SUPREME COURT OF YUKON

Citation: *Slahvahshkah v Director of Residential Tenancies* 2026 YKSC 101

Date: 20261106
S.C. No. 26-AP014
Registry: Whitehorse

BETWEEN:

KYLIE SLAHVAHSHKAH

APPLICANT

AND

DIRECTOR OF RESIDENTIAL TENANCIES and MIKAH FOX

RESPONDENTS

Before Chief Justice S.M. Duncan

Appearing on her own behalf — Kylie Slahvahshkah

Appearing on his own behalf — Mikah Fox

REASONS FOR DECISION

Overview

[1] This is a judicial review by the applicant former tenant, Ms. Slahvahshkah, of two decisions of the Residential Tenancies Office (RTO) – one from the deputy director and one from the director, reviewing the deputy director's decision. The decisions were made on two applications – one from the tenant and one from the landlord – that were joined together for one hearing. Ms. Slahvahshkah applied for return of her security deposit from the landlord, Mr. Mikah Fox, after she moved out of the unit she was renting from him. Mr. Fox applied for permission to retain the security deposit and monetary compensation for plumbing repairs, home fuel replacement, and loss of rental income.

[2] Ms. Slahvahshkah rented a unit from Mr. Fox for a period of approximately 15 months. In October 2025, she began living elsewhere for much of the time due to her concerns about the behaviour of dogs owned by new tenants in a suite in the same house as well as concerns about the tenants. On November 21, 2025, she gave notice of termination of tenancy, which was accepted by Mr. Fox. Her last day of tenancy was December 15, 2025. On December 17, 2025, at the move-out inspection, which Ms. Slahvahshkah did not attend, Mr. Fox learned that the unit was very cold and the water was not running. Upon further inspection, some of the pipes were frozen. In early January 2026 the pipes were repaired but the unit was not able to be rented again until after the end of January. The fuel tank was not filled upon Ms. Slahvahshkah's departure, contrary to the agreement between tenant and landlord.

[3] The deputy director conducted the hearing in writing. He decided that both parties had forfeited their right to the security deposit, and that Mr. Fox was entitled to compensation consisting of one month's rent, the cost of the plumbing repairs, and the cost to fill the fuel tank.

[4] Ms. Slahvahshkah requested a review of this decision by the director. The director upheld the deputy director's decision. He found that Ms. Slahvahshkah was able to attend and participate in the hearing, that the new evidence she sought to introduce did not meet the legal test for admissibility at the review, and that the deputy director was not misled by evidence that was misrepresented, concealed or withheld. He ordered Ms. Slahvahshkah to pay to the landlord the amount of $5,031.39 by May 29, 2026.

[5] Ms. Slahvahshkah obtained a stay of the order to pay pending the outcome of the judicial review.

[6] Ms. Slahvahshkah asks this Court to quash the decisions of the deputy director and the director, or in the alternative that the decision of the deputy director be remitted for reconsideration on the grounds of procedural unfairness and unreasonableness, and in the further alternative that the review decision of the director be remitted for reconsideration in accordance with the principles of procedural fairness.

[7] Mr. Fox says the process was fair, and the decisions were reasonable.

[8] For the following reasons, I find that there was no procedural unfairness in this matter and the decisions were reasonable. I will first state all the issues, and then address the applicable law, positions of the parties, and the analysis and conclusion for each issue.

Issues

i. Can both the decisions of the deputy director and the director be judicially reviewed together?

ii. Did the extension of time granted to Mr. Fox to file and serve his material, the alleged inability of Ms. Slahvahshkah to respond fully to all of Mr. Fox's material, and the RTO's communication about settlement to Ms. Slahvahshkah create procedural unfairness?

iii. Was the director's review decision denying the admission of new evidence unreasonable?

iv. Was the decision to order monetary compensation to Mr. Fox for lost rental income, for plumbing repair costs and for home fuel replacement

unreasonable due to improper attribution of their cause to Ms. Slahvahshkah on the basis of insufficient evidence from Mr. Fox and ignoring evidence from her?

v. Was the decision that Ms. Slahvahshkah forfeited the security deposit by not attending at the move-out inspection unreasonable?

vi. Was the arithmetic error in the calculation of the fuel costs unreasonable?

Issue i – Can both decisions be judicially reviewed together?

