

SUPREME COURT OF YUKON

Citation: *Sola Corporation (o/a Baranov Estates) v Travill*,
2024 YKSC 20

Date: 20240509
S.C. No. 23-A0150
Registry: Whitehorse

BETWEEN:

SOLA CORPORATION (O/A BARANOV ESTATES)

PLAINTIFF

AND

MICHAEL TRAVILL

DEFENDANT

Before Chief Justice S.M. Duncan

Appearing on behalf of Sola
Corporation

Harrison Kwok

No one appearing for the Defendant

REASONS FOR DECISION

Introduction

[1] This is a landlord and tenant dispute. The landlord, Sola Corporation operating as Baranov Estates, and manager of a mobile home park in Whitehorse, seeks an order of removal of the mobile home and other personal belongings of the former tenant, Michael Travill, from the mobile home site described as Unit 33-37 Sycamore Street in Whitehorse. The Deputy Director of the Residential Tenancies Office (“RTO”) determined they have no jurisdiction under the *Residential Landlord and Tenant Act, SY*

2012, c 20 (“*RLTA*”) to make such an order because the value of the property at issue is over \$25,000 (s. 65(3)(a)). In addition, as of November 2023, the Deputy Director considered that the mobile home and other personal property were not abandoned (s. 64).

[2] Michael Travill was not present in Court the day of the hearing. The matter proceeded as a trial. Harrison Kwok, a director of Sola Corporation, appeared on behalf of the plaintiff landlord and presented oral and documentary evidence in support of the landlord’s claim.

[3] Based on the evidence, I grant an Order for removal of Michael Travill’s mobile home and contents, an Order for costs if the landlord is required to remove and dispose of the items, and costs of this proceeding.

Background

[4] Michael Travill rented a mobile home site at Unit 33-37 Sycamore Street, in the Porter Creek subdivision of Whitehorse, from Sola Corporation operating as Baranov Estates. The original landlord and tenant dispute was about the termination of Michael Travill’s tenancy for non-payment of rent for the mobile home site. An order for possession was obtained by the landlord from the Deputy Director at the RTO on August 18, 2023, after a dispute resolution hearing. At an earlier dispute resolution hearing, the Deputy Director held in a decision issued June 9, 2023, that Michael Travill would be required to pay all outstanding rent by July 15, 2023, and his failure to do so would be sufficient grounds for the landlord to issue a notice to end tenancy for cause for repeated late payment of rent. Michael Travill did not pay the July rent payment in

full until July 24, 2023, contrary to the July 15, 2023 deadline. The order of August 18, 2023, from the RTO stated:

The DEPUTY DIRECTOR ORDERS that:

- 1) The tenant must vacate and remove all their possessions from the mobile home site located and described as Unit #33 – 37 Sycamore Street, Whitehorse, Yukon (the “Premises”), no later than September 30, 2023, at which time the landlord is entitled to exclusive and vacant possession of said Premises.
- 2) The tenant and landlord be served with the decision and order at their respective email addresses, being miketravill@gmail.com and Baranov.yukon@gmail.com and will be deemed served immediately upon the emails being sent.

[5] On October 3, 2023, the landlord obtained a writ of execution from the Supreme Court of Yukon to effect the possession. Michael Travill had not removed the mobile home or any of his belongings. On October 6, 2023, the landlord attended at the mobile home site to enforce the order of possession. Notice had been provided by the landlord the day before, October 5, 2023, by email to Michael Travill, stating that the landlord considered him to have abandoned his possessions, and would be removing and storing them at his expense until he retrieved them or until the landlord obtained an order to dispose of them. The landlord also sent Michael Travill a copy of the writ of execution they intended to use to enforce the order of possession.

[6] Michael Travill did not respond to the landlord and was not present at his mobile home on October 6, 2023, when the landlord arrived with the locksmith. The sheriff had attended earlier to confirm no one was present and to place the writ of possession on the door. The landlord entered the mobile home and discovered contents of concern

within, including firearms, ammunition and large animal heads, parts and hides. Photos of the contents were introduced as evidence. The RCMP were called and items seized. The locks on the mobile home were changed. The landlord emailed Michael Travill again on October 6 and 9, 2023, to advise him of what they had done and to send the photos they had taken of the contents in the mobile home. The landlord also advised the RTO by email of their entry to the mobile home, their findings, including photographs, and that they changed the locks.

