

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KAYLA CROZIER

Appellant

- and -

NORTHVIEW FUND

Respondent

MEMORANDUM OF JUDGMENT

[1] This is a statutory appeal from a decision of the Rental Officer made pursuant to the *Residential Tenancies Act*, RSNWT 1988, c R-5 (the *Act*).

[2] The Respondent Northview Fund filed an application with the Rental Officer claiming that the Appellant Kayla Crozier had repeatedly failed to pay her rent in full when due and had repeatedly accumulated rental arrears. The Respondent sought payment of the rental arrears, requested the termination of the tenancy and the eviction of the tenant.

[3] A hearing was held on May 31, 2023. Ms. Crozier was not present at the hearing and the Rental Officer granted the application after hearing from representatives of Northview Fund. The Rental Officer issued an Order and Eviction Order on June 2, 2023 finding that Kayla Crozier owed rental arrears of \$6115.75 to Northview Fund, terminating the tenancy agreement and ordering the Appellant to vacate the rental premises.

[4] Ms. Crozier filed an Originating Notice of Appeal on the ground that she was not served a copy of the filed application. She seeks to have the eviction cancelled and the hearing rescheduled.

[5] Section 87 of the *Act* allows for an appeal of the decision of a rental officer to the Supreme Court. The *Act* does not prescribe an appellate standard of review. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the Supreme Court of Canada clarified the law with respect to standards of review for judicial reviews and statutory appeals.

[6] Where there is a statutory right of appeal of an administrative decision and no standard of appeal is prescribed in the legislation, the appellate standards of review which were stated in *Housen v Nikolaisen*, 2002 SCC 33 are applicable. If the issue on appeal is a question of law, including questions of statutory interpretation and the scope of the decision maker's authority, the standard of review is correctness. If the issue on appeal is a question of fact or mixed fact and law where the legal principle is not readily extricable, the standard of review is palpable and overriding error. This is an error that can be plainly seen. See *St Croix v Yellowknife Housing Authority*, 2021 NWTSC 31 at para18.

[7] The issue of whether Ms. Crozier had notice of the hearing before the Rental Officer is a question of mixed fact and law for which the standard of review is palpable and overriding error.

[8] When filing an application with the Rental Officer, an applicant is required to serve a copy of the filed application on the other party at least five business days before the hearing or within another period specified by the rental officer: s. 76, *Act*.

[9] Service is addressed both in the *Act* and the *Residential Tenancies Regulations*, R-052-2010 (the *Regulations*). There are several methods by which a landlord or tenant can serve the other with an application to be heard by the Rental Officer. The *Act* allows for service by personal service, registered mail, fax or a method set out in the regulations: s. 71(1).

[10] The *Regulations* also permit service of a notice or another document on a landlord or tenant by e-mail if the receiver provides their e-mail address for that purpose. A document served by e-mail is deemed to have been received three days after being sent: s. 4, *Regulations*.

[11] Kayla Crozier entered into a Tenancy Agreement with the Respondent. Clause 10 of the Tenancy Agreement deals with Service of Documents and Notices. It allows the landlord and tenant to state the address where documents are to be served, by personal service or registered mail. An address for service was included for both and in addition, Ms. Crozier agreed to allow notices to be served on her electronically at an e-mail address which is stated in the Tenancy Agreement. The Tenancy Agreement also stated that “Notices sent via email are deemed to be received three days after they have been sent.”

[12] The Respondent filed the Application to a Rental Officer on May 1, 2023. The Rental Office filed the application and set a hearing date of May 31, 2023. An e-mail was sent to a representative of the Northview Fund on May 3, 2023 which included copies of the filed application and notices of attendance addressed to each party. The e-mail noted that it was the obligation of Northview Fund to serve Ms. Crozier with the filed application and notice of attendance.

