

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF the *Residential Tenancies Act*, R.S.N.W.T. 1988, c. R-5,
as amended;
AND IN THE MATTER OF the Decision of the Rental Officer, No 17842,
dated June 1, 2023

BETWEEN:

JOHN JOSEPH MANTLA

Applicant

-and-

BEHCHOKO KO GHA K'AODEE

Respondent

MEMORANDUM OF JUDGMENT

OVERVIEW

[1] This is the statutory appeal of John Joseph Mantla of a decision of the Rental Officer of the Northwest Territories made pursuant to the *Residential Tenancies Act*, RSNWT 1988, c R-5 (the “*Act*”). On June 1, 2023, the Rental Officer made an order that Mr. Mantla owed \$36,753.10 in rental arrears, that the tenancy agreement between Mr. Mantla and Housing NWT was terminated as of June 15, 2023 and that Mr. Mantla be evicted from the leased premises on or after June 30, 2023.

[2] This appeal was heard on February 16, 2024. Mr. Mantla did not appear. For reasons that follow, I dismiss his appeal.

PROCEDURAL HISTORY

[3] Mr. Mantla filed his appeal on July 5, 2023. Mr. Mantla alleged the following grounds:

- (a) That he was not given an opportunity to be heard in accordance with the rules of natural justice; and
- (b) That he was unaware of the nature of the proceedings, as the documents served on him were in English, not Tłıchq his first language.

[4] Mr. Mantla filed an affidavit sworn July 5, 2023, in support of his appeal. Mr. Mantla stated that while he could speak English, he could not read English well and that Tłıchq was his first language. He stated that he received some papers but he did not understand why he was getting them. He also advised that he had some health issues which had led to him not being able to work in 2020 and that it took some time before he was able to get disability payments. He stated that he was now receiving disability payments of \$1,000 per month and could now pay his rent.

[5] Housing NWT was erroneously named as the Applicant/Landlord in the proceedings before the Rental Officer and was named as the Respondent in this appeal. Behchoko Ko Gha K'aodee is the actual landlord and the agency which entered into the lease with Mr. Mantla. As such, an Order was issued on July 28, 2023 which substituted Behchoko Ko Gha K'aodee ("BKGK") as the proper Respondent in this matter.

[6] This appeal was spoken to in court on several occasions. The Originating Notice of Appeal filed by Mr. Mantla was first spoken to in court on July 28, 2023. Mr. Mantla did not appear in court on that day, despite it being his appeal. On that same date, BKGK applied for an order substituting BKGK as the proper Respondent. That order was granted and the matter was adjourned to August 25, 2023.

[7] Due to the evacuation of Yellowknife and other northern communities in August, 2023 as a result of wildfires, court did not proceed as scheduled on August 25, 2023. When court was able to resume in September, the matter was scheduled to be spoken to on September 29, 2023. As Mr. Mantla did not have actual notice of the court appearance on that day, and the Record of the Rental Officer had not yet been filed, the matter was adjourned to November 10, 2023. I gave a direction to BKGK to serve Mr. Mantla with notice of the new date and to ensure that Mr. Mantla

was made aware, in his own language, of the importance of Mr. Mantla appearing in court on November 10, 2023.

[8] On November 10, 2023, Mr. Mantla did not appear, despite being provided with notice of the court date by a process server who spoke Tłıchǰ. In order to give Mr. Mantla a further opportunity to speak to the matter, the appeal was adjourned for a pre-hearing conference on December 4, 2023. A pre-hearing conference was required pursuant to Rule 604 of the *Rules of the Supreme Court of the Northwest Territories*. BKGK was again asked to ensure that Mr. Mantla was provided with actual notice of the court date in Mr. Mantla's first language.

[9] On December 4, 2023, Mr. Mantla did appear in court for the pre-hearing conference and issues relating to the conduct of the appeal were discussed. When asked if he needed an interpreter, Mr. Mantla indicated that he was able to speak English and could proceed in English.

[10] On December 4, 2023, BKGK indicated their intention to file evidence relating to their interactions with Mr. Mantla in both English and Tłıchǰ. BKGK also wished to update the court on the status of rent payments. Mr. Mantla also indicated a desire to meet with BKGK to try to address the issue of rental arrears. As such, the pre-hearing conference was adjourned to January 19, 2024.

[11] On January 19, 2024, Mr. Mantla did not appear despite having actual knowledge of the court date as a result of being present in court on December 4, 2023. BKGK advised that they had filed the affidavit of Roger Otikor, a manager with BKGK, addressing Mr. Mantla's language use as well as updating the court on rental arrears. Given that the Record had been filed and the evidentiary record was complete, the appeal was set for February 16, 2024. BKGK was directed to serve Mr. Mantla with notice of the appeal date, and to ensure that the information was explained to him in Tłıchǰ, and BKGK did so. An affidavit of service of the court order setting the appeal date reveals that Mr. Mantla was provided with notice of the appeal hearing on January 29, 2024. Mr. Mantla was provided with notice by being served with a copy of the order made on January 19, 2024 setting the appeal date. The process server swore to the fact that she had explained the order to Mr. Mantla in both English and Tłıchǰ.

[12] On February 16, 2024, despite being served with notice of the court date, Mr. Mantla did not appear.

STANDARD OF REVIEW

[13] 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.

[14] 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 paragraph 18 and *Crozier v Northview Fund*, 2024 NWTSC 7 at paragraph 6.

[15] The issue of whether Mr. Mantla had a fair hearing and whether there was a breach of the rules of natural justice is a question of mixed law and fact for which the standard of review is palpable and overriding error.

