IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *JSS Investments Ltd. v. Samimi,* 2023 BCSC 1776

Date: 20231012
Docket: S217316
Registry: Vancouver

Between:

JSS Investments Ltd.

Petitioner

And

Shahdad Samimi and Shahab Samimi

Respondents

Before: The Honourable Justice Kirchner

Reasons for Judgment

Counsel for the Petitioner:	D. Moonje
Counsel for Respondents:	A.D.A. Greer
Place and Date of Hearing:	Vancouver, B.C. September 28, 2023
Place and Date of Judgment:	Vancouver, B.C. October 12, 2023

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A. Introduction

[1] The Petitioner, JSS Investments Ltd., applies for judicial review of a decision of an arbitrator (the "Arbitrator") made pursuant to s. 51(2) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78.

[2] JSS Investments is a closely held corporation owned by Tejinder Sidhoo. I will refer to JSS and Ms. Sidhoo together and individually as the ("Landlord"). The Respondents, Shahdad Samimi and Shahab Samimi (the "Tenants"), are siblings and were the Landlord's tenants from August 2014 until the Landlord ended the tenancy effective April 1, 2020. The reason given for ending the tenancy was that the Landlord's close family member, her daughter, was going to occupy the rental unit.

[3] The Tenants moved out of the rental unit by the April 1, 2020 deadline set in the notice to end tenancy. However, they later learned that the daughter did not move into the rental unit after they left so they filed a dispute notice with the Residential Tenancy Branch claiming entitlement to a payment of one years' rent as provided for under s. 51(2) of the *Residential Tenancy Act*. The Arbitrator found that the daughter did not occupy the rental unit as of April 2, 2020 or for a period of six months after the end of the tenancy and awarded the Tenants the full amount of their claim, being $21,600.

[4] The Landlord argues that the Arbitrator's decision was made through an unfair process by which he unreasonably denied the Landlord the opportunity to submit documentary evidence despite a flaw in the Landlord's service of those documents on the Tenants. The Landlord also argues that she was not permitted to lead certain oral testimony and make arguments relating to extenuating circumstances that purportedly explain why the daughter did not occupy the rental unit. She also argues the Arbitrator's written reasons are inadequate in that they fail to address a material issue, namely the asserted extenuating circumstances.

[5] For the reasons that follow, I dismiss the application for judicial review.

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B. Background Facts

[6] The Landlord owns a property on West 3rd Avenue in Vancouver that contains an upstairs unit and a downstairs unit. The Tenants rented the downstairs unit starting on August 1, 2014. On January 30, 2020 the Landlord served the Tenants with a notice to end tenancy to take effect two months later on April 1, 2020. As noted, the stated purpose for ending the tenancy was that the Landlord's close family member – her daughter – would be occupying the unit.

[7] Section 49(4) of the *Residential Tenancy Act* permits a landlord to end a tenancy for this reason. It reads:

> 49. (4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

[8] There is no dispute that the Landlord is a family corporation and that the daughter is a close family member of the person owning voting shares in that corporation.

[9] The Tenants moved out by April 1, 2020. However, they later learned that the daughter was not living in the rental unit and they believed she had never moved in. They therefore filed the dispute notice with the RTB on February 6, 2021 seeking payment of $21,600.00 being the equivalent of 12 months' rent at the rate they had been paying before the tenancy was ended.

[10] The basis for this claim is in s. 51(2) of the *Residential Tenancy Act* which provides that a landlord, if called upon to do so, must establish that the stated purpose for ending a tenancy was accomplished within a reasonable period after the effective date of the notice to end tenancy and that the rental unit was used for that purpose for a period of at least six months. If the landlord cannot establish this then, absent extenuating circumstances referred to in s. 51(3), the landlord must pay the tenant an equivalent of 12 months' rent. Section 51(2) reads:

> **51.** (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of

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> 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that
>
> (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
>
> (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[11] Thus, the Landlord had to prove that the daughter had moved into the rental unit within a reasonable time after April 1, 2020 and that she occupied the unit for at least six months thereafter. As noted, the Arbitrator found this was not established.