[13] Northview Fund presented materials to the Rental Officer that claimed that Ms. Crozier had been provided with notice of the hearing. A document entitled Proof of Service of Documents stated that the documents were sent to the email address provided by Ms. Crozier in the Tenancy Agreement on May 16, 2023. Attached to the Proof of Service was an e-mail sent by Cesar Cervantes, Regional Administrator for Northview Fund addressed to Ms. Crozier at her e-mail address. Within the body of the email was information informing Ms. Crozier about the application and advising of the date and time of the scheduled hearing. The e-mail indicated that there were attachments including the application form, hearing information sheet and other supporting documents.

[14] At the hearing, the Rental Officer accepted the Proof of Service finding (at page 1 of the Transcript of the Hearing before the Rental Officer):

I can confirm that Ms. Crozier was served with the filed application and notice of this hearing by e-mail deemed received on May 19, 2023, pursuant to section 4(4) of the *Residential Tenancies Regulations*. As such, I am satisfied she is aware of the application and her opportunity to speak to it. I am prepared to proceed in her absence pursuant to section 80(2) of the *Residential Tenancies Act*.

[15] Ms. Crozier argues that she did not see the e-mail sent by Mr. Cervantes because it went into her junk mail folder. She also claims that she did not know Mr. Cervantes and had never dealt with him before so likely would not have opened an

email from him. Ms. Crozier says that she had previously received e-mails sent on Northview Fund's behalf from either Katherine Cullum or an e-mail address called Northview Fund. Ms. Crozier referred to a previous application before the Rental Officer where Northview Fund had served her and sent her a reminder of the hearing. In that case, communications had come from Katherine Cullum.

[16] While Ms. Crozier may not have dealt with Mr. Cervantes before, there was no requirement that Northview Fund communicate with her through a specific e-mail address or through a specific method. In the Tenancy Agreement, Ms. Crozier agreed to receive notices electronically at her e-mail address in addition to receiving documents by personal service or registered mail. Any of these options were open to Northview Fund to serve Ms. Crozier with notice of the application and the hearing date.

[17] Ms. Crozier claimed that in addition to not knowing who Mr. Cervantes was, she receives spam e-mail from online gambling sites and an e-mail from someone named "Caesar" would have been overlooked as being from an online casino. While Ms. Crozier may have overlooked the e-mail, the subject of Mr. Cervantes' e-mail was "Notice of Attendance for Rental Court". This would have been visible to Ms. Crozier and should have caught her attention.

[18] While it is unfortunate that Ms. Crozier did not view the e-mail from Mr. Cervantes in time to attend the hearing before the Rental Officer, Northview Fund complied with the requirements for service under the *Act* and *Regulations*.

[19] She was served with the documents by e-mail as permitted by the *Regulations* and after three days, the e-mail was deemed received. There was no requirement for Northview Fund to remind Ms. Crozier of the hearing.

[20] The Rental Officer accepted that the service on Ms. Crozier was proper and deemed service to have been made. There is no error in that conclusion.

[21] Another issue raised at the hearing by Ms. Crozier was her concern that the amount of arrears ordered was not correct. Ms. Crozier's rent had been paid by income assistance on a monthly basis and she claimed there was discrepancy with two of the months. This was not a ground of appeal but it appears that there may be some confusion regarding some of the arrears.

[22] Counsel for Northview Fund indicated that he was willing to meet with Ms. Crozier and a representative from income assistance to attempt to resolve this problem. At the end of the hearing, I encouraged the parties to meet to attempt to resolve this issue. I hope that this meeting has been arranged and the issue resolved to the satisfaction of both parties.

[23] For these reasons, the appeal is dismissed.

S.H. Smallwood
Chief Justice

Dated at Yellowknife, NT this
6th day of February, 2024

Counsel for the Appellant: Self-Represented
Counsel for the Respondent: Simon Barry

S-1-CV-2023-000204

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**MEMORANDUM OF JUDGMENT OF THE
HONOURABLE CHIEF JUSTICE S.H.
SMALLWOOD**