[9] This issue was not raised by either party but it is a procedural legal matter that requires clarification. Ms. Slahvahshkah seeks to set aside the decision of the deputy director of May 4, 2026, and the review decision of the director of May 22, 2026.

[10] Rule 54(4) of the Supreme Court of Yukon *Rules of Court* requires that an application for judicial review shall be limited to a single decision in respect of which relief is sought unless the court orders otherwise. This wording is identical to Rule 302 of the *Federal Courts Rules*, SOR/98-106. In the Federal Court's jurisprudence interpreting Rule 302, an applicant may challenge multiple decisions in one application where the decisions constitute continuing acts and are so closely linked that they should be considered together (*Nanda v Canada (Citizenship and Immigration),* 2026 FC 649 at para. 14 and cases cited therein).

[11] This Court in the decision of *Boles v Residential Tenancies Office and Gerry Kuhn*, 2024 YKSC 33 (*Boles*) in an identical situation, where the applicant implicitly sought to have both the original and review decisions of the RTO quashed and remitted for another hearing held as follows:“...the two decisions are intertwined. Because the director’s decision is a review of the deputy director’s decision, a determination about

whether the director erred affects the validity of the deputy director's decision" (at para. 15).

[12] Following these cases, this application for judicial review will be of the decision of the deputy director and the director.

Issue ii – Did the extension of time granted to Mr. Fox to serve his materials, the alleged inability of Ms. Slahvahshkah to respond to all of his materials, and the RTO's communication about settlement create procedural unfairness?

Legal Principles

[13] Decisions of an administrative body like the RTO may be judicially reviewed for procedural unfairness.

[14] The standard of review for procedural fairness has been described by some courts as correctness, and by other courts as simply "whether a fair and just process was followed" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, (*Canadian Pacific Railway Company*) at para. 54). In that case the Federal Court of Appeal referenced the Supreme Court of Canada in *Mission Institution v Khela*, 2014 SCC 24 and wrote: "attempting to shoehorn … procedural fairness into a standard of review analysis is … an unprofitable exercise" (*Canadian Pacific Railway Company* at para. 55). As I wrote in *Yukon Big Game Outfitters Ltd v Yukon (Government of),* 2022 YKSC 31 (*YBGO*), "the ultimate question is whether the applicant knew the case they had to meet and had a full and fair opportunity to respond" (at para 58).

[15] Also, in the *YBGO* decision at para. 69, I wrote there are three questions to be asked in a procedural fairness analysis:

- does the duty of procedural fairness arise;
- what degree of procedural fairness is required; and

- was procedural fairness breached.

[16] The first question means that anyone whose rights, interests or privileges are affected by a decision of a quasi-judicial or administrative decision-maker is owed a duty of fairness at common law.

[17] The second question has been interpreted by the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 (*Baker*), the leading case on this issue. The Court said "the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected" (at para. 22). The Court listed several non-exhaustive factors to consider:

a. The nature of the decision being made and the process followed in making it; (at para. 23)

b. The nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (at para. 24)

c. The importance of the decision to the individual or individuals affected; (at para. 25)

d. The legitimate expectations of the person challenging the decision; (at para. 26) and

e. The choice of procedure made by the administrative decision-maker itself (at para. 27).

[18] This Court explained these factors in *Boles* (at paras. 34-38). The following is taken from that case.

[19] For the first factor, the Court considers how adversarial the context is; whether the decision-maker makes findings of fact; and the type of procedural protections in the process (*Baker* at para. 23). The closer the procedure is to the judicial decision-making process, the greater the procedural protections.

[20] The second factor, the nature of the statutory scheme, requires a consideration of appeal rights and the finality of the decision (at para. 24).

[21] The third factor of the importance of the decision to the parties is significant and has been interpreted as the more important the decision is, the greater the procedural protections required (at para. 25).

[22] The factor of legitimate expectations refers to the situation where an administrative decision-maker provides information to an individual or acts in a way to signify that the process will occur in a particular way: for example, an in-person hearing will be held due to a policy of the decision-making body (at para. 26).

[23] The final factor relates to the choices the decision-maker has made about processes and in particular where discretion is provided to the decision-maker about procedural choices (at para. 27).

[24] The third question is whether the procedural fairness requirements in the circumstances were met.

