

**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 Order of the Rental Officer of the Northwest Territories, File No. 17380, dated October 29, 2021

**BETWEEN:**

CYNTHIA GRANDJAMBE

Appellant

-and-

YELLOWKNIFE HOUSING AUTHORITY

Respondent

**MEMORANDUM OF JUDGMENT**

**INTRODUCTION**

[1] Cynthia Grandjambe (“Grandjambe”) appeals a Rental Officer’s order terminating her lease and ordering her eviction. The basis of the order was the Rental Officer’s conclusion Grandjambe breached her obligations as a tenant by disturbing other tenants’ and the landlord’s possession and peaceful enjoyment of the rental premises.

**BACKGROUND**

[2] The Yellowknife Housing Authority (“YHA”) provides public housing to qualified people in Yellowknife. Among other things, it enters commercial leases with various accommodation providers to provide rental units in various buildings.

It then leases those units to its own residential tenants. Grandjambe became one of the YHA's tenants in 2019.

[3] Some months after Grandjambe moved into her unit, the YHA started receiving complaints from other tenants that Grandjambe was engaging in conduct which disturbed their quiet enjoyment of their own rental units. These complaints included people yelling and whistling from outside at all hours to be let into the building; Grandjambe yelling back at the people outside; and Grandjambe allowing people inside her apartment to communicate with people making noise outside. YHA provided Grandjambe with a number of warnings, but the conduct continued.

[4] YHA brought an application before a Rental Officer to terminate Grandjambe's lease and evict her. That hearing, which is not the subject of this appeal, occurred on July 14, 2020. The Rental Officer found there were insufficient grounds to terminate the tenancy, but she found Grandjambe had nevertheless breached her obligation not to disturb other tenants' possession or enjoyment. She recognized Grandjambe had little control over what people outside the apartment building did; however, she found Grandjambe could, and was required to, control the conduct of people she had as guests in her own apartment. The Rental Officer issued an order under which Grandjambe was required to comply with her obligation not to disturb other tenants' quiet enjoyment.

[5] Unfortunately, the July 14, 2020 order did not resolve the issues. YHA received numerous complaints from other tenants suggesting Grandjambe was continuing to engage in conduct which disturbed their quiet enjoyment of the property. YHA issued warnings to Grandjambe on two occasions. It also offered to enter a "Last Chance" agreement with a view to giving her an opportunity to comply with her obligations, including her obligation not to engage in conduct which would disturb other tenants' quiet enjoyment. She did not sign the agreement. The YHA then filed an application to a Rental Officer under the *Residential Tenancies Act*, RSNWT 1988, c R-5 on September 13, 2021 seeking an order terminating the tenancy and evicting Grandjambe.

[6] The application YHA filed with the Rental Officer included a variety of documents: the tenancy agreement, YHA's file notes, photographs, and email correspondence from one of the other building tenants, Dorothy Westerman ("Westerman") alleging disturbances caused by Grandjambe. The application, including the documentary materials, was served on Grandjambe.

[7] A hearing was initially scheduled for October 14, 2021. The parties attended by teleconference. Grandjambe said she had a lawyer assisting her and requested an adjournment to allow him time to prepare. She said her lawyer would require at least two weeks and possibly more due to other commitments. The Rental Officer adjourned the matter without a date and instructed Grandjambe to have her lawyer contact the Rental Office by the following Monday to verify he was representing Grandjambe and to provide dates he would be available. The Rental Officer also advised that if she did not hear from Grandjambe's lawyer by that time, she would be setting another date for hearing and send out notices to the parties. She did not receive a call from the lawyer.

[8] The hearing was rescheduled for October 25, 2021. The parties and two witnesses appeared by teleconference. Grandjambe was approximately 15 minutes late in joining the hearing and it started without her; however, she missed only a few housekeeping items. YHA's representative, Pratheesh Saratchandran, then made an opening statement. He later provided evidence about the events leading YHA to bring the application.

[9] Grandjambe was asked if she wished to reply to YHA's opening statement. She asked for a second to get her documents in order. The Rental Officer advised she could only give Grandjambe a certain amount of leeway due to time constraints and suggested Grandjambe could make opening submissions and reply to YHA later in the process.

