

KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 97**

Date: **2026 05 07**
Docket: KBG-SA-00402-2026
Judicial Centre: Saskatoon

IN THE MATTER OF S. 72(1) OF *THE RESIDENTIAL TENANCIES ACT, 2006*

BETWEEN:

AMANDA PARCHEWSKY and ANTHONY PENNER

APPELLANTS

- and -

LOGAN MAYES and JENNIFER EMPEY

RESPONDENTS

- and -

DIRECTOR OF THE OFFICE OF RESIDENTIAL
TENANCIES

RESPONDENT

Appearances:

Madison M. Christensen	for the appellants
Chris Lee	as agent for Logan Mayes and Jennifer
Empey	No appearance
Tenancies	for the Office of Residential

JUDGMENT
May 7, 2026

GERECKE J.

[1] Amanda Parchewsky and Anthony Penner [tenants] appeal against a decision of the Office of Residential Tenancies [ORT] made in ORT File No. 259043.

Logan Mayes and Jennifer Empey [landlords] are the respondent landlords. The hearing officer's decision on the merits [*Decision*] was rendered on March 30, 2026.

[2] The *Decision* held that the lease pursuant to which the tenants occupied the landlords' residential property was properly terminated under s. 57 of *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001 [*Act*], because the tenants were more than 15 days in arrears. The hearing officer then granted an order for possession.

[3] The tenants appeal on four grounds (I have consolidated their five grounds into four and reordered them):

1. That the hearing officer erred in law by failing to ensure that the tenants were afforded procedural fairness, as Mr. Penner learned of the hearing after it began and was able to participate only in the final moments after all evidence had been presented;
2. That the hearing officer erred in law by granting an order for possession despite the fact that the rent arrears were fully paid before the hearing and no ongoing breach existed at that time;
3. That the hearing officer erred in law by relying solely on the existence of arrears without considering surrounding circumstances including the landlords' inconsistent and shifting basis for seeking to end the tenancy; and
4. That the hearing officer failed to properly apply the "just and equitable" discretion under s. 70(6) of the *Act* by not considering the tenants' good faith efforts to pay the rent.

[4] The landlords contend that the hearing officer made no such errors.

[5] This appeal is brought under s. 72(1) of the *Act*. Such appeals are limited to questions of law, jurisdiction and procedural fairness. In *Abueidda v Boardwalk REIT Properties Holdings Ltd.*, 2022 SKQB 120 at para 13, Popescul C.J. explained the

appeal process in a manner that avoided legalistic terms, describing this Court's role as to engage in "... a close examination of the hearing officer's decision to determine if they made a legal mistake".

[6] I am satisfied on the record before me and the submissions of the parties that the hearing officer made errors of law (though not all the errors alleged by the tenants) so that it is appropriate to order a new hearing. My reasons follow.

Fresh evidence

[7] At argument of this appeal, I came to better understand the nature of the procedural fairness issue. Mr. Penner was briefly incarcerated when the notice of hearing was served on Ms. Parchewsky. I did not have evidence of those events, so I invited the tenants to file affidavits and a brief on the procedural fairness issue, which they did. I also allowed the landlords to file a brief, which they also did.

[8] I consider the evidence properly admissible in the sense contemplated by *Saskatchewan (Workers' Compensation Board) v Gjerde*, 2016 SKCA 30, and am appreciative that the tenants' affidavits were limited to the procedural concerns. I also find that the evidence satisfies the requirements set out in *R v AB*, 2021 SKCA 119 at para 13. The two affidavits are admissible.

Ground 1 Procedural fairness

[9] The tenants argue that the hearing officer failed to ensure procedural fairness for them. There are two issues: that Mr. Penner was never served, and that Mr. Penner was not allowed a full opportunity to participate in the hearing.

[10] The argument concerning service does not assist the tenants. While service on one tenant will generally not constitute service on both, in this case the hearing notice was served in multiple ways. It was served on Ms. Parchewsky by posting on the unit's door and by email. It was served on Mr. Penner by posting on the

unit's door and text message. Proof of that service was filed with the ORT. The service on Mr. Penner complied with s. 82(2) of the *Act*, which provides that service may be effected by posting on the unit's door and by electronic service (ordinary mail or electronic). The landlord is not responsible to ensure that a tenant has access to their phone to receive text messages or emails unless they become aware that it was not received. I have no evidence to suggest that the landlords were aware of Mr. Penner's incarceration.

[11] Accordingly, I conclude that the hearing officer did not err with respect to service.