Positions of parties

[25] In this case, Ms. Slahvahshkah says she did not have a meaningful opportunity to respond because Mr. Fox was granted an extension of time without notice to her and their submissions filings overlapped. She also says her inability to respond to Mr. Fox's answers to questions asked by the RTO was unfair. Finally, Ms. Slahvahshkah says

procedural unfairness resulted from the RTO's wording in the email to her requesting her response within three days to the settlement offer from Mr. Fox.

[26] Mr. Fox reviewed the dates of extensions, service and responses of both parties, including to the request for additional information and said Ms. Slahvahshkah had a full opportunity to respond and consequently there was no procedural unfairness. Mr. Fox says the settlement offer had no bearing on the decision on the merits of the case. Adjudication of both applications continued without reference to the settlement offer. There was no unfairness.

Analysis

[27] I find a medium-high standard of procedural fairness is to be applied here. The RTO did not act unfairly and there was no breach of procedural fairness. Ms. Slahvahshkah had a meaningful opportunity to know the case against her and to respond. The wording used for describing the settlement option and the time limit imposed was appropriate.

[28] I will apply the three questions necessary for a finding of procedural fairness to the facts and circumstances of this case.

[29] First, it is clear and undisputed that Ms. Slahvahshkah is owed a duty of procedural fairness in this case. Any individual whose rights, interests or privileges are affected by a decision of a quasi-judicial or administrative decision-maker is owed a duty of fairness. The purpose of procedural fairness is to ensure that public administrative authorities act fairly when determining legal rights or interests (*YBGO* at para. 70 citing *Cardinal v Director of Kent Institution*, [1985] 2 SCR 643). Ms. Slahvahshkah's interests in retaining the security deposit and in objecting to the

payment of plumbing repairs, fuel replacement and loss of rental income entitle her to procedural fairness in any decision made about them. Similarly, Mr. Fox's interests in being compensated for monies lost on rental income, on monies spent to repair the pipes, and on monies spent for home fuel replacement entitle him to procedural fairness.

[30] A determination of the degree of procedural fairness requires the application of the five factors set out in the *Baker* decision.

[31] The first factor suggests a high degree of procedural fairness: the tenant and the landlord are in an adversarial context, the decision-maker must make findings of fact and law necessary or incidental to making the decision or order (s. 98 of the *Residential Tenancies Act,* SY 2025, c 7 (the *Act*)) and the procedures in the legislation are specific and detailed. The statutory scheme contains provisions for holding hearings (s. 97 and s. 99); for the completion of approved forms, setting out particulars of the disputes, and compliance with time limits and fees (s. 95); for the ability of the director to admit any form of oral or written testimony or any document or thing that is considered necessary and appropriate and relevant to the proceedings (although the rules of evidence do not apply) (s. 111); for the director to administer oaths for the purpose of the statute (s. 124); for the director to issue summons to compel persons to attend to give evidence or to produce documents (s. 125); and for the ability of the director to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, or a tenancy agreement (s. 106). These provisions and others bring the scheme closer to a judicial form of decision-making rather than an administrative decision-making process.

[32] The second factor also supports a high degree of procedural fairness. The decision of the person hearing the dispute is final, subject to a review by the director, based on three specific grounds, and a judicial review to this Court.

[33] A medium level of procedural fairness is suggested by the importance of the decision to the individual in this case. Unlike an eviction dispute, where a tenant's ability to continue living in the place they call home may be terminated, and the landlord's ability to keep the rental accommodation secure and safe for all tenants and their property may be at risk, the dispute in this case is about money, in particular for Ms. Slahvahshkah. She voluntarily left the property and has another place to live.

[34] The fourth factor of legitimate expectations does not relate to any procedural fairness because there is no evidence that Ms. Slahvahshkah had any legitimate expectations about the RTO process.

[35] Finally, as noted by this Court in *Boles,* the decision-making body has discretion in choosing their own procedures. They can decide whether a hearing is held in person or in writing and may "deal with any procedural issues that arise" (s. 108(3)(a) of the *Act*). They may make interim or temporary orders. This suggests a medium level of procedural fairness.

[36] Considering all the factors as a whole, in this case, the degree of procedural fairness owed to Ms. Slahvahshkah is medium-high.

