

KWANLIN DÜN FIRST NATION JUDICIAL COUNCIL

**In the Matter of an Appeal of a Decision under
the *Residential Landlord and Tenant Act* (Yukon)**

MALINDA DAWSON

Applicant

Date of Decision: October 4, 2021

Appeal Panel:

Debra Thibodeau, Chairperson
William Webber, Elder Representative
Margaret McKay, Elder Representative
Haily Bill, General Assembly Appointee
William Carlick, General Assembly Appointee

REASONS FOR DECISION

Introduction

1. There is substantial history to this application which will be briefly outlined below.
2. On September 12, 2021, the Applicant, Malinda Dawson, delivered to the Judicial Council her Application for Appeal or Review, using the Judicial Council's standard Form 1 for that purpose.
3. Ms. Dawson also submitted with the application several documents, among which was the eviction notice, response to eviction, historical emails and responses to same, copies of Lateral Violence article from KDFN newsletter, 14 Day Notice to End Tenancy from the Yukon Residential Tenancies Office dated September 22, 2017, Extension of that notice on October 16, 2017, a Housing Reintegration Plan dated January 23, 2018 whereby agreed upon conditions were outlined, a Tenant Summary, numerous documented complaints, a 14-Day Notice to Vacate with Cause dated July 14, 2021, a Tenancy Agreement dated December 3, 2001 and a Decision and an Order in the matter

of the *Residential Landlord and Tenant Act* from the Deputy Director of Residential Tenancies dated September 3, 2021. An Amended Order was sent to the Judicial Council by Ms. Dawson on September 13, 2021.

Eviction Appeal Process

4. The appeal process that Ms. Dawson's application evidence outlined followed both the Kwanlin Dün First Nation Housing Policy and the *Residential Landlord and Tenant Act*. Those steps are outlined below:

- September 22, 2017, Ms. Dawson received a 14 Day Notice to End Tenancy for a series of complaints and for an outstanding arrears balance.
- October 16, 2017, an Extension of the 14 Day Eviction Notice was issued between KDFN (Landlord) and Ms. Dawson (Tenant), ending November 15, 2017.
- December 20, 2017, Ms. Dawson's partner met with KDFN Justice department with respect to KDFN's Housing Policy Section 7.0 "Interdepartmental Case Management Approach" and a reintegration plan was discussed, and all parties agreed upon certain conditions.
- January 2018 Ms. Dawson and her partner entered a Housing Reintegration Plan, in which the tenants agreed to certain conditions to void end of tenancy. With agreement of that plan, the parties acknowledged that should any of the conditions not be abided by, the eviction date of November 15, 2017, would be invoked.
- July 14, 2021, Ms. Dawson received a 14 Day Notice to End Tenancy with Cause. On October 15, 2021, for breaching the tenancy agreement and has not corrected the breach in a reasonable time after receiving the demand letter to do so; non-payment of rental arrears; and adversely affecting the quiet enjoyment, security, safety or physical well being of another tenant in an adjacent property.
- To dispute this notice, Ms. Dawson was to file an Application for Dispute Resolution at the Residential Tenancies Office within 5 days of receiving it. A letter of eviction appeal was sent August 12, 2021, to the Residential Tenancies Office.
- The application of the tenant by way of a documentary hearing was held by the Deputy Director, Residential Tenancies on September 1, 2021. Upon reviewing the submissions by both the Tenant and the Landlord the Deputy Director reviewed the matter and prepared a Decision on September 3, 2021. Additionally, an Order (and subsequent Amended Order) in the Matter of the *Residential Landlord and Tenant Act* was issued which upheld the end of the tenancy on October 15, 2021.

Jurisdiction – Judicial Council Has No Authority Over Residential Tenancy Legislation

5. As the background facts disclosed in Ms. Dawson’s application to the Judicial Council suggest, she is seeking a review or appeal of the September 1, 2021 decision of the Deputy Director, Residential Tenancies, which upheld KDFN’s Notice to End Tenancy, effective October 15, 2021. That order followed from Ms. Dawson seeking recourse under the applicable law of general application, the *Residential Landlord and Tenant Act*.
6. Before accepting Ms. Dawson’s application, the Judicial Council must determine whether it has the jurisdiction or legal authority to undertake a review or appeal of the Deputy Director’s order. Any such authority must be found in either the KDFN Constitution or another KDFN law.
7. The provisions of the KDFN Constitution relating to the Judicial Council are contained in Chapter Eight, sections 53 to 57. Section 56 of the Constitution states that the Judicial Council has authority, among other things, to “*exercise any authority specifically assigned to it elsewhere in this Constitution, or in Kwanlin Dün First Nation law...*” Specifically, the Constitution does not give the Judicial Council any authority to undertake an appeal or review of decisions from any agency of the Government of Yukon.
8. Looking elsewhere, neither KDFN’s *Judicial Council Act* (2016), nor any other KDFN legislation gives the Judicial Council the jurisdiction to deal with the subject of Ms. Dawson’s application.
9. Since the order Ms. Dawson is seeking to appeal or have reviewed was issued under the authority of Yukon’s *Residential Landlord and Tenant Act* [the “RLTA”] – a law of general application – any remedy she may wish to pursue must be found either under that act or at common law. The KDFN Judicial Council has no jurisdiction to grant that kind of remedy.
10. Therefore, the Judicial Council must decline to accept Ms. Dawson’s application because it has no jurisdiction to deal with the application’s subject matter – i.e. appealing the order of the Deputy Director, Residential Tenancies Office.

Abuse of Process – Attempting to Circumvent the Deputy Director’s Order

11. Having followed to completion the due process available to her under the RLTA, Ms. Dawson is now applying to the Judicial Council to relitigate the matter in a different forum, seeking a different result. This approach is referred to as a “collateral attack” on the validity and authority of the original order of the Deputy Director.

12. A decision of the Supreme Court of Canada (*BC Workers' Compensation Board v. BC Human Rights Tribunal*, 2011 SCC 52) described the rule against collateral attack as a means to protect the fairness and integrity of the justice system by preventing duplicative proceedings. It prevents a party from using an institutional detour to attack the validity of an order by seeking a different result from a different forum, rather than through the appeal or judicial review options designated by law.

13. Ms. Dawson previously brought an appeal under the *Residential Landlord and Tenant Act*, which the Deputy Director dismissed. Any further remedy available to her must be sought under the RLTA. Seeking a different outcome by appealing to the Judicial Council is considered an abuse of process that would violate principles such as "judicial economy, consistency, finality and the integrity of the administration of justice".


Conclusion

14. For the reasons discussed above, the Judicial Council lacks the jurisdiction to entertain Ms. Dawson's appeal from the decision and order of the Director Deputy, Residential Tenancies, dismissing her appeal under the RLTA.

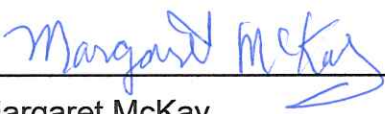
15. However, even if the Judicial Council were to have some kind of jurisdiction to deal with Ms. Dawson's appeal in this matter, it would decline the application, as to do so would amount to condoning a collateral attack on the Deputy Director's order, which would be an abuse of process.

16. For the reasons stated above, the Judicial Council declines to accept Ms. Dawson's application.

BY THE FOLLOWING MEMBERS OF KWANLIN DÜN FIRST NATION JUDICIAL COUNCIL:


Debra Thibodeau, Chair


William D. Webber


Margaret McKay


Haily Bill


William Carlick