SUPREME COURT OF YUKON

Citation: *Ramza Developments Ltd. v Newell,* 2024 YKSC 53

Date: 20241004
S.C. No. 24-A0040
Registry: Whitehorse

BETWEEN

Ramza Developments Ltd.

APPLICANT

AND

Merv Newell

RESPONDENT

Before Justice K. Wenckebach

Agent for the Applicant — Christina Zahar

Appearing for the Respondent — No one appearing

REASONS FOR DECISION

[1] WENCKEBACH J. (Oral): The applicant, Ramza Development Ltd, is a residential landlord and the respondent, Merv Newell, is Ramza's former tenant. Ramza has brought a judicial review application of the Residential Tenancies Office's decision that Ramza was required to return approximately $99 of Mr. Newell's security deposit to him.

[2] The facts are that, after Ramza served notice on Mr. Newell that it would be increasing his rent, he elected to terminate his lease agreement. Mr. Newell asked if he could terminate the lease early and Ramza agreed. Full rent was paid for December, the last month Mr. Newell lived at the apartment, but he elected to leave early on the

20th of December. The landlord knew that he would be leaving early. The director of the landlord, Christina Zahar, reminded Mr. Newell that he should not cancel the electricity, but should keep it on until December 31st. As it was December, canceling the heat before the end of the month could cause damage to the apartment. Despite this, Mr. Newell canceled the electricity when he moved out. Ms. Zahar learned that Mr. Newell had canceled the electricity and had it turned back on. She then held back approximately $100 to compensate for the costs of reconnection and the cost of electricity until the end of the month.

[3] The question before the RTO was who was responsible for the electricity between the time Mr. Newell moved out and the 1st of January. It held a documentary hearing. It concluded that Ramza was responsible and ordered that it pay the money it held back to Mr. Newell.

[4] At the judicial review hearing, Ms. Zahar, who was representing Ramza, provided evidence in the form of submissions that had not been before the RTO. The judicial review application, however, is based solely on the evidence that was before the RTO. I therefore have not considered any of the new evidence Ms. Zahar presented. Ms. Zahar also expressed frustration with the RTO, the processes it has adopted, and the decisions it has made in other cases.

[5] I cannot deal with some of the larger problems Ms. Zahar raised but will address three of Ms. Zahar's arguments that apply specifically to the facts of this case. First, she submits that the adjudicator erred in making her decision by failing to take facts into account and placing too much weight on other facts. Second, she submits that the process of having only a documentary hearing was procedurally unfair. Instead, there

should have been an oral hearing. Third, she has concerns about paying Mr. Newell through an email transfer as required by the RTO.

[6] In my analysis, I will first address the question of procedural fairness. I will then assess whether the decision was reasonable. If necessary, I will consider the issue of payment of Mr. Newell. An issue that Ms. Zahar did not raise but which I will address if I grant her application is what remedy should be ordered.

[7] So, I now turn to the first question: whether the RTO breached procedural fairness by conducting a documentary hearing instead of an oral hearing.

[8] Before I get into the merits of the issue, I must determine the extent of procedural fairness the RTO owes to parties. This is because there are many different administrative bodies who deal with different kinds of issues and operate under different legislative schemes. Thus, the level of procedural fairness can change from administrative body to administrative body and from issue to issue.

[9] The Court applies five factors to determine the level of procedural fairness an administrative decision-maker owes to parties. These are:

- the nature of the decision and the process used in making it;
- the nature of the statutory scheme;
- the importance of the decision to the individual affected;
- the applicant's legitimate expectations; and
- the agency's choice of procedure.

[10] On the first factor, the Court will consider the extent to which the parties are in an adversarial or non-adversarial context, the issues the decision-making body resolves, for instance, whether they must make findings of fact, or their decisions are based on

other considerations such as public interest, and the nature of the procedures the legislation provides.

[11] The second factor is the nature of the statutory scheme. It concerns the extent of appeal rights and whether the decision is determinative of the issue.

[12] Under the third factor, the more important the decision to the parties, the higher the level of procedural fairness that will generally be owed. The importance of the decision is a significant factor in determining the level of duty of fairness owed to the parties.

[13] Legitimate expectations may arise where an administrative body, by word or conduct, gives a party reason to believe that the body will conduct the matter in a particular way.

[14] And finally, the last factor is focused on the choices the decision-making body has made about the processes it follows, especially where the statute provides the body with discretion in choosing its procedures.

[15] In this case, legitimate expectations do not apply. I will therefore not consider this factor in my analysis.

[16] I recently considered the procedural fairness the RTO owes in proceedings concerning a with-cause eviction notice. This case was *Boles v Yukon Residential Tenancies Office*, 2024 YKSC 33 (“*Boles*”). The dispute resolution process provided in the legislation is the same for proceedings about the return of a security deposit as they are for without-cause evictions. My analysis in *Boles* of the first, second, and fifth factors are therefore equally applicable here.

[17] Thus, under the first factor, which is the nature of the proceedings and the process used in making it, the proceedings are adversarial and the processes are closer to the judicial model. This therefore suggests a higher degree of procedural fairness.

[18] The second factor, that is, the nature of the statutory scheme, also suggests a higher degree of procedural fairness as, aside from judicial review, the decision by the director is subject only to review on a narrow basis.

[19] The fifth factor, on the other hand, suggests a more middling level of procedural fairness. This factor is the choices the decision-making body has made about the processes it follows.

[20] The *Residential Landlord and Tenant Act*, RSY 2002, c 20 (the "*Act*"), has provided the RTO with considerable discretion in the choice of procedures it may use to resolve disputes. In this case, it has determined that a paper-based hearing is appropriate. This suggests a more middling level of procedural fairness is owed.

