed through physical modification or repairs to the unit.

[13] Ms. St. Croix requested a number of other repairs be carried out. Among these was repair of a damaged corner in one of the bedroom walls; a toilet paper holder which was no longer affixed to the wall; missing electrical outlet covers; and periodic paint bubbles. The Rental Officer declined to order that the Landlord carry out these particular repairs because there was insufficient evidence about whether they were the Landlord's or Ms. St. Croix's responsibility.

GROUND'S OF APPEAL

[14] Ms. St. Croix's grounds for the appeal can be summarized as follows:

- a. The Rental Officer erred in finding he did not have jurisdiction to order the Landlord to provide another unit to Ms. St. Croix and her family;
- b. Relatedly, the Rental Officer failed to consider and apply the *Human Rights Act*, SNWT 2002, c 18 in considering Ms. St. Croix's application;
- c. The Rental Officer erred in finding there was no significant risk of asbestos exposure in Ms. St. Croix's unit and in his conclusion that there was insufficient evidence to allow him to order the Landlord to carry out certain repairs.

[15] In her materials, Ms. St. Croix also raised bias on the part of the Rental Officer as a ground of appeal. This stems from an exchange between the two of them during the hearing in which the Rental Officer told her he had worked for the Northwest Territories Housing Corporation for a period of about fifteen years, starting in 1972 or 1973. *Record*, Tab 15, p 133. This ground of appeal can be addressed summarily.

[16] Having an unbiased decision-maker is fundamental to our justice system. If there is an apprehension of bias, however, it must be reasonable. The test is well-known: would an informed person, looking at the matter realistically and practically, conclude that it is more likely than not that the decision-maker would, either consciously or unconsciously, decide the manner unfairly? In the circumstances, the answer to that question is "no". Over three decades passed between the time the Rental Officer left his employment at the Housing Corporation and the date of the hearing. Further, Ms. St. Croix's tenancy agreement, and the entity from which she was seeking relief, was with the Yellowknife Housing Authority, not the Northwest Territories Housing Corporation. There is no basis to establish bias. This ground of appeal is dismissed.

[17] The remaining grounds of appeal are addressed below.

STANDARD OF REVIEW

[18] Section 87 of the *Residential Tenancies Act* provides for a statutory right of appeal and accordingly, I must apply the standards of review set out in *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235: *Canada (Minister of Citizenship and*

Immigration) v Vavilov, 2019 SCC 65 at para 33. These standards are first, correctness and second, palpable and overriding error. Correctness applies where the appellate court must decide questions of law, including questions about the decision-maker's jurisdiction. Where a decision is incorrect, the appellate court is free to substitute its own opinion for that of the decision-maker. On questions of fact, or questions of mixed fact and law where the legal issue is not readily extricable from the factual one, the applicable standard is palpable and overriding error. This is an error that can be plainly seen.

[19] The issue of whether the Rental Officer erred in determining he did not have jurisdiction to order the Landlord to transfer Ms. St. Croix to another unit is purely a question of law. It must be reviewed on a standard of correctness.

[20] The issue of the Rental Officer's consideration of the *Human Rights Act* is closely related to the jurisdictional issue. As explained below, the argument Ms. St. Croix was advancing was that the *Human Rights Act* gives the Rental Officer the authority to order that a tenant be transferred to another unit. This, too, is a question of law, to be determined on a standard of correctness.

[21] The Rental Officer's factual findings about asbestos exposure, mould and the extent of required repairs and inspections must reviewed on the overriding and palpable error standard.

ANALYSIS

Jurisdiction to Order a Landlord to Transfer a Tenant to Another Unit

[22] Section 30(1) of the *Residential Tenancies Act* imposes obligations on landlords to maintain rental premises and to ensure compliance with all health, safety, maintenance and occupancy standards. If the Rental Officer determines the landlord has breached its obligations, the Rental Officer can make a number of orders, which are set out in s. 30(4):

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;

requiring the landlord to not breach the landlord's obligation again;

- (b) 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;
- (c) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or
- (d) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on a date specified in the order and ordering the tenant to vacate the rental premises on that date.