[12] However, a landlord may be excused from the requirements of s. 51(2) if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending the tenancy and from using the rental unit for that purpose for at least six months. Section 51(3) reads:

> **51** (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from
>
> (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
>
> (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[13] The Landlord claims there were extenuating circumstances in this case. She says her daughter, who lived in Toronto, was planning to move to Vancouver to care for the Landlord while she underwent cancer treatment. The Landlord says the daughter's employment enabled her to relocate to her employer's Vancouver office. However, the COVID-19 pandemic was declared just over a month after the notice to end tenancy was issued and, due to travel restrictions, the daughter was not able to move to Vancouver until June 2020.

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[14] Further, the daughter was laid off from her job because of the pandemic. This meant she was not able to transfer to her employer's Vancouver office and needed to find other work. She eventually found a job in Toronto which prevented her from staying in Vancouver.

[15] Prior to the hearing, the Landlord filed with the RTB a collection of documents she maintained supported these extenuating circumstances. She also sent the documents by registered mail to the Tenants. She put them in a single package addressed to both Tenants. Service of documents may be effected under the *Residential Tenancy Act* by registered mail.

[16] However, at the telephone hearing held in June 2021, the Arbitrator would not allow the Landlord to rely on these documents because they had not been served in accordance with Residential Guideline Policy 12. That guideline stipulates that each party to a dispute must be served separately. It reads in part:

> Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

[17] Since the Landlord sent only one package of documents in a single envelope addressed jointly to both Tenants, the Arbitrator ruled the documents had not been properly served and declined to allow the Landlord to rely on those documents.

[18] The Landlord, however, argues that even if she had sent the documents in two separate packages they would not have reached the Tenants because the Tenants had provided an incomplete address for service. In fact, even the single package sent by registered mail to both Tenants jointly could not be delivered because of the incomplete address. The Landlord therefore argues on this judicial review that the Arbitrator's preliminary decision to deny the Landlord's ability to rely on the documents is patently unreasonable.

[19] The Landlord also argues that the Arbitrator should have permitted her to adjourn the hearing to properly serve the documents rather than deny her the

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opportunity to rely on them. Her counsel argues that a fair process compels the Arbitrator to alert lay litigants to their procedural options, including asking for an adjournment as contemplated by Guideline 12.

[20] The Landlord was not represented by counsel at the RTB hearing but she was assisted by an agent she hired. I am told by counsel that this agent offers his services for a fee to assist and speak for people in RTB proceedings.

[21] On the substantive issue under s. 51(2), the Arbitrator found that the Landlord's daughter did not occupy the rental until from April 2, 2020 to October 2, 2020. He based this decision on the Tenants' evidence which included:

- a letter from B.C. Hydro dated April 8, 2020 stating that there was no active account associated with the rental unit and registration of an active account was required to avoid disconnection. This suggests the unit was empty at least for the first 8 days of April;

- a letter signed by the tenants of the upper floor unit confirming that the downstairs rental unit was vacant from April 1 to around September 1, 2020 and that a "For Rent" sign was posted on the fence starting around early or mid August 2020; and

- a text message dated August 30, 2020 from the upper floor tenants to the Tenants stating "…people are about to move into your old place, no relation to [the Landlord]…".

[22] The Arbitrator found the Tenants' evidence to be "coherent and detailed" and the letter form the upper floor tenants to be "convincing and credible". He noted that the Landlord "did not rebut the letter's content, or the text message dated August 30, 2020." He went on to say:

> Based on the tenant's coherent and detailed testimony, the upper-floor tenant letter, the text messages dated August 30, 2020 and the electricity company letter, I find, on a balance of probabilities, that the landlord's daughter did not occupy the rental unit from April 02 to October 02, 2020.

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[23] The Arbitrator did not refer to any evidence or address any submission respecting extenuating circumstances under s. 51(3). The Landlord claims this makes the reasons for decision inadequate as the Arbitrator failed to address a material issue in the dispute.