[37] The third question of whether procedural fairness was breached requires a review of the procedural steps and timelines, given the nature of the concerns raised by Ms. Slahvahshkah.

[38] Ms. Slahvahshkah says the RTO extended the time for service of Mr. Fox's materials to her without notice to her and this compromised her ability to respond fully to his submissions. She says the service of his materials on April 1, 2026 coincided with the due date of her submissions and so she did not have the opportunity to review materials, identify inaccuracies or gather rebuttal evidence. She further complained that the RTO refused her request for extension on her submissions in response to Mr. Fox's application. These arguments rely on the conflation of the two separate applications for dispute resolution, as I will explain below.

[39] There are two applications for dispute resolution in this matter. The first one was brought by Ms. Slahvahshkah on January 8, 2026, for the return of her security deposit of $3,190.00. Her exhibits were provided on January 12, 2026. Mr. Fox then brought his own application for dispute resolution on January 20, 2026, for retention of the security deposit, and compensation for lost rental income and monies spent on plumbing repairs and home fuel.

[40] On March 25, 2026, the RTO emailed Ms. Slahvahshkah and advised she was required to serve all of the documents provided to the RTO on Mr. Fox by March 28, 2026, as required by the *Act*, along with the Notice of Hearing and How to Respond document attached to the email. At the request of Ms. Slahvahshkah, the RTO granted her a four-day extension of time to serve Mr. Fox, that is, until April 1, 2026, with a corresponding extension of time for Mr. Fox to respond, from April 13 to April 17, 2026. Ms. Slahvahshkah complied with this new deadline and served Mr. Fox on April 1, 2026.

[41] Mr. Fox was originally instructed by email from the RTO on March 27, 2026, to serve Ms. Slahvahshkah with his application for dispute resolution and supporting

documents on March 30, 2026, again in keeping with the statutory requirement. He responded with a proposed settlement offer which was communicated to Ms. Slahvahshkah by the RTO on March 27, 2026, requesting that she respond by noon on March 30, 2026. She did not respond.

[42] In the meantime, the RTO had instructed Mr. Fox that he did not need to serve his documents until April 3, 2026, three days after the deadline for Ms. Slahvahshkah's response to the settlement offer. After receiving no response from Ms. Slahvahshkah by March 30, 2026, Mr. Fox served his materials on Ms. Slahvahshkah on April 1, 2026. The RTO explained by email on April 2, 2026 to Ms. Slahvahshkah why the extension had been granted to Mr. Fox, in answer to her email request for an explanation of the discrepancy between the email requirement by the RTO of service by March 30, 2026, and the actual service on April 1, 2026. Ms. Slahvahshkah then requested a corresponding extension of time for her response to Mr. Fox's application. This request was denied because she had not responded to the email about the settlement offer by March 30, 2026. She had 12 days to respond to Mr. Fox's application, that is, until April 13, 2026.

[43] Ms. Slahvahshkah suggests in her submissions that she was prejudiced because her submissions filed on April 1, 2026 in support of her application, coincided with Mr. Fox's documents served on her on April 1, 2026, in support of his application. However, this argument is not grounded in the facts of what occurred.

[44] Ms. Slahvahshkah had until April 13, 2026 to respond to Mr. Fox's application, served on her on April 1, 2026. The absence of an extension to her of two additional days was not procedurally unfair in the circumstances, especially since

Ms. Slahvahshkah did not respond to the email about the settlement offer. It is also noteworthy that Mr. Fox provided his submissions in response to Ms. Slahvashkah's application on April 13, 2026, the original date provided, and not April 17, 2026. This was the reason for the RTO closing the submissions on April 14, 2026 – everything was completed by that date. Ms. Slahvashkah's complaint that the RTO's failure to tell her about the extension given to Mr. Fox until she asked does not amount to procedural unfairness. The RTO acted consistently: she was granted a four-day extension of time to serve her materials and Mr. Fox was not notified. Such a short extension in the circumstances where a settlement offer has been made was not unfair.

[45] Ms. Slahvahshkah's complaint that she was not able to reply to Mr. Fox's response to the questions asked by the RTO on April 21, 2026did not amount to procedural unfairness. The RTO asked questions of each party for clarification and proof of certain points in their respective submissions. The RTO process was transparent as each party saw all of the questions, and received the answers and supporting documents of the other party. The *Act* provides that the RTO can choose its own procedures. The questions asked of Mr. Fox were straightforward and factual. There was no procedural unfairness in this process of requesting additional clarification of each party's submissions.