ANALYSIS

[16] Mr. Mantla alleges that he was not given an opportunity to be heard in accordance with the rules of natural justice. As he chose not to participate in the appeal, I do not have the benefit of submissions on the alleged breach of natural justice and whether he alleges a breach in addition to the language issue that his second ground of appeal raises.

[17] Nonetheless, I will review the proceedings before the Rental Officer.

[18] The Record discloses that BKGK's application was filed on December 13, 2022. Mr. Mantla was served with the application and a Notice of Attendance on December 14, 2022 for a hearing before the Rental Officer on January 8, 2023.

[19] The Record indicates that Mr. Mantla was served with notice of the January 8, 2023 hearing both by registered mail and personally. The affidavit of Roger

Otikor reveals that when Mr. Mantla was served with notice, the individual serving him explained the need for Mr. Mantla to attend in the Tḥchḳ language.

[20] 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*. That was done in these circumstances.

[21] Mr. Mantla did not attend the rental hearing on January 8, 2023. The Rental Officer heard evidence from Lillian Erasmus, an employee of BKGK, regarding Mr. Mantla's circumstances. It was ultimately agreed to adjourn the hearing *sine die* – that is, without a date – so as to allow Mr. Mantla to work with BKGK and provide them with the necessary financial information so as to allow them to readjust his rent.

[22] During the adjournment period, Mr. Mantla did provide the necessary financial information which resulted in his rent being reduced. He also entered into an agreement to pay rental arrears on March 31, 2023. The evidence in the Record and in this appeal through Mr. Otikor's affidavit, shows that, but for one payment of \$400, Mr. Mantla did not follow the agreement to pay arrears.

[23] A new hearing was set for May 31, 2023. Mr. Mantla was served with notice of the hearing by registered mail. The Record discloses that Mr. Mantla signed for the registered mail.

[24] Section 71 of the *Act* sets out how service of notices, processes and documents can be effected under the *Act*. Subsections (1) and (2) are the parts of section 71 that are engaged in this case. Section 71(1) permits service by registered mail in addition to personal service. Section 71(5) deems service by registered mail to have been served on the seventh day after mailing.

[25] This provision makes it plain that the Legislature intended to provide for different methods of service in the context of this *Act*. Service by registered mail is one of those methods.

[26] Not only was Mr. Mantla served in accordance with the *Act*, the Record reveals he picked up his registered mail. As such, he had actual notice of the hearing set for May 31, 2023.

[27] Mr. Mantla did not appear at the hearing and it proceeded in his absence, as the Rental Officer noted that Mr. Mantla had been provided with adequate notice.

[28] With the possible exception of the language issue raised by Mr. Mantla, the Record discloses no failure of natural justice. Mr. Mantla was personally served with notice of the first hearing and was clearly aware of the outcome of that first hearing as evidenced by his providing his financial information to BKGK in March 2023 and entering into an agreement respecting rental arrears. With respect to the second hearing, service by registered mail is authorized by the *Act* and the evidence is that he had actual notice of the hearing.

[29] As such, Mr. Mantla's first ground of appeal fails.

[30] With respect to the second ground of appeal, namely, that Mr. Mantla was unaware of the nature of the proceedings as he did not understand the documents given that they were not in his language, that ground also fails.

[31] Firstly, Mr. Mantla signed a lease with BKGK in which he confirmed that he speaks and understands English. The evidence of BKGK is this clause was explained to Mr. Mantla when he signed his lease on or about April 1, 2016: Affidavit of Roger Otikor, paragraph 6, sworn January 10, 2024.

[32] Secondly, the evidence of BKGK is that all their dealings with Mr. Mantla, both written and oral, have been in English. BKGK has had a long relationship with Mr. Mantla for many years. The uncontested evidence is that Mr. Mantla has responded to written communications in the past and that it was not until Mr. Mantla served his Originating Notice of Appeal on BKGK that Mr. Mantla raised the issue of being unable to understand the documents because they were in English: Affidavit of Roger Otikor, paragraphs 2 to 5.

[33] Thirdly, throughout these appeal proceedings, BKGK's representatives have gone to great lengths to communicate with Mr. Mantla in Tłchq. These efforts have not resulted in Mr. Mantla participating in these proceedings, suggesting that the reasons for Mr. Mantla's non-participation are unrelated to language.

[34] Fourthly, Mr. Mantla appeared in court on December 4, 2023 and indicated that he was comfortable proceeding in English. He committed to working with BKGK to address the rental arrears. He clearly demonstrated an understanding of the nature of these proceedings.

[35] Fifthly, while section 14 of the *Canadian Charter of Rights and Freedoms* protects the legal rights of people who do not understand the language in which a proceeding is conducted, there is an obligation to raise a desire for an interpreter at the first instance. Raising these objections only on appeal is not permissible: *Mohammadian v. Canada (Minister of Citizenship and Immigration)(T.D.)*, 2000 CanLII 17118 (F.C.) at paragraphs 13 to 17, affirmed by the Federal Court of Appeal at 2001 FCA 191 (CanLII).

[36] For all of these reasons, the second ground raised by Mr. Mantla fails.

[37] Mr. Mantla's appeal is dismissed. The Rental Officer's decision to terminate the tenancy agreement is confirmed. The eviction order will be effective two weeks from the date of these reasons.

[38] BKGK shall be entitled to their taxed costs of this action.

S.M. MacPherson
J.S.C.

Dated at Yellowknife, NT, this
28th day of February, 2024

Self-Represented Applicant:

John Joseph Mantla

Counsel for the Respondent:

Jeremy Dixon

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