



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Care Givers Inc. v. Dr. William Taylor Investments Inc.*, 2026 NLSC 97

Date: August 18, 2026

Docket: 202501G3421

BETWEEN:

CARE GIVERS INC.

APPLICANT

AND:

**DR. WILLIAM TAYLOR
INVESTMENTS INC.**

FIRST RESPONDENT

AND:

**RESIDENTIAL TENANCIES
TRIBUNAL**

SECOND RESPONDENT

Before: Justice Stacy Ryan

On Judicial Review From: A Decision of the Residential Tenancies Tribunal,
Application # 2024-0137-NL dated the 16th day of May, 2025.

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: February 13, 2026

Appearances:

Megan S. Reynolds	Appearing on behalf of the Applicant
F. Stephen Fitzgerald, K.C.	Appearing on behalf of the First Respondent
Ian Hennessey	Appearing on behalf of the Second Respondent

Authorities Cited:

CASES CONSIDERED: *Care Givers Inc. v. Dr. William Taylor Investments Inc.*, 2026 NLSC 96; *McKenzie v. Newfoundland and Labrador Housing Corp.*, 2025 NLSC 146; *Housen v. Nikolaisen*, 2002 SCC 33; *Benhaim v. St-Germain*, 2016 SCC 48

STATUTES CONSIDERED: *Residential Tenancies Act, 2018*, S.N.L. 2018, c. R-14.2; *Contributory Negligence Act*, R.S.N.L. 1990, c. C-33

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT

RYAN, J.:

INTRODUCTION

[1] This is an originating application for judicial review seeking an order of *certiorari* to quash a decision of the Newfoundland and Labrador Residential Tenancies Tribunal pursuant to Rules 54.02 and 54.06 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D.

[2] The Application is brought pursuant to s. 50(1) of the *Residential Tenancies Act, 2018*, S.N.L. 2018, c. R-14.2 (the “Act”).

[3] The Residential Tenancies Adjudicator ordered damages in the amount of \$107,481.25 to Dr. William Taylor Investments Inc. (the “Landlord”).

PROCEDURAL HISTORY

[4] On February 1, 2024, the Applicant filed an application for dispute resolution pursuant to the *Act*.

[5] The Applicant was seeking compensation for damages accrued to the property in the amount of \$107,481.25.

[6] The hearing was scheduled for April 16, 2024, and continued on December 6, 2024.

[7] The Adjudicator allowed the Landlord’s claim for damages in the amount of \$107,481.25. The decision was rendered on May 16, 2025.

[8] It is that decision which is now subject to review.

[9] The Applicant also filed a Notice of Appeal on June 12, 2025. I will address this matter in a separate decision.

BACKGROUND

[10] Care Givers Inc. (the “Applicant”) rented a property from the First Respondent, Dr. William Taylor Investments Inc. The rental agreement was entered into on July 5, 2018. The terms of the tenancy were intended for one year, from July 1, 2018, to July 1, 2019. The rent for the premises was set at \$1,950.00 per month.

[11] The tenant issued a notice of termination with an effective date of January 31, 2023; however, the parties continued their rental agreement on a month-to-month basis under the same terms as those in the rental agreement.

[12] The rental agreement allowed the Applicant to modify the property as the intention was to house individuals who required specialized programming to address complex social, emotional, behavioral, and developmental needs.

[13] The First Respondent permitted the Applicant to perform modifications to the property as there was an agreement that, upon vacating the premises, the Applicant was to restore the property to its original condition.

[14] The Applicant was no longer housing individuals at the premises as of November 2022. A written notice was provided to the First Respondent on January 31, 2023, indicating that they were terminating the tenancy.

[15] The Applicant continued to pay monthly rent while they sought appropriate contractors to restore the premises to its original state. During this time, there were no individuals occupying the premises.

[16] The Applicant issued an RFP (request for proposals) to undertake the restoration work. This RFP was issued in April 2023 and extended to June 29, 2023.

[17] Subsequently, a sewer backup on the premises occurred sometime between June 28, 2023 and July 27, 2023. Significant damages were sustained to the property.

[18] A hearing was held, and the Adjudicator ruled in favour of the First Respondent.

ISSUES

[19] The issues before me are:

1. Is the decision subject to review?
2. Did the Tribunal err in failing to apply the *Contributory Negligence Act*, R.S.N.L. 1990, c. C-33 concluding that the Landlord did not cause delay and should not be responsible for any related damages?

Is the decision subject to review?

[20] The parties further agreed that issues 1, 2 and 3 ought to be dealt with by way of appeal. The decision on this appeal can be found at *Care Givers Inc. v. Dr. William Taylor Investments Inc.*, 2026 NLSC 96. Issue number 4 may be dealt with by way of judicial review. The matter proceeded on this basis.

Did the Tribunal err in failing to apply the *Contributory Negligence Act*, concluding that the Landlord did not cause delay and should not be responsible for any related damages?

[21] This issue is one of mixed fact and law, it involves the application of legal standards to factual findings. The standard of review for this issue is palpable and overriding error. (*McKenzie v. Newfoundland & Labrador Housing Corp.*, 2025 NLSC 146 at paragraph 10).

[22] The Applicant states the Adjudicator erred by failing to consider and apply s. 2 of the *Contributory Negligence Act*. This section states:

- (1) Where by the fault of 2 or more persons damage or loss is caused to 1 or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each person was at fault.

