

# KING'S BENCH FOR SASKATCHEWAN

Citation: 2024 SKKB 145

Date: 2024 08 14  
File No.: KBG-YT-00016-2024  
Judicial Centre: Yorkton

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

BETWEEN:

BASADINAA PROPERTY MANAGEMENT LTD.

APPLICANT/APPELLANT

- and -

AMBER ACOOSE, THE DIRECTOR OF THE OFFICE OF  
RESIDENTIAL TENANCIES, and the ATTORNEY GENERAL FOR  
SASKATCHEWAN

RESPONDENTS

**Appearing:**

Callie L. Schwartz  
Macrina Badger

for the applicant/appellant  
for the respondent, the Attorney General

Amber Acoose

for Saskatchewan  
self-represented respondent

**-and-**

File No.: KBG-YT-00033-2024  
Judicial Centre: Yorkton

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BETWEEN:

BASADINAA PROPERTY MANAGEMENT LTD. and ZAGIME  
ANISHINABEK

APPLICANTS/APPELLANTS

- and -

AMBER ACOOSE

RESPONDENT

**Appearing:**

Callie L. Schwartz  
Amber Acoose

for the applicants/appellants  
self-represented respondent

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FIAT  
August 14, 2024

LAYH J.

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**Background**

[1] This fiat addresses issues raised in two Court of King’s Bench matters: an appeal by the appellant, Basadinaa Property Management Ltd. [Landlord], in KBG-YT-00016-2024; and an originating application initiated by the Landlord in KBG-YT-00033-2024. Both matters arise from a rental arrangement between the Landlord and the respondent, Amber Acoose.

[2] Ms. Acoose is a member of Zagime Anishinabek First Nation. She entered into a lease agreement with the Landlord on May 25, 2020, pursuant to which she was granted a lease interest in a rental unit on the Zagime Anishinabek First Nation. She promised to pay a monthly rent of \$700 and a \$25 fee for late payment. The Landlord is a Saskatchewan for-profit corporation in the business of managing properties on behalf of the Zagime Anishinabek First Nation.

[3] Ms. Acoose ceased to pay rent in June 2022. The Landlord provided Ms. Acoose with numerous notices of arrears, and notices to vacate the rental unit dated: July 13, 2022; August 5, 2022; September 29, 2022; June 14, 2023; and October 18, 2023. Ms. Acoose has refused to vacate the rental unit.

[4] The Landlord applied for a writ of possession and judgment for rental arrears before the Office of Residential Tenancies [ORT]. However, the Hearing Officer in the ORT Decision of January 2, 2024 (*Basadinaa Property Management Ltd. v Acoose* (2 January 2024) Yorkton: 235380 (Sask ORT) [*ORT Decision*]), refused to

determine the Landlord's application, holding that he lacked jurisdiction under *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001, to make orders affecting rental property on a First Nation. He concluded in the *ORT Decision*, writing:

[53] For the foregoing reasons, I am satisfied that the application must be dismissed because I do not have jurisdiction to hear this matter. The appropriate recourse for the Landlord, in my view, is to pursue an application to the Court of King's Bench for possession pursuant to The Queen's Bench Rules, as was done in Yuzicappi.

[5] The Hearing Officer's suggestion to the Landlord – that it apply in this Court for its remedy – has materialized in KBG-YT-00033-2024. In that pursuit, the Landlord has applied under an originating application, citing Rule 10-28(1) of *The King's Bench Rules*, for an order for a writ of possession and judgment for unpaid rent.

[6] However, the Hearing Officer also predicted another procedural development that would arise from his decision. In the final paragraph of the *ORT Decision*, he wrote:

[54] However, I anticipate this decision may be appealed. If I am in error with respect to the foregoing, then I hope this Office will receive direction from the Court of King's Bench.

[7] With prescient accuracy, the Hearing Officer predicted well. The Landlord has pursued both options. In addition to its application in KBG-YT-00033-2024 wherein it asks for an order for possession, the Landlord had appealed the Hearing Officer's decision in KBG-YT-00016-2024.

#### **KBG-YT-00033-2024**

[8] First, I will address KBG-YT-00033-2024. The Landlord cites Rule 10-28 of *The King's Bench Rules*. It reads as follows:

Writ of possession for recovery of land

**10-28(1)** A judgment or order that a party recover possession of any land or that any person named in the judgment or order deliver up

possession of any land to some other person may be enforced by writ of possession without any order for the purpose.

(2) A writ of possession may be issued only after 15 days after the entry of the judgment or service of a copy of the order.

(3) A writ of possession must be in Form 10-28.

(4) A writ of possession is effective to enable the sheriff to maintain the party entitled to possession in possession of the land as against:

(a) any party bound by the proceedings; or

(b) any person or persons claiming through or under a party bound by the proceedings.