[46] Finally, Ms. Slahvahshkah argues that the RTO's statement when providing her with Mr. Fox's settlement offer that there was "no guarantee of success" if she proceeded with the dispute; encouraging her to "carefully consider" the offer, giving her only three days to respond; and using her non-response as a reason to deny the extension, all contributed to procedural unfairness.

[47] The settlement offer from Mr. Fox was included in the RTO record and consisted of his proposal to withdraw his claim for compensation for the repairs and lost rental income and a return of Ms. Slahvahshkah's security deposit plus interest, minus the cost of the fuel charge. This would have amounted to a payment from Mr. Fox to Ms. Slahvahshkah of $2,546.71.

[48] There was nothing unfair about the wording used or the time limit for response imposed by the RTO. The benefits of settlement include certainty, control over the outcome, reduction of costs and time spent on the dispute, and the ability of the parties to move on from the dispute. Once a dispute is turned over to a third party for a decision, certainty of result for the parties is lost. Lawyers, administrative tribunals, and courts regularly encourage parties to consider settlement of legal disputes for these reasons and more. There are often time limits imposed on settlement offers as a way of encouraging parties to focus on resolution. The purpose of the RTO email was to encourage settlement by noting its advantages.

Issue iii – Was the director's decision denying the admission of new evidence unreasonable?

Legal Principles

[49] The function of a judicial review is to ensure the legality, reasonableness and fairness of the administrative process and its outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 28). Judicial review functions to maintain the rule of law while giving effect to legislative intent (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*) at para. 2).

[50] The presumptive standard of review in a judicial review is reasonableness (*Vavilov* at paras. 23-32). There are exceptions, but none of them applies here.

Reasonableness requires that a reviewing court not substitute its decision for that of the administrative decision-maker, but instead ensures the reasoning process and the outcome are transparent, intelligible and justified (*Vavilov* at para. 15):

> …the reviewing court must consider only whether the decision made by the administrative decision maker – including both the rationale for the decision and the outcome to which it led – was unreasonable (*Vavilov* at para. 83).

[51] The RTO has adopted the application of the *Palmer* test when considering the admissibility of new evidence, from the decision of the Supreme Court of Canada in *Palmer v The Queen* [1980] 1 SCR 759, at 760 and 775. New evidence should only be admitted if all four of the following factors (adapted to the RTO context) are met:

1. The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial.
2. The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
3. The evidence must be credible in the sense that it is reasonably capable of belief.
4. It must be such that if believed it could reasonably be expected to have affected the result.

Positions of Parties

[52] Ms. Slahvahshkah argues the decision of the director not to admit her new evidence because it was available to her at the time of the hearing with reasonable effort, was unreasonable. The new evidence was a statement from a friend with accompanying photos of the unit he says he took on December 13, 2025, when he accompanied her and remained with her for the day while she cleaned and did the final

move-out. In addition, she submitted an anonymous unsigned statement by another person about the bad behaviour of the other tenants' dog and the tenants on September 30, 2025. Ms. Slahvahshkah wrote in her application for review by the director that she "did not understand until now the need to obtain and formalize evidence in signed witness statement form"; that the photos were on her friend's device, not hers; that the other witness was concerned for her own safety due to potential retaliation from the other tenants. She also wrote the decision did not factor in her documented cognitive limitations, financial hardship, housing instability or displacement in assessing reasonable effort. Finally, the failure to consider more than one aspect of the legal test for admissibility of evidence was unreasonable.

[53] Mr. Fox said the director applied the *Palmer* test appropriately and the decision was reasonable.

Analysis

[54] The director's applicability of the *Palmer* test resulting in a rejection of the new evidence proffered by Ms. Slahvahshkah was reasonable. The director provided reasons why the evidence of the condition of the unit could have been submitted earlier: Ms. Slahvahshkah knew of the existence of the evidence at the time of the initial application; her relationship with the witness who took photos of the unit and accompanied and stayed with her for the day while she cleaned and moved out was of sufficient proximity that she could have retrieved the photos and obtained a statement from him at the time of her application; the reason for taking the photos at the time must have been to show the condition of the unit, and so would have been available to her when needed.