[21] While my reasoning on most of the factors here is the same as in *Boles*, there is one factor that is different: the importance of the decision to the parties. In the case at bar, the proceedings were about the refund of money; whereas in *Boles* it was about an eviction.

[22] Under the legislation, a landlord may require a tenant to pay up to one month's rent as security deposit if they rent on a monthly or yearly basis. One month's rent is a significant amount to a renter and possibly to the landlord as well. At the same time, it is not at the level of importance as a with-cause eviction. The decision is important but is not as pressing an issue as other issues.

[23] Taking the factors into consideration, the procedural fairness owed is in the middle of the spectrum. This level of procedural fairness does not preclude proceeding by way of a documentary hearing. A documentary hearing can provide sufficient rights to parties to present their own case and respond to the case against them. Proceeding by way of documentary hearing in matters involving who is entitled to the security deposit is not in itself problematic.

[24] Ms. Zahar argued that there have been instances in which she took part in documentary hearings and where she believes the adjudicator could have resolved issues by asking questions about the evidence presented. I cannot make any decision about other cases.

[25] Ms. Zahar also submits that, in this case, because there was no oral hearing, the adjudicator made unwarranted assumptions. As I see it, these arguments are not about the process used but about the adjudicator's reasoning.

[26] Given the level of fairness the RTO owed, I conclude that the RTO did not breach procedural fairness when it chose to proceed by way of a documentary hearing.

[27] I now turn to the question of whether the adjudicator erred in making her decision.

[28] The standard of review on the merits of the decision is reasonableness. The law on reasonableness is as follows. A tribunal's decision is reasonable if it is based on internally coherent reasoning and is justified in light of the legal and factual constraints that bear on the decision. In determining whether a decision is reasonable, the reviewing court will look at the justification, transparency, and intelligibility of the decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

("*Vavilov*") at paras. 99, 101). The Court is not to interfere with the tribunal's factual findings. However, a decision may be unreasonable if the tribunal fundamentally misapprehended evidence, failed to take evidence into account, or made conclusions that were not based on the evidence that was before it (at paras. 125-126).

[29] In the case at bar, the adjudicator implicitly reasoned that, to determine who was responsible for the electricity between December 20th and January 1st, it was necessary to decide when the tenancy agreement terminated. If it ended on December 20th, then Ramza would be responsible for the cost of electricity. If it ended on December 31st, then Mr. Newell would be responsible for those costs.

[30] As I understand the adjudicator's decision, she concluded that the parties renegotiated the rental agreement to permit Mr. Newell to finish his tenancy on December 20th. In coming to this decision, she relied on the following facts:

- Ms. Zahar acknowledged that Mr. Newell planned to move out on December 20th;
- Ms. Zahar stated that she would return his damage deposit on that day;
- Ms. Zahar inspected and cleaned the apartment for the new tenants on or shortly after December 20th; and
- the keys were returned to Ms. Zahar around that time as well.

[31] The adjudicator then stated:

> The tenant no longer had access to the unit and would not have any control over the use/misuse of the utility service. It is an incredible risk to take in the winter months. The landlord is responsible for the unit after the tenancy ended, including the utility connections and costs.

[32] The adjudicator's analysis does show that she engaged with some of the facts in a meaningful way. However, there are two deficiencies in the decision: first, she does not take into account all the important evidence on this issue; and second, she misapprehends some of the evidence.

[33] While many of the facts cited by the adjudicator do support the conclusion that Ms. Zahar and Mr. Newell agreed that the tenancy would end on December 20th, there are also facts that suggest otherwise. These are: Mr. Newell paid full rent for December and paid this amount after he announced he was moving out on December 20th; and Ms. Zahar reminded him on more than one occasion that he was responsible for the electricity until the end of December, and he did not contest this.

[34] Taken together, these facts suggest that, although Mr. Newell vacated early — which he was at liberty to do — the tenancy agreement itself ended on December 31st. This was important evidence that could have indicated the parties' intentions. The adjudicator did note that Ms. Zahar reminded Mr. Newell that he was responsible for the electricity but did not then factor this into her analysis. Mr. Newell's acquiescence, both that he was required to pay full rent for December and that he was responsible for the electricity until the end of the month, needed to be considered.

[35] Moreover, the adjudicator misapprehended the evidence about when the key was returned. The evidence about the key is contained in the emails exchanged between Mr. Newell and Ms. Zahar. Mr. Newell told Ms. Zahar that his sister would give her the key. Ms. Zahar agreed, telling him his sister could leave it under her door mat. There is no evidence about when the key was actually returned, however. It was therefore not possible for the adjudicator to conclude that Mr. Newell provided the key

before December 31st or that he no longer had control over the apartment after December 20th.

[36] This is not to say that the adjudicator should have concluded that the tenancy ended on December 31st. The adjudicator, after having taken all the facts into account, could have determined that the parties agreed that the tenancy ended on December 20th. However, such a decision would be reasonable only after considering all the evidence before her.

[37] I therefore conclude the RTO's decision was unreasonable.

[38] As Ms. Zahar was successful, I need not consider the RTO's order about how she is to pay Mr. Newell.

[39] I do, however, have to consider the question of remedy. Generally, when a tribunal's decision is overturned, the Court does not substitute a new decision. Instead, it returns the proceedings to the tribunal for reconsideration. Here, however, after initially taking part in the proceedings, Mr. Newell has not participated. He has not filed any substantive submissions, nor did he appear for the oral hearing.

[40] Given that he has, in effect, abandoned the matter, I will not remit the proceedings to the RTO, but will simply allow the judicial review application.

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WENCKEBACH J.