[7] The matter returned to the RTO for another dispute resolution hearing in November 2023. There were two issues for decision. First, Michael Travill argued that the landlord had impeded the sale of his mobile home by refusing to extend the tenancy agreement to the proposed purchaser. Second, Sola Corporation sought authorization to remove and dispose of the abandoned property left on the mobile home site, so they could have complete vacant possession of the mobile home site and could rent it to someone else.

[8] The Deputy Director at the RTO decided on November 14, 2023 to dismiss Michael Travill's application. Among other things, he was found to be an overholding tenant contrary to the order of possession issued by the RTO on August 18, 2023. The Deputy Director further declined to determine the landlord's application to order disposal of the tenant's property because they found a lack of jurisdiction due to the claim exceeding the monetary limit of \$25,000 set by the *Small Claims Court Act*, RSY 2002, c 204. The landlord's only option for an order for removal of the mobile home and Michael Travill's other belongings was to make application to this Court under s. 65(5)(a) of the *RLTA*.

[9] The landlord served a statement of claim dated December 1, 2023, on Michael Travill, and an amended statement of claim dated February 29, 2024, after a case management conference in this Court, to specify the relief claimed. A statement of defence was filed by Michael Travill to the original statement of claim. No amended statement of defence was filed. A notice of trial was served. On May 1, 2024, the date set for trial, Michael Travill was not present. He was paged but did not appear. The trial proceeded with Harrison Kwok representing the landlord.

Evidence at Trial

[10] Harrison Kwok provided the background as described above, supported by various documents: the decisions of the RTO of August 18 and November 14, 2023, the order of possession from the Deputy Director of the RTO, the writ of execution from the Supreme Court of Yukon, emails from the landlord to the tenant and the RTO describing their intended and completed actions and findings in the mobile home, dated October 3, 5, 6, and 9, 2023. Harrison Kwok also introduced into evidence a valuation he received from a realtor of the mobile home (who assessed the outside of the home and the inside from what she could see through the windows) of \$22,000-\$24,000. The Deputy Director in their decision had relied on offers to purchase received by Michael Travill which exceeded \$25,000, and a relatively recent insurance assessment that assigned a value of \$49,000 to the mobile home. This was sufficient for the Deputy Director to refer the matter to this Court.

Analysis

[11] This Court must decide whether the landlord is entitled to an order for removal of Michael Travill's mobile home and other belongings from the mobile home site, plus costs.

[12] Section 65(5) of the *RLTA* provides that the Supreme Court of Yukon may hear a dispute under the *RLTA* where the claim is for an amount that is more than the \$25,000 monetary limit for claims under the *Small Claims Court Act* and may make any order that the Director of the RTO may make under the *RLTA*.

[13] Section 64 allows the Director to order the removal and sale of goods of a tenant if the tenancy has ended or the tenant has abandoned the rental unit and has left property in the rental unit. The Director may also authorize the landlord to sell or otherwise dispose of property if the landlord has made reasonable efforts to find the tenant and the tenant cannot be found, or if the tenant has been located but has not made reasonable arrangements for the removal of the property. If any proceeds are obtained from the sale or disposal of the property, they may be deducted from the costs incurred by the landlord to remove the property or from any amount owing to the landlord by the tenant under the tenancy agreement, the *RLTA* or the regulations.

[14] In this case, it is clear that Michael Travill's tenancy had ended on September 30, 2023, with the order of possession from the Deputy Director of the RTO.

[15] Harrison Kwok testified that to his knowledge, Michael Travill had not been living at the rental unit over the winter months. Michael Travill's failure to appear at trial or the two previous court appearances despite being provided notice supports the evidence of his abandonment.

[16] The mobile home remains on the site, along with other belongings inside the home and in the yard, including a cargo trailer.