[55] The director noted the evidence of the other witness about the behaviour of the other tenants and their dog when submitted on September 30, 2025, was anonymous and unsigned. Although the director does not explicitly state this, it can be inferred from his description of that witness statement that the person's fear of retaliation was no different at the time of submission of the proposed evidence than it was at the time of the original application. His reference to the date and the subject matter also suggests that there may be a relevance issue with that statement as the occurrence it describes was months before the move out and there was no dispute about Ms. Slahvahshkah's reasons for moving.

[56] There is nothing unreasonable about the analysis of the director in his review decision on this point. He articulated the test correctly. As he correctly noted, all four factors of the test must be satisfied. If one factor is not satisfied, there is no need to consider the rest, which is what he did in this case. His reasons for finding the evidence could have been provided by Ms. Slahvahshkah at the time of the hearing were explained and are reasonable. I further note that the possibility of providing statements from third parties was specifically stated in the notice of hearing sent to Ms. Slahvahshkah before she provided her submissions.

Issue iv – Was the decision to order monetary compensation to Mr. Fox for lost rental income, plumbing repairs, and home fuel unreasonable due to improper attribution of their cause to Ms. Slahvahshkah on the basis of insufficient evidence or the ignoring of other evidence?

Legal Principles

[57] The same legal principles of the reasonableness standard of review described above in the previous issue apply to this issue and the next two.

Position of the Parties

[58] Ms. Slahvahshkah argues the deputy director's decision was unreasonable because:

a) the reasons did not grapple with all of the evidence or absence of evidence about the cause of the plumbing damages, including identifying how the electrical breakers she turned off contributed to the freezing of the pipes; explaining how the plumbing repairs in January 2026 were for damage that occurred in December 2025; and failing to consider whether conditions in the shared laundry area or Mr. Fox's directions on January 7, 2026, to increase the temperature in the unit to 77 degrees Fahrenheit were contributing causes to the plumbing problems;

b) the decision-maker unreasonably inferred that the condition of the unit was substantially the same on December 17, 2025, as it was on December 15, 2025;

c) the reasons for the one month lost rental income were not sufficiently tied to her actions; and

d) the decision-maker failed to address Mr. Fox's obligations to maintain the heating system in good working condition, to protect the plumbing from freezing, and to recognize she had given notice in November 2025 of a diesel odour emitting from the Toyo stove.

[59] On the fuel issue, if I understand correctly Ms. Slahvahshkah's disagreement with the order that she pay the final home fuel fill up, it appears that she objects to the

amount because the determination of the amount of a full tank and the starting amount at the outset of the tenancy were never verified despite her requests.

[60] Mr. Fox responds that the lack of water in the unit and its cold temperature were not known until December 17, 2025, and a leak in the downstairs pipes began on December 24, 2025. Mr. Fox began contacting multiple plumbers on December 18, 2025, but due to significant plumbing emergencies caused by the extreme cold (minus 40 to minus 50 degrees Celsius) in Whitehorse during the month of December 2025, no plumber was available until January 2026. The plumbers advised him not to thaw the pipes without professional supervision. When he directed the increase to the heat in January 2026, due to further leaks into the other tenants' suite, a plumber was engaged shortly after and completed the repairs between January 11 and 15, 2026. Mr. Fox says Ms. Slahvahshkah admitted that she had not been living in the unit since early October 2025 and had kept the heater turned down. She also admitted she turned off electrical breakers because electricity costs in other areas of the home were being billed to her account. These actions in the context of the extreme cold in December 2025 were the cause of the pipes freezing and ultimately bursting. Mr. Fox advertised the unit immediately, before the December 17, 2025 move-out inspection, and his knowledge about the lack of water and cold temperature of the unit, in order to mitigate his losses. It was not ready to rent until the repairs were completed in mid-January 2026.

[61] The tenancy agreement was silent on whose obligation it was to fill the fuel tank and the timing of that obligation. Through email exchanges, and at the request of Ms. Slahvahshkah, they agreed that she would fill the fuel tank at the end of her tenancy, having received a full one at her move-in. Mr. Fox filled the tank in January

2026, after the repairs were completed. This was his first opportunity to do so because of the extreme cold in December 2025.