[10] YHA then called its first witness, Westerman. Westerman testified she had sent over 50 emails to the landlord to complain about Grandjambe's conduct and its effects on her. Her complaints included people standing right outside of her apartment window and continually yelling and whistling up to Grandjambe's apartment; Grandjambe responding to them; and Grandjambe letting non-tenants into the building. She said the noise at all hours from people asking Grandjambe to let them in, and non-tenants wandering around the building, caused disturbances which made it difficult to sleep. She was missing work as a result. Westerman observed some of those she said were wandering around the building and making noise enter Grandjambe's apartment. She also said she saw Grandjambe selling "things" out of the building's back door and that people "would just arrive and leave." She later said she assumed she was witnessing illegal drug transactions, which Grandjambe denied.

[11] The second witness was Simran Randhawa ("Randhawa"), who lives directly below Grandjambe. She testified to being disturbed very frequently by

noise, in the form of what she thought was someone jumping on the floor in Grandjambe's unit, as well as loud voices emanating from Grandjambe's unit late at night. She called the building owner, then YHA and the RCMP to complain on several occasions. Like Westerman, she heard people whistling, yelling, and calling "Cindy", who she assumed was Grandjambe, from outside. She heard Grandjambe respond to them.

[12] Randhawa said she also had people knocking at her door, asking for "Cindy" and she testified that one time someone she did not know entered her apartment when she had left the door unlocked. She assumed it was someone associated with Grandjambe. Finally, she testified that Grandjambe had herself tried to enter Randhawa's apartment. Grandjambe explained she had done so, mistakenly believing it was her own apartment. Like Westerman, Randhawa was having difficulty sleeping and found herself exhausted because of the noise disturbances.

[13] Grandjambe provided oral evidence on her own behalf. She explained she has many friends and relatives who, for one reason or another, sometimes ask to stay with her. She has no control over whether they come to the apartment building and how they behave standing outside. She also noted the building has no buzzer system and consequently, people call up to her from the street if they wish to see her. In many cases, she said she would yell back at the people standing on the street to leave her alone and tell them they were causing problems for her. She noted she is not the only tenant who deals with these issues, nor is she the only tenant who lets people into the building.

[14] Grandjambe explained her young grandson lives with her and he has various special needs. At times he has difficulty controlling his emotions and engages in behaviours, such as jumping or throwing things, which make noise. These behaviours occur at different times of the day or night. She is unable to control them and she cannot predict when they occur; however, she said they are sometimes triggered by sounds coming from other apartments in the building.

[15] Grandjambe was given an opportunity to, and did, question all of the witnesses, and she made final submissions.

[16] None of the file notes, emails or photographs included in YHA's application package were put to the witnesses, nor did the Rental Officer refer to them in her reasons. She only referred to the tenancy agreement between Grandjambe and YHA.

## THE RENTAL OFFICER'S CONCLUSIONS

[17] The Rental Officer made an order terminating the tenancy and evicting Grandjambe. She found Grandjambe “repeatedly and unreasonably” caused disturbances; repeatedly failed to comply with her obligation not to disturb other tenants’ quiet enjoyment of the rental property; and failed to comply with the July 2020 order requiring her to comply with that obligation and not breach it again. The Rental Officer determined, given the length of time Grandjambe had continued to disturb other tenants’ rights, it would be unfair to them to allow her tenancy to continue.

[18] The Rental Officer’s decision was based on the effect of the grandson’s conduct in Grandjambe’s apartment and on Grandjambe’s own actions in engaging with people on the street from her unit.

[19] With respect to her grandson’s behaviour, the Rental Officer noted first Grandjambe was in breach of the tenancy agreement by allowing him to live with her. The Rental Officer pointed to an express provision in the tenancy agreement requiring the landlord’s authorization for additional occupants, noting that authorization was not granted. Second, while the Rental Officer recognized it would be unfair to blame a young child with a medical condition for the disturbances, Grandjambe was ultimately responsible for his conduct. Her inability to control her grandson’s behaviour, and its detrimental effects on other tenants, ought to have prompted a re-evaluation of the suitability of the accommodations.

