KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 183**

Date: **2024 10 17**
Docket: KBG-RG-02183-2024
Judicial Centre: Regina

IN THE MATTER OF S. 72(1) OF *THE RESIDENTIAL TENANCIES ACT, 2006*, SS 2006, c R-22.0001

BETWEEN:

CCI RENTALS

APPELLANT

- and -

MIRANDA WENTZ

RESPONDENT

- and -

DIRECTOR OF THE OFFICE OF RESIDENTIAL TENANCIES

RESPONDENT

Appearances:

Kay Adebogun	agent for the appellant
No one appearing	for the respondent
No one appearing	for the Office of Residential Tenancies

FIAT — MITCHELL J.
October 17, 2024

A. Introduction

[1] CCI Rentals [appellant] appeals pursuant to ss. 72(1) of *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001 [*Act*] from a decision of a hearing officer dated August 27, 2024 (*Wentz v CCI Rentals* (27 August 2024) Regina, File #239131 (Sask ORT)) [*Decision*]. In the *Decision*, the Hearing Officer ordered the appellant to

pay damages to its former tenant, Ms. Miranda Wentz [respondent] in the amount of $1,079.84 pursuant to ss. 70(6) of the *Act*.

[2] In its notice of appeal dated September 13, 2024, the appellant identified numerous grounds of appeal.

[3] This appeal came before me in Regina chambers on October 3, 2024. Mr. Kay Adebogun appeared as agent for the appellant. No one appeared on behalf of either the respondent, or the Director of the Office of Residential Tenancies. At the conclusion of the hearing, I reserved my decision.

[4] These reasons explain why I have concluded this appeal must be allowed in part.

B. Jurisdiction and Standard of Review

[5] In *Drover v Avenue Living Communities Ltd.*, 2022 SKKB 254, I reviewed the legal principles relevant to an appeal under the *Act* at paras. 8 and 9 as follows:

> [8] In *Knapp v ICR Commercial Real Estate*, 2019 SKQB 59, the court reviewed the legal principles governing appeals under the *Act* as follows at paras. 16 to 18:
>
> > 16. Section 72 of the *Act* provides an aggrieved party the right to appeal a hearing officer's decision to this Court, but only on a question of law or a question of jurisdiction. **An appeal under s. 72 is neither a re-hearing of the application nor a re-weighing of the evidence presented at the original hearing. Rather, this Court's jurisdiction under the *Act* is narrow. It is supervisory only, focusing principally on the impugned decision of the hearing officer and the evidence underlying it. As a result, deference ought to be accorded to the hearing officers' factual findings and "to those aspects of [the hearing officers'] decisions which reflect an exercise of discretion". See: *Reich v Lohse* (1994), 123 Sask R 114 (CA), at paras 18 and 20.**
> >
> > 17. It is apparent that before an appeal under s. 72 can be

> adjudicated, two preliminary legal issues must be determined. First, does the appeal raise issues that may be characterized as questions of law or questions relating to the hearing officer's jurisdiction? This question may be described as "the jurisdictional issue". If the answer to this question is "no", then the appeal cannot proceed as this Court lacks jurisdiction to entertain it.
>
> 18. If, however, the answer to this question is "yes", then the court must turn to the second preliminary legal issue, namely what is the appropriate standard of review to be applied on the appeal. This question may be described as the "standard of review issue".
>
> [Emphasis added]

> [9] It is apparent that this Court has very limited power to overturn a decision of a hearing officer. An appellant must demonstrate that the hearing officer, when deciding a case, committed an error of law or jurisdiction. An appeal under s. 72(1) of the *Act* is not a rehearing or a "do-over". These, then, are the principles I must employ when deciding this appeal.
>
> [Emphasis in original]

[6] Courts in this province have determined that when an appellant raises factual questions, a reviewing court can only intervene if the hearing officer made palpable or overriding errors in fact finding amounting to an error of law. See especially: *Lansdowne Equity Ventures Ltd. v Cove Communities Inc.*, 2020 SKQB 113 at para 30 [*Lansdowne Equity*], and *P.S.S. Professional Salon Services Inc. v Saskatchewan (Human Rights Commission)*, 2007 SKCA 149, [2008] 5 WWR 440.

[7] As with all statutory appeals, questions of law are to be assessed on the correctness standard. See: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 53-54, [2019] 4 SCR 653.

C. Analysis

[8] At the hearing of this appeal, I advised Mr. Adebogun that only two of the many grounds of appeal he advanced in the appellant's notice of appeal qualified under s. 72 of the *Act*. The two grounds relate to:

(a) Using the notice of intention to increase the rent as the basis for the hearing officer's calculation of monthly rent, and

(b) The hearing officer's failure to set-off the amount owed to the appellant by the respondent for non-payment of rent in *CCI Rentals v Wentz*, 2024 SKORT 831 [*Eviction Decision*]

[9] I will address each of these grounds of appeal in turn.

1. Wrong Calculation of Rent

[10] In the *Decision* at para 13(a), the Hearing Officer determined that the "Notice of Intention filed by [CCI] shows that a month's rent was $2,000 at the material time". Using this amount as a basis for a rebate of "a ¼ month's rent" for lack of heat, he awarded the respondent $500 in damages. This was to compensate the respondent for the approximately five days there was no heat in the rental unit during winter due to a furnace breakdown.