Analysis

[62] The decision to order compensation for Mr. Fox was reasonable. The deputy director considered the evidence provided by both parties. I can only consider in this judicial review the evidence that was provided to the RTO for the applications or responses to the applications. As noted above, both Ms. Slahvahshkah and Mr. Fox provided additional evidence by way of affidavit for this judicial review. While there are some circumstances in which affidavit evidence may be accepted on a judicial review, such as facts related to the decision-making process to support a procedural fairness argument, clarification of the requirements of the governing statute, evidence not in the record that affected the decision, additional factual evidence to support the arguments made before the decision-maker are generally not permitted.

[63] Ms. Slahvahshkah's arguments at this judicial review that Mr. Fox's direction to turn up the heat in her former unit in January 2026 to 77 degrees Fahrenheit, or that the shared laundry facilities with exposed piping, where the leak first appeared on December 24, 2025, could have caused the damage instead of her, were not raised before the deputy director. Further, her arguments that the invoices from the plumbers contained charges for work that should not have been attributed to her were not raised before the deputy director. I have not considered them in this judicial review.

[64] The deputy director accepted on a balance of probabilities that Ms. Slahvahshkah's actions contributed to and likely caused the damage to the plumbing. She found that Ms. Slahvahshkah had not resided in the unit since October

2025, and that she had turned off certain electrical breakers, contributing to the freezing pipes. She also concluded that the evidence did not support Ms. Slahvahshkah's claim that she continued to keep the heat at an adequate level and monitor the property regularly. It remained unclear how often she monitored the property, especially in the extreme cold. The electricity use summary from December 10, 2025, and the fuel invoice from September 29, 2025, submitted by Ms. Slahvahshkah were insufficient to show the unit was maintained at a safe temperature to prevent freezing pipes. She accepted the existence on December 17, 2025 of the conditions described in the move-out inspection report of an extremely cold unit, no water running from the faucets and frozen pipes. By inference she accepted that substantially the same or similar conditions existed on December 15, 2025, the last day of tenancy and the initial date proposed for the move-out inspection. The deputy director said the tenant had a duty to ensure sufficient heat was maintained to protect the unit given the extreme cold in December 2025. She found the landlord met his obligation to mitigate his losses especially by trying to engage plumbing services as soon as he discovered the problem on December 18, 2025. No plumber was able to attend at the home until January 2026, except for emergency repairs to the pipe leak in the laundry room on December 26, 2025. The unit was not able to be rented until after mid-January 2026, when all the repairs were completed.

[65] The deputy director concluded it was Ms. Slahvahshkah's responsibility to fill the fuel tank at the end of her tenancy and at the move-out inspection it was evident she had not done so. As a result of her failure to do so, the deputy director found she "lack[ed] the standing to challenge the delivery schedule or subsequent

results”(*Decision of the Deputy Directo*r, (May 4, 2026), Residential Tenancies Office*,* File No. 3620-25-156 and 3620-25-157 at 9). She relied on the tenancy agreement and the email exchange between the parties in October 2024, confirming her obligation.

[66] The deputy director’s conclusion was reasonable on a balance of probabilities, considering the information that was before her:

a) First, addressing Ms. Slahvahshkah’s concerns about the cause of the plumbing damage, while she denied her actions were the cause, she was unable to provide sufficient proof to the deputy director of her consistent maintenance of the heat in the unit at a reasonable level, during the extreme cold temperatures. She admitted to turning off electrical breakers in an email to Mr. Fox on December 9, 2025, because of the ongoing issue of the billing to her electrical account of charges from electricity use by the other tenants or in the common areas. As a result of her actions, the tenants were unable to plug in their cars during the cold December temperatures, and the outside common areas, including stairs, were unlit, causing safety hazards. While it is true that the deputy director was not explicit about how her turning off of the electrical breakers contributed to the plumbing problems, an inference could be drawn from these actions that she had little regard for the safety and well-being of others or the building during the cold weather, contributing to the deputy director’s conclusion that the heat was not properly maintained in the unit.

b) It was not unreasonable for the deputy director to infer that the same conditions existed in the unit on December 15, 2025, as on December 17,

2025, given the cold external temperatures and the cold temperature of the unit on December 17, 2025.