[20] The Rental Officer accepted that Grandjambe could not be held responsible for the conduct of people outside of the apartment building trying to get her attention by yelling and whistling; however, she found Grandjambe’s reaction to that conduct, that is, yelling back and otherwise engaging with them, was something she could control. There were other options for dealing with them:

With respect to the yelling back and forth with persons outside the building, were it just a matter of those persons doing the yelling and whistling with no engagement from anyone in the building, then I would be hard pressed to find the Respondent responsible for their behaviour. Those persons’ disruptive behaviour would be a matter for either the RCMP or Municipal Enforcement to address. However, in this case there is sufficient evidence that the Respondent has been interacting with the persons calling to her from the street, and doing so in a significantly disruptive manner. It is no longer just the people on the street who are causing the disturbances, but so is the Respondent, and it is that response and engagement that the Respondent is responsible for.

If it is true that the Respondent did not want or invite the people calling from the street to be there she would be better served by not responding to them at all, and if necessary calling the police to report the public disturbances. This is not what the Respondent did. The Respondent instead reacted to the street calling at all hours of the day and night by engaging in some form or another with them, aggravating the disturbances. This is despite having already been warned by an order of the Rental Officer not to cause further disturbances.

Record, Tab 12, p 4

## **GROUND OF APPEAL**

[21] Grandjambe's grounds of appeal can be summarized as follows:

- a. Grandjambe was denied the opportunity to be represented at the hearing and to ask questions of witnesses, thereby violating her right to a fair hearing;
- b. The Rental Officer improperly relied on the photographs to support findings that Grandjambe was letting unauthorized people into the apartment building and engaging in illegal drug transactions; and
- c. The Rental Officer should not have accepted Westerman's evidence because she admitted she made assumptions in concluding Grandjambe was selling drugs.

## **STANDARD OF REVIEW**

[22] 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. If the decision-maker is incorrect on an issue of law, the appellate court can substitute its own opinion for that of the decision-maker. On questions of fact, or questions of mixed fact and law where the legal issues are not easily separated from the factual ones, the applicable standard is "palpable and overriding" error; that is, an error that can be plainly seen.

[23] In this case, the grounds of appeal concern separate legal and factual issues. Whether Grandjambe was afforded a fair hearing and whether the photographs were wrongly admitted into evidence are questions of law and thus relied on improperly must be evaluated on a standard of correctness. The weight the Rental Officer assigned to Westerman's evidence and the conclusions she drew from it are questions of fact, to be reviewed on the overriding and palpable error standard.

## ANALYSIS

### *Was the hearing fair?*

[24] Respectfully, this ground of appeal is without merit. It is clear from the record Grandjambe was afforded procedural fairness. She was permitted to attend the hearing, to question witnesses, to give evidence and to make submissions. The matter was straightforward with relatively little evidence. There is nothing to suggest Grandjambe did not understand the nature of the proceedings, the consequences or her rights. The Rental Officer took great pains to explain the procedure and to ensure both parties had a fair opportunity to put their cases forward.

### *Did the Rental Officer improperly rely on emails, notes and photographs?*

[25] As noted, these materials were included with YHA's application and served on Grandjambe. While they were part of what was before the Rental Officer, they were not put into evidence. Further, it is clear from the Rental Officer's reasons that she placed no reliance on them. The Rental Officer's conclusions were based on undisputed and admitted facts about Grandjambe's conduct. Other than the tenancy agreement, the Rental Officer did not refer to any of the documents submitted with YHA's application.

### *Did the Rental Officer err in relying on Westerman's evidence?*

[26] What Grandjambe disputes about Westerman's evidence is the latter's assumption that Grandjambe was selling illegal drugs. Westerman's evidence about what she perceived Grandjambe to be doing by the back door was not something the Rental Officer relied on in making her decision. Again, what the Rental Officer found, in addition to Grandjambe's inability to control her grandson's behavior, was that Grandjambe breached her obligation not to disturb other tenants' quiet enjoyment. She did so by verbally engaging with the people outside the building wishing to gain entry. That aspect of the evidence is not in dispute: Grandjambe admitted to it. The allegation that Grandjambe may have been selling illegal drugs did not factor into the decision.

## CONCLUSION

[27] The Rental Officer made nor errors of law or fact. Grandjambe was afforded procedural fairness and the Rental Officer made no palpable or overriding error in her factual findings. The appeal is dismissed and the Rental Officer's order of October 29, 2021 is confirmed.

K. M. Shaner  
J.S.C.

Dated at Yellowknife, NT  
this 28<sup>th</sup> day of February, 2023

Appellant was self-represented

Counsel for the Respondent:

Marie-Pier Leduc



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