[12] Mr. Penner's attendance at the hearing is another matter and on this point error is established. The *Decision* suggests that Mr. Penner was fully present at the hearing. I find based on the fresh evidence filed on this appeal that he was not.

[13] I appreciate that the ORT deals with many hearings, and that such matters are urgent where the landlord seeks possession of the unit. Nonetheless, procedural fairness requires that Mr. Penner was entitled to be present and to provide evidence at the hearing. As this Court has held on multiple occasions, ORT proceedings are subject to a high level of procedural fairness. While that is true for both landlords and tenants, tenants can be at risk of removal from their homes, as here. See *Bell v Mainstreet Equity Corp.*, 2024 SKKB 68 [*Bell*], which refers to several other decisions of this Court.

[14] It may have been appropriate to begin the hearing in Mr. Penner's absence if the hearing officer was unaware of why Mr. Penner was not on the call. That said, once Mr. Penner joined near the hearing's conclusion, the hearing officer was under an obligation to inquire into the circumstances and, if it was clear that Mr. Penner had missed a meaningful portion of the hearing for a valid reason, the hearing officer should have either adjourned the hearing to be restarted later, restarted it on the spot, or at least allowed Mr. Penner to provide his evidence and make submissions. Limited

participation at the end of a hearing does not satisfy procedural fairness if there was a valid and genuine reason for the party's tardiness.

[15] Accordingly, I conclude that the hearing officer erred in law by failing to ensure that procedural fairness was accorded to the tenants.

Grounds 2 and 3 Status of the rent arrears

[16] I am able to address grounds 2 and 3 together. The tenants have not established error in either case.

[17] The position of the tenants is that they had brought the arrears up to date by the time of the ORT hearing, so that their tenancy should not have been terminated.

[18] I cannot agree with the tenants' position. In my view, the tenancy ended when the landlord served a notice to vacate on March 16, 2026. That notice related to the March rent due on March 1, 2026.

[19] Why did the tenancy terminate on service of the notice to vacate? Because of the provisions of the *Act*. Sections 67, 68 and 69 contemplate two different ways that a landlord can end a residential tenancy early for non-payment of rent. One method is to apply for an order under s. 68. The other is what the landlord did here – to serve a notice of termination under s. 57(1), which authorizes a landlord to “end a tenancy immediately” where the rent is unpaid for 15 days or more after the day on which it is due. Where the rent is 15 or more days in arrears and notice is served under s. 57(1), the tenancy is immediately terminated. If they do not vacate, the tenant becomes an overholding tenant who is liable to be removed once the landlord applies for an order for possession under s. 70.

[20] In this case, the hearing officer found that the landlord served the notice under s. 57(1), thereby terminating the tenancy, and properly brought this application

for possession under s. 70. I see no error that would disturb those findings.

[21] The landlord's notice to vacate (which serves as termination of the tenancy) was served on March 16, 2026. After that, the tenants had no ability to unilaterally put the genie back in the bottle because the tenancy was already over. That occurred well before the hearing occurred on March 27, 2026.

[22] The hearing officer therefore did not err when he determined that the landlord was entitled to seek an order for possession even though the rent arrears had been paid before the hearing.

[23] The alleged shifting grounds for ending the tenancy also do not matter. Section 57(1) of the *Act* provides a strict rule if rent arrears reach 15 days. Thereafter, a landlord can voluntarily permit a tenant to remain in the premises but is not required to. The fact that a landlord may previously have wished to obtain possession on another basis is irrelevant. The late payment of rent in this case gave these landlords a lawful basis to end the tenancy, which they did.

[24] Accordingly, the hearing officer did not commit the alleged errors under these grounds.

Ground 4 The hearing officer's treatment of the just and equitable inquiry under s. 70(6)

[25] The hearing officer purported to carry out an inquiry under s. 70(6), but it was insufficient. He wrote as follows in the *Decision*:

[10] Even though the arrears were later paid, the Tenants' decision to withhold March rent based on their own interpretation of discussions – without any written confirmation from the Landlords – does not align with the requirement to pay rent on time. I also note that section 42 of the *Act* expressly prohibits a Tenant from withholding rent. The Landlords are entitled to certainty regarding rent payments, and it would not be just and equitable to require them to continue the tenancy

when the rent became more than 15 days overdue and no agreement existed to waive or defer payment.

[11] I am therefore satisfied on a balance of probabilities that the Landlord has established a legal basis for an order pursuant to section 57 of the Act.