c) The plumbing damage may have been mitigated or avoided if a plumber had been able to attend earlier than January 11, 2026, but the cold weather emergencies that prevented this meant that the problem could not be fixed until then. The occurrence of the repairs in January does not eliminate the probability that the problem originated in December. There is no evidence that the water began flowing in the unit in December or early January.

d) The ongoing problems support Mr. Fox's lost rental income for the last two weeks in December and the month of January. There was insufficient evidence before the deputy director of other potential causes of the plumbing problems between December 17, 2025, and January 11, 2026.

e) The deputy director's finding that Ms. Slahvahshkah was obliged to ensure the unit was sufficiently heated to protect the unit from damage is supported by the tenancy agreement at para. 19(3) providing that whoever controls the temperature of the rental unit (in this case it was Ms. Slahvahshkah) must not allow the rental unit to become so cold that it is reasonable to expect the temperature to cause damage to the rental unit. This does not overlook or ignore Mr. Fox's obligations to maintain the heating and plumbing systems in good working order. The deputy director noted he attempted to fulfill these obligations by contacting multiple plumbers as soon as he knew about the problem on December 18, 2025.

> Although Ms. Slahvahshkah said she complained about numerous issues during her tenancy, such as water damage and leaks, mould development, electrical concerns, roof and structural issues, and a diesel smell emitting outside her unit, she did not complain otherwise about the heating system, the operation of the plumbing, or a lack of insulation. This contributes to the reasonableness of the conclusion that the December plumbing problems were caused by the deliberate turning down of the heat, not from a pre-existing problem or weakness in the structures or systems.

[67] Finally, while the deputy director was incorrect in her finding that the tenancy agreement required Ms. Slahvahshkah to return the fuel tank to the original full capacity at the end of her tenancy, the agreement does say the tenant is responsible to pay all utilities. The deputy director correctly identified the email exchange between the parties on October 24, 2024, confirming Ms. Slahvahshkah would be responsible for filling the oil tank at the end of her tenancy. There is no dispute that she did not do so. Due to the extreme cold weather, Mr. Fox's attempts to fill the tank on December 18, 2025, were to no avail: it was not able to be filled until January 9, 2026, due to the weather. The deputy director noted the delay resulting from the severe weather and the peak holiday demand were beyond the landlord's control. While the phrase employed by the deputy director that the tenant "lacks the standing" to challenge the delivery schedule or result is not entirely appropriate, her conclusion that this was Ms. Slahvahshkah's unfulfilled responsibility was reasonable in these circumstances.

Issue v – Was the decision that Ms. Slahvahshkah forfeited the security deposit by not attending at the move-out inspection unreasonable?

[68] As part of her objection to the reasonableness of the monetary award granted to Mr. Fox, Ms. Slahvahshkah stated that her failure to attend the move-out inspection did not represent an abandonment of her position on the condition of the unit. She recognized that s. 51 of the *Act* provides that her right to a return of the security deposit is extinguished if she does not participate in the move-out inspection, after being offered two opportunities to do so, as occurred here. However, she says that this does not prevent her from disputing the contents of the inspection report or the weight to be given it.

[69] The deputy director's decision to apply s. 51 of the *Act* in this case and determine that Ms. Slahvahshkah's ability to retain the security deposit was extinguished did not prevent her from challenging the monetary award claimed by Mr. Fox. However, because she was not present when the facts for the inspection report were observed and recorded, her ability to dispute the condition of the unit credibly was compromised. While the use of the word "forfeited" is questionable, because there is nothing in the *Act* that prevents the tenant from disputing the condition documented, even if they failed to attend the inspection, the deputy director's conclusion that any such dispute may lack credibility is reasonable.

Issue vi – Was the arithmetic error in the calculation of the fuel costs unreasonable?

[70] The deputy director and the director both made a $38 error in the tenant's favour in the amounts noted for reimbursement of the fuel amount. Mr. Fox accepts the error and seeks no adjustment.

[71] Ms. Slahvahshkah argues that this error provides a further ground for judicial review. She says it appears to have occurred because the figures were taken from Mr. Fox's summary and not from the actual invoices.

[72] This is not a reviewable error. It was a slip and is not material.

Conclusion

[73] For the above-noted reasons, the application for judicial review is dismissed. Ms. Slahvahshkah shall pay to the landlord the amount of $5,031.39.

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DUNCAN C.J.