[17] The landlord has met the requirements under the *RLTA* for an order for removal.

Order

[18] Sola Corporation operating as Baranov Estates is authorized to remove, sell, or otherwise dispose of the mobile home belonging to Michael Travill and all its contents, as well as the contents in the yard at Unit 33-37 Sycamore Street, Whitehorse, belonging to Michael Travill, after 30 days from the date of this order, if they have not otherwise been removed by Michael Travill.

[19] Sola Corporation operating as Baranov Estates is entitled to deduct the costs of the removal, sale or disposal of the property, as well as the costs of this proceeding, from any resulting proceeds from the sale or disposal of the property. If there are no proceeds, then Sola Corporation is entitled to recover its costs from Michael Travill.

[20] Michael Travill shall pay to Sola Corporation operating as Baranov Estates the amount of \$3,325, which is the monthly rent of \$475 from October 2023 to April 2024 for Unit 33-37 Sycamore Street.

[21] Sola Corporation is entitled to costs of this proceeding in the amount of \$2,500.

Observations

[22] This matter was procedurally onerous to conclude. It involved two decisions from the RTO, two case management conferences at the Supreme Court of Yukon, the filing and serving of pleadings, an affidavit, and documents, and a third court appearance for this disposition.

[23] In the November 14, 2023 decision by the Deputy Director of the RTO, they wrote that the *RLTA* does not provide the landlord with authority over the mobile home. The Deputy Director wrote that an order of possession such as the one obtained on August 18, 2023, authorizes the landlord to remove overholding tenants (s. 62(2)), but not the mobile home. On the last page of their decision they wrote:

The *RLTA* does not clearly authorize the Residential Tenancies Office to make orders for the disposal of mobile homes that are not abandoned. The Tenant is overholding the mobile home site, but the mobile home structure has not been determined to be abandoned. The evidence is not determinative that the mobile home is valued at \$25,000 or less, within the jurisdiction of the *RLTA*.

And further:

The application to dispose of abandoned property of the Landlords revealed gaps in the process of enforcing an order of possession in a mobile home park. Consideration and guidance by a court of appropriate jurisdiction would help clarify how these issues may be decided.

[24] I do not agree with the Deputy Director of the RTO that it is necessary to find that the mobile home was abandoned in order to obtain an order for removal. Section 64(1) of the *RLTA* states that on application, “the director may make an order under this section [for removal or sale] if (a) the tenancy of a tenant has ended ... and (b) the tenant has left property in the rental unit.” Section 64(3) provides in part that if the tenant has been located and has not made reasonable arrangements for the removal of the property, the director may authorize the landlord to remove it. In other words, it is not necessary to find that the tenant has abandoned the rental unit, or that the tenant cannot be located, in order to obtain an order for removal or sale.

[25] However, there are difficulties for landlords in properly executing writs of possession, because of the different character of mobile homes from other dwellings, reflected in the following definitions in the *RLTA*.

[26] “Mobile home” means a structure, whether ordinarily equipped with wheels or not, that is (a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and (b) is used or intended to be used as living accommodation.”

[27] “Mobile home park” means the parcel or parcels on which the following are located (a) one or more mobile home sites that the same landlord rents or intends to rent, and (b) associated common areas.”

[28] “Mobile home site” means a site in a mobile home park which is rented or intended to be rented for the purpose of being occupied by a mobile home.”

[29] “Rental unit” means living accommodation rented or intended to be rented to a tenant and includes a mobile home site.”

[30] Thus, in the mobile home context, a notice to vacate for non-payment of rent is a notice to vacate the rental unit (s. 51), which is the mobile home site, not the mobile home. If there is an overholding tenant, the landlord may obtain an order of possession, enforceable by the sheriff through a writ of execution from this Court. Generally, subsection 62(2) allows the landlord with the assistance of the sheriff to enter the rental unit and take possession of the rental unit occupied by the overholding tenant. In a non-mobile home situation, this would be the actual living space occupied by the tenant. In the mobile home context, however, an order of possession allows the landlord to obtain possession only of the mobile home site because it is the rental unit. The mobile home

is owned by the tenant and not rented from the landlord and is not part of the rental unit. As a result, if a tenant is overholding by not releasing the mobile home site, the landlord in a mobile home park has no effective remedy.