(2) Notwithstanding subsection (1)

(a) where, having regard to the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and

(b) nothing in this section shall operate so as to make a person liable for damage or loss to which his or her fault has not contributed.

Position of the Applicant

[23] The Applicant suggests the Landlord delayed the awarding of the work to restore the property to its original state. The Applicant suggests the RFP closing date was delayed from June 8 to July 13 as a result of the Landlord's property management agency demanding a right of first refusal and stating that it would not give access to any contractor to carry out the work.

[24] The Applicant states that the Tribunal's conclusion in paragraph 67 of the decision that the Landlord had not delayed the awarding of the work is contrary to the evidence.

[25] The Applicant states that, despite the Adjudicator referring to this evidence, they did not consider it and gave no weight to the fact that the tenant was forced to obtain legal advice, which delayed the closing date from June 8, 2023, to July 13, 2023. The Applicant states that this evidence was undisputed and uncontradicted; therefore, it was unreasonable for the Tribunal to conclude that the Landlord did not contribute to the delay at this point.

Position of the First Respondent

[26] The First Respondent submits that there was no evidence called at the hearing from any representatives of Western Health indicating that the First Respondent's property manager's interference, if any, actually delayed the RFP process.

[27] The First Respondent submits that the Adjudicator had ample evidence to conclude that the First Respondent and/or its agent did not delay the RFP process and thus did not commit any palpable or overriding error by finding that the First Respondent was not contributorily negligent.

[28] The First Respondent submits that the Applicant claims the First Respondent was contributorily negligent by failing to take immediate steps after becoming aware of the sewage backup after July 27, 2023, to mitigate the damages. The First Respondent submits that the Applicant's claims are not based on evidence to establish this at the hearing.

[29] The First Respondent submits that the evidence before the Adjudicator established that, had the sewage backup been discovered right away, the damages would likely be restricted to \$42,500.00. By July 27, 2023, the evidence establishes that it was too late to expect to repair the premises for that cost. The First Respondent submits that the Adjudicator did have evidence before them to conclude the extent of the damages was \$107,481.25 and that no palpable or overriding error was made in concluding that the evidence had established these damages.

PALPABLE AND OVERRIDING ERROR

[30] In *Housen v. Nikolaisen*, 2002 SCC 33, the Supreme Court of Canada defined a palpable error as one that is obvious or clearly seen, stating:

What is palpable error? The *New Oxford Dictionary of English* (1998) defines “palpable” as “clear to the mind or plain to see” (p. 1337). The *Cambridge International Dictionary of English* (1996) describes it as “so obvious that it can easily be seen or known” (p. 1020). The *Random House Dictionary of the English Language* (2nd ed. 1987) defines it as “readily or plainly seen” (p. 1399).

[31] The Supreme Court of Canada considered the meaning of “palpable and overriding error” in *Benhaim v. St-Germain*, 2016 SCC 48. The Supreme Court referenced the descriptive language chosen by the Appellate Courts to illustrate just

how very obvious and substantial an error must be, in order to be deemed palpable and overriding. Justice Wagner, at paragraphs. 38 and 39 of *Benhaim*, stated:

It is equally useful to recall what is meant by “palpable and overriding error”. Stratas J.A. described the deferential standard as follows in *South Yukon Forest Corp. v. R.*, 2012 FCA 165, 4 B.L.R. (5th) 31, at para. 46:

Palpable and overriding error is a highly deferential standard of review “Palpable” means an error that is obvious. “Overriding” means an error that goes to the very core of the outcome of the case. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall.

39 Or, as Morissette J.A. put it in *G. (J.) c. Nadeau*, 2016 QCCA 167 (C.A. Que.), at para. 77, [TRANSLATION] “a palpable and overriding error is in the nature not of a needle in a haystack, but of a beam in the eye. And it is impossible to confuse these last two notions.”

THE ADJUDICATOR’S DECISION

[32] The Adjudicator found there is a duty of care between parties in a tenant and landlord relationship. Whether or not the tenant has breached the duty of care requires considering whether the tenant was required to monitor the property. They found the *Act* does not overtly impose a duty to monitor the property; however, the Tribunal has accepted and continues to accept that tenants have a duty to report damages of which they have become aware in a timely manner.

[33] The Adjudicator considered that conduct is negligent if it creates a risk of harm. They outlined the test for unreasonable risk of harm. They stated the test as would a reasonably prudent person, in the circumstances, leave the property unmonitored for as long as the tenants did in this case?

[34] They outlined, at paragraph 38 of the decision, the factors they considered.

[35] They found a reasonably prudent person would check on the property more than once in 30 days. They found on a balance of probabilities that the tenant did not do so and therefore breached their duty of care.

[36] With respect to causation and damages, they found that the tenant's breach was leaving the property unmonitored for an unreasonable amount of time. They found the evidence suggested that had the backup been caught within 72 hours to a week, the damage would have been significantly less. They further accepted that the backup had occurred three weeks prior to the tenant discovering it.

[37] They considered legal causation or whether the harm was too unrelated to the wrongful conduct to hold the tenant fairly liable. They concluded it was not.

[38] The Adjudicator found in favour of the Landlord and awarded damages in the amount of \$107,480.00.

[39] I find there is no palpable and overriding error in the Adjudicator's decision. There was ample evidence upon which to base the decision.

[40] The Application is dismissed. The First Respondent shall have its costs in accordance with Column 3 of the Scale of Costs in the Appendix of Rule 55 of the *Rules of the Supreme Court, 1986*.

STACY RYAN
Justice