[11] However, the Hearing Officer erred in using the amount identified in the notice of intention as the basis for his determination. At all relevant times, the rent which the respondent had to pay was $1,650, not $2,000. The amount of rent listed in the notice of intention did not come into effect until after the respondent had left the rental unit. Utilizing the amount of $2,000 to determine the damages owed to the respondent for the lack of heat in the rental unit qualifies as a reviewable error. See: *Lansdowne Equity* at para 30.

[12] When the correct amount is used, the rebate of a quarter month's rent is $412.50.

[13] Adjusting the aggravated damages awarded to the respondent to reflect this error means the amount of aggravated damages should be $712.50, and not $800.

[14] Consequently, the total amount of damages the respondent is awarded should now be **$992.34**.

[15] I turn now to consider the second issue raised on this appeal, namely whether this amount should be set-off against the amount of rent arrears awarded to the appellant in the *Eviction Decision*.

2. Is a Set-off Appropriate?

[16] In the *Eviction Decision,* the hearing officer issued a writ of possession for the rental unit occupied at the time by the respondent. He also ordered the respondent to pay $1,700 to the appellant. This amount included one month's rent of $1,650, and a filing fee of $50. See: *Eviction Decision* at para 12. The respondent did not appeal the *Eviction Decision*. Furthermore, at the hearing before me Mr. Adebogun advised that the respondent has not yet satisfied the amount she was ordered to pay in the *Eviction Decision*.

[17] Mr. Adebogun advised that he did bring the amount owed by the respondent after the *Eviction Decision* to the attention of the Hearing Officer in this matter. However, the Hearing Officer dismissed the *Eviction Decision* as irrelevant. See: *Decision* at para 9.

[18] At the hearing, Mr. Adebogun submitted that there should be a set-off between these two amounts, and the Hearing Officer erred in not doing so.

[19] The *Act* contemplates a form of statutory set-off in ss. 70(6)(b), and 70(7). Those provisions provide:

> **70.**
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> …
>
> (6) After holding a hearing pursuant to this section, a hearing officer may make any order the hearing officer considers just and equitable in

> the circumstances, including all or any of the following:
>
> > ...
> >
> > (b) an order requiring a tenant to pay to the director all or any part of any instalment of rent otherwise payable to the landlord[.]
>
> …
>
> (7) If an order is made pursuant to clause (6)(b), the hearing officer may direct that the moneys paid to the director be used to remedy the landlord's contravention of or failure to comply with the tenancy agreement, this Act, the regulations or an order made pursuant to this Act.

[20] This remedial power was open to the Hearing Officer in this matter had he turned his mind to the order made against the respondent in the *Eviction Decision*. Plainly, he did not do so.

[21] Admittedly, there is a paucity of case law addressing whether, in circumstances such as these, a set-off is available on appeal. In *Schoonover v Caswell* (1997), 154 Sask R 186 (QB) at para 17, Gerein J. intimated that the doctrine of set-off may be applicable. However, he determined that on the facts before him, it was neither an available nor an appropriate remedy.

[22] More recently, in *Elance Steel Fabricating Co. Ltd. v Three-o-six Industrial Services Inc.*, 2023 SKKB 198 at paras 9-17 [*Elance Steel*], for example, Scherman J. canvassed the law relating to the doctrines of statutory or equitable set-off. He determined at para. 17 that the relevant test was "whether it is of an ascertainable amount or not, the claim **must be a claim by the defendant which arises out of the same dealings, transactions or occurrence giving rise to the claim of the plaintiff**" (bold in original).

[23] Respectfully, I conclude the Hearing Office erred in law by not applying the doctrine of statutory set-off authorized in ss. 70(7) of the *Act*. This failure amounts to an error of law.

[24] Furthermore, applying the *Elance Steel* test, I am persuaded that an equitable set-off is also appropriate in this case for the following reasons.

[25] First, the amounts at issue are plainly ascertainable. The respondent owes the appellant $1,700 pursuant to the *Eviction Decision*. An amount which remains outstanding. The appellant now owes the respondent $992.32 pursuant to this fiat. The first criterion is met.

[26] Second, these claims are grounded in "the same dealings, transactions or occurrence" to quote *Elance Steel* at para 17. The *Eviction Decision* was issued following the appellant's application seeking to evict the respondent from the rental unit located at 20 Empress Drive in Regina, Saskatchewan, due to non-payment of rent. The *Decision* which is under review in this Court concerns the respondent's successful application for damages from the appellant for breaches of the *Act* during the time she occupied the rental unit.

[27] There can be little doubt that these two claims arise out of the "same dealings, transactions or occurrent", namely the aborted tenancy of the respondent.

[28] Consequently, applying either the doctrine of statutory set-off or the doctrine of equitable set-off to this matter results in a holding that the respondent now owes the appellant the amount of **$707.66**. This amount reflects the difference between the amount owing to the appellant pursuant to the *Eviction Decision* – $1,700 – and the amount owing to the respondent following this appeal of the *Decision* – $992.34.

D. Conclusion

[29] Accordingly, for these reasons, I am persuaded that this appeal should be allowed in part, and the respondent directed to pay to the appellant the amount of $707.66 to satisfy fully the order the hearing officer made in the *Eviction Decision*. The respondent is at liberty to pay this money to the Director of Residential Tenancies as

authorized under ss. 70(7) of the *Act* or to the appellant directly.

J.
G.G. MITCHELL