[31] The wording of the order of possession of August 18, 2023 from the Deputy Director of the RTO, and of the writ of execution of October 3, 2023 from this Court, suggests that the tenant is required to remove all of their personal possessions, including the mobile home, to allow the landlord to have vacant possession of the site. However, the definitions in the *RLTA*, particularly the definition of rental unit, limited to the mobile home site, do not cover the mobile home or other possessions, and prevent the landlord from obtaining actual possession of the mobile home site if the tenant does not move the mobile home. To effect the original order of possession in a case where the tenant has not removed the mobile home from the site, another order from the RTO (or this Court if valued at over \$25,000) is required (s. 64 and s. 65).

[32] The current definitions in the statute as noted above, do not allow the landlord with an order of possession and writ of execution for possession of a mobile home site to obtain possession of the site by removing the mobile home. It is hoped that the government is aware of this gap and will consider alternatives in its review of the *RLTA*.

DUNCAN C.J.

Residential Landlord and Tenant Act, SY 2012, c 20:

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64 Director may order removal or sale of abandoned goods

(1) On application by a landlord, the director may make an order under this section if

(a) the tenancy of a tenant has ended or the tenant has vacated or abandoned the rental unit formerly occupied by them; and

(b) the tenant has left property in the rental unit.

(2) The director may make the order without giving notice to the tenant or giving the tenant an opportunity to be heard.

(3) The director may, in the circumstances described in subsection (1), authorize the landlord to remove the property from the rental unit and sell it or otherwise dispose of it if the director is satisfied that

(a) the landlord has made reasonable efforts to determine the whereabouts of the tenant who left the property; and

(b) the tenant who left the property cannot be located, or if that tenant has been located, they have not made reasonable arrangements for the removal of the property.

(4) If a landlord removes, sells or otherwise disposes of the property in accordance with an order of the director, the landlord

(a) may deduct from any resulting proceeds

(i) any amount owing to the landlord under the tenancy agreement, this Act or the regulations, and

(ii) any costs incurred by the landlord to remove, sell or otherwise dispose of the property; and

(b) must pay any proceeds that remain after those deductions to the director to the credit of the person who left the property.

(5) If the tenant who left the property does not claim the remaining proceeds within six months after the proceeds were paid to the director, the director must forward the proceeds to the Minister of Finance for deposit in the consolidated revenue fund.

(6) If a landlord removes, sells or otherwise disposes of property under this section in accordance with an order of the director, the landlord, or any person acting on behalf of the landlord, is not liable in any action taken by the tenant who left or owned the property respecting the removal, sale or disposition.

[S.Y. 2012, c. 20, s. 64]

65 Who determines disputes

(1) Except as restricted under this Act, a person may make an application to the director in relation to a dispute with the person's landlord or tenant in respect of any of the following

(a) rights, obligations and prohibitions under this Act; or

(b) rights and obligations under the terms of a tenancy agreement that

(i) are required or prohibited under this Act, or

(ii) relate to

(A) the tenant's use, occupation or maintenance of the rental unit, or

(B) the use of common areas or services or facilities.

(2) The director may refuse to receive an application for dispute resolution if

- (a) in the director's opinion, the application does not disclose a dispute that may be dealt with under this Part; or
- (b) the application does not comply with subsection 66(1).
- (3) If the director receives an application, the director must determine the dispute unless
 - (a) the claim is for an amount that is more than the monetary limit for claims under the Small Claims Court Act;
 - (b) the application was not made within the applicable time period specified under this Act; or
 - (c) the dispute is linked substantially to a matter that is before the Supreme Court.
- (4) Except as provided in subsection (5), a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted for a determination by the director under this Act.
- (5) The Supreme Court may
 - (a) on application, hear a dispute referred to in paragraph 3(a) or (c); and
 - (b) on hearing the dispute, make any order that the director may make under this Act.

[S.Y. 2012, c. 20, s. 65]

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