[23] The Rental Officer reviewed these provisions and he concluded that he did not have authority to order the Landlord to transfer Ms. St. Croix to another unit. In reaching this conclusion, he considered whether subsection 30(4)(e), which permits the Rental Officer to order a tenancy be terminated, could be interpreted in a way that would give him the authority to order a transfer. He found it could not:

Paragraph 30(4)(e) does allow the termination of the tenancy agreement, but there is no provision in section 30, or any other section of the Act, to order a landlord to transfer the tenant to other premises or to enter into another agreement regarding different rental premises. Such an order, in my opinion, would clearly be *ultra vires*.

Record, Tab 12, page 4

[24] The Rental Officer reached the correct conclusion on this point. As a statutory decision-maker, a Rental Officer may only exercise the authority that is specifically assigned to him/her/them under the Act. *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 29, [2008] 1 SCR 190. There is no authority in the Act that would permit the Rental Officer to order a tenant be transferred to another premises and there is no authority that would permit the Rental Officer to direct a landlord enter into a new lease agreement with a tenant.

Consideration of the Human Rights Act

[25] Section 7(2) of the *Residential Tenancies Act* states that the *Human Rights Act* applies to tenancy agreements.

[26] In her application and argument before the Rental Officer, Ms. St. Croix referred to s. 6 of the *Canadian Human Rights Act*, RSC 1985 c H-6, which protects against denial of rental accommodation on a prohibited ground of discrimination, including disability. On this appeal, the Landlord argues, correctly, that the Rental Officer has no jurisdiction to consider or apply the *Canadian Human Rights Act* because it only applies to federal works, undertakings or businesses. The Landlord acknowledged, however, that there is a provision equivalent to s. 6 of the *Canadian Human Rights Act*, found at s. 12 of the Northwest Territories' *Human Rights Act*, which applies to tenancies. The context suggests that this is what Ms. St. Croix was arguing.

[27] The Rental Officer did not expressly address question of the effect of the *Human Rights Act* on his jurisdiction in his written reasons, but it was discussed and ruled on at the hearing itself. The hearing transcript reveals that Ms. St. Croix argued that the Rental Officer could use the authority of the *Human Rights Act* to order the Landlord to transfer her to another unit. (*Record*, Tab 15, pp 124-129). The Rental Officer disagreed, noting that while tenancy agreements are subject to the *Human Rights Act*, the remedies available under that legislation are not available to the Rental Officer. (*Record*, Tab 15, p 127). In my view, this is correct.

[28] The effect of s. 7(2) is to expressly require residential landlords and tenants to comply with the *Human Rights Act* in their dealings with each other. A landlord cannot terminate a tenancy agreement, increase rent or refuse to comply with its other obligation on a prohibited ground of discrimination. Faced with evidence of discrimination that contravenes the *Human Rights Act*, a Rental Officer could, for example, refuse to terminate a tenancy or order a landlord to effect certain repairs. This would involve the Rental Officer exercising only the jurisdiction expressly granted under the *Residential Tenancies Act*. In other words, s. 7(2) does not expand the suite of remedies available to the Rental Officer under the *Residential Tenancies Act*.

Rental Officer's Factual Findings

[29] As noted, whether the Rental Officer erred in his factual findings about the risk from asbestos and mould, as well as his assessment of what repairs needed to be undertaken by the Landlord, must be determined on the standard of overriding and palpable error.

[30] The Rental Officer's factual findings on these points are set out above. They are fully supported by the evidence in the Record. There is no error.

CONCLUSION

[31] The appeal is dismissed.

K. M. Shaner
J.S.C.

Dated at Yellowknife, NT, this
20th day of September 2021

The Appellant was self-represented

Counsel for the Respondent:

Christopher Buchanan

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