

Date: 2023 05 30
Docket: S 1 CV 2022 000 108

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. 17544, dated May 16, 2022

BETWEEN:

MARTHA PORTER

Appellant

-and-

NORTHWEST TERRITORIES HOUSING CORPORATION and
YELLOWKNIFE HOUSING AUTHORITY

Respondents

MEMORANDUM OF JUDGMENT

[1] Pursuant to s. 87 of the *Residential Tenancies Act*, RSNWT 1988 c R-5, Martha Porter appeals a Rental Officer’s order dated May 16, 2022, which terminated her lease and ordered her eviction. The basis for the appeal is she did not receive notice of the hearing until it already occurred and therefore was denied the opportunity to present evidence and make submissions.

[2] The Rental Officer hearing was held May 11, 2022. The Respondent Yellowknife Housing Authority (the “landlord”) served Ms. Porter by email on April 16, 2022, but she did not appear at the hearing, nor did anyone appear on her behalf. The Rental Officer was satisfied Ms. Porter had notice of the time and place of the hearing.

[3] Ultimately, the Rental Officer found Ms. Porter had failed to pay rent and was in arrears; she failed to reimburse the landlord for the cost to repair damages;

she caused disturbances which breached the landlord's and other tenants' rights to enjoyment of the premises; and she failed to comply with her obligation to provide updated income information as required by her lease agreement, despite the Yellowknife Housing Authority's repeated requests. Based on this, the Rental Officer ordered Ms. Porter's eviction, among other things.

[4] The appeal was filed June 1, 2022. The pre-hearing conference was to proceed on July 22, 2022, but it was adjourned upon Ms. Porter's request to August 5, 2022. Ms. Porter did not appear on August 5, 2022 and the pre-hearing conference was adjourned to September 2, 2022. Ms. Porter did not appear on that date and the pre-hearing conference was adjourned another week, to September 9, 2022. Ms. Porter appeared that day and requested a further adjournment for personal reasons. It was adjourned to September 23, 2022. The presiding judge cautioned Ms. Porter there would be no adjournments after that.

[5] The pre-hearing conference proceeded on September 23, 2022. The presiding judge advised Ms. Porter he would allow her to provide oral evidence at the appeal hearing, which would include cross-examination by counsel for the landlord. He set November 24, 2022 as the date.

[6] Ms. Porter did not appear at the hearing on November 24, 2022. It was put over to January 27, 2023. Ms. Porter did not appear at that time. Counsel for the landlord offered to communicate with Ms. Porter to find mutually available dates for a hearing and eventually, the hearing was set for April 4, 2023.

[7] On April 4, 2023, Ms. Porter appeared and requested a further adjournment. She indicated she had someone to help her, but he was not available that day. Over the landlord's objections, Ms. Porter was granted another adjournment, to April 11, 2023, with a caution the hearing would proceed on that date.

[8] Ms. Porter appeared on April 11, 2023. She was not prepared to proceed but said she had recently contacted someone different to advocate for her. She requested another adjournment. This was denied. Ms. Porter left the courtroom. The appeal was heard in her absence.

[9] Where, as here, legislation grants a statutory right of appeal, the applicable standards of review are those 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 are first, correctness and second, palpable and overriding error. Correctness applies to 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.

[10] In this case, what the Rental Officer had to decide was factual. First, she had to determine if Ms. Porter received notice of the hearing. Second, she had to decide if the landlord's evidence respecting Ms. Porter's rental arrears, damages to the unit, disturbances, and the failure to provide updated financial information was sufficient to support the application. The question for this Court is whether the Rental Officer made a palpable and overriding error in making those factual findings.

[11] The Rental Officer did not make a palpable or overriding err in concluding Ms. Porter had notice of the hearing and proceeding in her absence. In all legal proceedings, deadlines are imposed and hearings are set with the expectation that, barring some unforeseen event, the parties will appear, the matter will be heard and the issues determined. When one party does not comply with a deadline or, having had notice, does not appear at a hearing, the usual result is the next step can be taken without further notice. In this case, the next step was to proceed with the hearing. Adherence to this is necessary to ensure certainty and finality in the process for everyone involved: the parties know what the expectations are; and courts and administrative tribunals can ensure their proceedings are not unduly protracted or otherwise undermined because a party chooses not to comply with directions or deadlines, or where, as here, a party fails to appear at a hearing.

[12] The affidavit of service contained in the Record shows Ms. Porter was served with a Notice to Attend at her email address on April 13, 2022, approximately one month before the hearing. *Record*, Tab 5. Among other things, the Notice to Attend states failure to appear at the time and date specified can result in ". . . your application being dismissed in your absence". *Record*, Tab 4. A further email exchange on May 10, 2022, shows correspondence from Ms. Porter (using the same email address as was used to serve her) to the Rental Office Administrator at 12:53 p.m. in which Ms. Porter provides additional information respecting some of the substantive issues in the application. There is a response from the Rental Office Administrator approximately 20 minutes later, confirming receipt of the information and stating "I will forward along to the Rental Officer for the hearing tomorrow". *Record*, Tab 7. There is no evidence Ms. Porter attempted to contact the Rental Office to ask for an adjournment.

[13] The only conclusion the evidence supports is that Ms. Porter had notice of the hearing. The Rental Office did not err in proceeding with the hearing.

[14] The Rental Officer's factual findings on the substantive issues were all supported by the evidence before her. The landlord's financial evidence demonstrated Ms. Porter had accumulated significant rental arrears. There was substantial evidence the landlord's program officer made frequent requests to Ms. Porter to verify household income so her rent could be re-assessed, possibly to a lower rate. Ms. Porter did not comply with these requests and often responded to them with hostility. The landlord produced photographs, a work order, and an invoice respecting tenant-caused damage in Ms. Porter's unit. Finally, the landlord provided evidence of complaints from a contractor, another tenant and its own staff about abusive and aggressive conduct Ms. Porter directed to each of them in January, February and March, 2022. The Rental Officer did not err in making these findings, which amply justify her decision to grant the orders she did.

[15] The appeal is dismissed. The Rental Officer's order of May 16, 2022 terminating the tenancy and ordering damages against Ms. Porter is confirmed. The eviction order is renewed. Ms. Porter shall vacate the premises within 30 days of these reasons. The landlord is entitled to its costs in accordance with r 606.1 of the *Rules of the Supreme Court of the Northwest Territories*.

K. M. Shaner
J.S.C.

Dated at Yellowknife, NT
this 30th day of May, 2023

Appellant was self-represented

Counsel for the Respondent:

Marie-Pier Leduc

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**MEMORANDUM OF JUDGMENT OF
THE HONOURABLE JUSTICE K.M.
SHANER**