[12] Justice and equity do not demand that the Landlord carry the Tenant through difficult financial times or provide free accommodation for those who have contracted to pay for accommodation and then do not abide by the contract. Justice and equity do not demand that the Landlord endure repeated breaches of the Act, the regulations or the rental agreement.

[13] At paragraph 58 of *Heuck v Janz*, 2024 SKKB 76, (CanLII), Robertson J. writes:

[58] I pause to note that the “just and equitable” criteria as a residual criterion ensures that the law is applied to achieve justice and not injustice. The purpose of law in our constitutional democracy is to promote justice. That is its proper purpose. Laws, like any tool, can be employed for improper purpose. When that occurs, the result may be lawful, but unjust. To avoid that perverse result, the Act gives hearing officers a residual discretion to decline to make an order if it would not be just and equitable.

[14] With consideration to the factors discussed above and with regard to section 42 of the Act, I am satisfied that an order for possession in this case accords with justice and equity in that it is not a perverse result but is lawful and just. ...

[26] Regrettably, the hearing officer missed the point of the “just and equitable” inquiry. His analysis may be summarized as follows: it is lawful to grant an order for possession, landlords have no obligations to carry tenants who cannot pay, and so it therefore is just and equitable to order possession to the landlord.

[27] Nowhere in the *Decision* did the hearing officer consider the circumstances of the tenants. That is necessarily part of the just and equitable analysis. Instead, the hearing officer focused solely on one thing – rent must be paid, and it was not paid, and so it is not perverse to order the tenants out.

[28] Here I refer to this Court's decision in *Bell*. The entirety of the discussion from paras. 28 to 42 is relevant here, though I will not reproduce it all. This Court has held repeatedly (in *Bell* itself and in many cases it refers to at para. 28) that a hearing officer is under an obligation pursuant to s. 70(6) to conduct an inquiry into the tenant's circumstances. That is true even if the tenant does not appear at the hearing. There must also be inquiry into the landlord's situation, as that will also bear on what is just and equitable. Section 70(6) invests hearing officers with discretion and hearing officers are required to exercise that discretion judicially. It may require a nuanced balancing of interests. The proper exercise of that discretion could lead to numerous possible outcomes. Those outcomes could include immediate possession, possession upon a condition being met (if genuinely relevant to what would be just and equitable), or an order for possession with some delay as to its effect (if that is permitted under the *Act*). Those are merely examples. It is for a hearing officer to assess the circumstances, the equities, and the powers set out in the *Act*.

[29] Thus, termination of the tenancy does not necessarily result in immediate eviction. That is a decision the hearing officer must make. If the Legislature had intended that the "just and equitable" analysis need not be conducted where the tenancy is already terminated, it could have drafted the *Act* to say that. It did not do that. Section 70(6) is universal. It contemplates no such carve-outs. It must be genuinely analysed *in every case* before an order is made.

[30] In this case the hearing officer did nothing more than provide circular reasons suggesting that legality equates to equity. There can be situations where legality and equity are closely related, but the analysis cannot be complete without consideration of a tenant's circumstances. I also observe that the hearing officer here has misinterpreted *Heuck v Janz*, 2024 SKKB 76, if he means to suggest that "legal and not perverse" essentially equates to "just and equitable". An order can be legal and not perverse and yet not serve the interests of justice and equity. It is the hearing officer's

statutory responsibility to determine what is just and equitable, not merely what is not perverse.

[31] Given my determinations concerning the state of the lease after the landlords served their notice to vacate pursuant to s. 57 of the *Act*, the just and equitable considerations may vary from other circumstances. The lease was terminated by the landlord's notice. That fact will generally make it more challenging for a tenant to resist eviction. That can reasonably form part of the s. 70(6) analysis, but it does not permit a hearing officer to just gloss over other considerations.

[32] It is not only tenants who are impacted negatively when hearing officers fail to conduct the statutorily required analysis under s. 70(6). This Court has seen one disappointed landlord after another that presented their case appropriately only to be forced into a new hearing because a hearing officer failed to follow this Court's clear and repeated directions.

[33] In this case, the hearing officer erred by failing to properly analyze whether it was just and equitable to order possession of the unit to the landlords.

Conclusion

[34] The appeal is therefore allowed in respect of procedural fairness and the hearing officer's failure to analyze what order would be just and equitable. The writ of possession is quashed. I remit this matter to the Office of Residential Tenancies and order a new hearing to be held before a different hearing officer.

J.
D.G. GERECKE