[9] Since lease agreements necessarily exist that are not subject to *The Residential Tenancies Act, 2006*, this Rule permits a landlord to seek a writ of possession in such circumstances – just like the Hearing Officer suggested. This Court has jurisdiction to enforce the right of a First Nation to land: *Custer and Morin v Hudson's Bay Company Developments Limited and The Governor and Company of Adventurers of England Trading Into Hudson's Bay* (1982), 141 DLR (3d) 722 (Sask CA); and *Standing Buffalo Dakota First Nation v Yuzicappi*, 2022 SKQB 7 [Yuzicappi]. In the *Yuzicappi* decision at paras. 32, and 37-39, McMurtry J. wrote:

[32] In *Custer and Morin v Hudson's Bay Company Developments Limited and The Governor and Company of Adventurers of England Trading Into Hudson's Bay* (1982), 20 Sask R 89 (CA), the Court of Appeal recognized the jurisdiction of the Court of Queen's Bench to enforce the right of a First Nation to possession of land:

9 That the tort is alleged to have occurred on an Indian Reserve, in relation to a right of possession enjoyed by an Indian, or an Indian Band, of lands vested in the Crown in the right of Canada, (but reserved for Indians) whether taken singly, or together, does not remove the cause of action from the jurisdiction of the Court of Queen's Bench. ...

...

[37] The evidence satisfies me that the SBFN [Standing Buffalo First Nation] had grounds to terminate the leases to houses #224 and #225. I accept that the respondents are in arrears of rent. I accept

further that they have endangered the community by causing used intravenous needles to be left outside houses #224 and #225, notwithstanding the health and safety risks posed by these items to other residents of the First Nation, particularly children.

[38] While I am satisfied that the respondents were validly evicted from houses #224 and #225, I must determine whether a breach of the respondent's leases entitles the SBFN to possession of houses #224 and #225.

[39] In *Shawanaga First Nation v Ladouceur*, 2021 ONSC 871, Koke J. held that the Ontario Superior Court could enforce a First Nation's right to possession of land against a tenant in breach of his tenancy agreement:

78 The applicant brings this application for the purpose of enforcing its right to possession of a parcel of land to which it holds a valid registered Certificate of Possession. I have not been directed to any legislation which governs this dispute, and, in the circumstances, equitable and common law principles must be applied.

79 The respondents do not contest the fact that the applicant holds such a Certificate to the land. The courts agree that a Certificate of Possession constitutes the highest form of title a First Nations member can have to land on an Indian Reserve. I have found that the respondents do not have any licence or other interest in the land and that no right to possession accrues to them. Their refusal to vacate the property makes them trespassers on the land. In the circumstances the applicant is entitled to an order granting it possession of its land.

...

[10] These decisions bring landlords' rights to possession of land within principles of common law. Little is surprising that such remedy must be available to a landlord under a lease agreement that has been breached, particularly in circumstances akin to Ms. Acoose's refusal to pay rent over an extended period of time.

[11] Accordingly, pursuant to Rule 10-28 of *The King's Bench Rules*, I order that a writ of possession issue in favour of the Landlord. This writ of possession may be issued 15 days after service of the order upon Ms. Acoose.

[12] Respecting the judgment for unpaid rent, Ms. Acoose clearly understood her obligations under the lease agreement because she honoured her obligations in the initial months of the lease. She has been in breach of this obligation since June 2022. She has not provided any reasonable or credible explanation, nor justification for her failure to pay rent. The duration of the breach and the absence of any justifiable ground for her breach supports a judgment for the unpaid months.

[13] Ordinarily, a claim for unpaid rent outside the auspices of *The Residential Tenancies Act, 2006*, would require commencing an action by statement of claim. However, Rule 3-49(1)(j) of *The King's Bench Rules* provides latitude to determine “any matter where it is unlikely that there will be any material facts in dispute”. I find that the facts in the Landlord’s application are contentious, the necessary parties are before the court, and have been heard. I am, therefore, prepared to summarily grant a judgment in favour of the Landlord for unpaid rent from June 2022 to August 31, 2024, namely 26 months, which, given a monthly rental of \$700, equals \$18,200.

**KBG-YT-00016-2024**

[14] Now, turning to KBG-YT-00016-2024 – the Landlord’s appeal of the Hearing Officer’s decision – I raised the issue of mootness with counsel.

[15] Ms. Badger, counsel for the respondent, the Attorney General of Saskatchewan [Attorney General], stated that she only had recently learned that the Landlord was also pursuing a remedy under common law principles. Once she learned of the Landlord’s two-pronged approach, she, like the court, wondered whether the appeal would be moot – the Landlord had its remedy. Indeed, in the brief of law submitted by the Attorney General, one can see that its argument suggests that the jurisdictional issue may be moot.

[16] At para. 55 of the Attorney General’s brief of law, one reads:

55. While it can be appreciated, as was stated by the Appellant, that it may be less complex, timely and/or less costly to make an application before the Office of the Residential Tenancies that it is to this Honourable Court, that office does not have jurisdiction to hear this application. While it may not be as practical in a landlord-tenant dispute, this does not leave a gap in the law. The Appellant is not left without recourse. As stated by the Hearing Officer, issues relating to possession or occupation of Indian Reserve land can be raised before the Court of King's Bench or the Federal Court, where the common law would apply. Alternatively, the First Nation has the jurisdiction and authority to create its own landlord-tenancy regime under its bylaw making powers under the *Indian Act*, or pursuant to the *First Nation Land Management Act*.

[17] As I said to counsel at the hearing, the parties should have a chance to address the matter of mootness. Accordingly, this matter has been adjourned to September 3, 2024, to permit counsel to file further material (as they may choose) to allow the court to determine whether the appeal is moot.

#### **Costs**

[18] Costs in the amount of \$700 are awarded against Ms. Acoose in favour of the Landlord.

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J.  
D.N. LAYH