[24] The Landlord argues the documents she was not permitted to rely upon were material to the issue of the extenuating circumstances. Without them, she says she was not given a fair opportunity to present her case on that issue. She claims when her agent tried to make that case to the Arbitrator, he was denied the opportunity to do so. She states in her affidavit:

> 20. The arbitrator's Decision does not refer the exceptional circumstances the Landlord was trying to show; and instead focuses on the date my daughter was required to occupy the Rental Suite in the absence of exceptional circumstances.
>
> 21. The arbitrator was irritated with my agent and took control of the hearing after rejecting the admissibility of the Landlord's Evidence. The arbitrator asked questions only about the Tenants' documents. The arbitrator went through the Tenants' documents one at a time and restricted my agent to answering questions about those documents.

[25] In her reply affidavit she asserts that she had witnesses who would have testified that the daughter had moved into the unit but she was not permitted to call those witnesses.

[26] The Landlord applied for reconsideration of the Arbitrator's decision but that application was dismissed. The Landlord now seeks an order setting aside the Arbitrator's decision and remitting it back to the RTB for reconsideration.

C. Standard of Review

[27] The standard of review applicable to decisions of RTB arbitrators is governed by s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45. For issues of procedural fairness, the standard is whether, in all the circumstances, the decision-maker acted fairly. This standard applies to the question of whether the Landlord was fairly treated when the Arbitrator ruled that the hearing should proceed without the Landlord's documents rather than offering an adjournment. It also applies to the

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question of whether the Landlord was denied to the ability to call witnesses and make certain arguments.

[28] For matters within the Arbitrator's exclusive jurisdiction, the standard of review is patent unreasonableness. A patently unreasonable decision is one that is "clearly irrational" or "evidently not in accordance with reason." It is one that is so flawed that "no curial deference can justify letting it stand": *Law Society of New Brunswick v. Ryan,* 2003 SCC 20 at para. 52; *Ahmad v. Merriman*, 2019 BCCA 82 at para. 37. This standard applies to the substantive reason given for denying the Landlord's request to rely on the documents and to the question of whether the Arbitrator's reasons are adequate.

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D. Analysis

1. Was it unfair or patently unreasonable for the Arbitrator deny the Landlord the opportunity to rely on her documents?

[29] I am not persuaded that the Arbitrator's decision to deny the Landlord the ability to rely on the documents was unfair. The Arbitrator was entitled to rely on Policy Guideline 12 as a basis for finding that service of the documents was not in compliance with the *Residential Tenancy Act* or the RTB's process. It was also within the Arbitrator's discretion to decide how to deal with that flaw in service. In this case, the Arbitrator chose to exercise that discretion by denying the Landlord's request to rely on the documents and to proceed with the hearing. I cannot say he exercised that discretion unfairly.

[30] I am not persuaded that in the circumstances of this case the Arbitrator had an obligation to inform the Landlord or the Landlord's agent that they might consider asking for an adjournment to properly serve the documents. The Landlord relies on *Kikals v. British Columbia (Residential Tenancy Branch),* 2009 BCSC 1642 where Justice McEwan said:

> [37] It should be understood that in a system as stripped of the usual guarantees of due process as this, with no record, hearings by telephone, and lay participants appearing without assistance or advice, extra care must be taken to ensure fairness and the appearance of fairness. There is

> considerable reason to doubt that this is appreciated by at least some of the dispute resolution officers delegated to hear these cases.

[31] In this case, however, the Landlord was not appearing "without assistance or advice". She had a paid agent whom I am told is familiar with the RTB processes.

[32] Moreover, the Arbitrator considered the documents on which the Landlord wished to rely before making his ruling on their use. As I will discuss in some detail in a moment, none of the documents would have assisted the Landlord even if she was able to rely on them. Further, the Landlord could have given oral testimony about all matters that are covered by the documents. Had the documents been of any probative value, it might be that the Arbitrator would have, or ought to have, suggested to the Landlord that she consider seeking an adjournment. However, since the documents have no probative value an adjournment to serve them would have been futile.

[33] The Landlord also argues the Arbitrator's preliminary decision denying her the ability to rely on the documents is patently unreasonable because even if the Landlord had served the documents in conformity with the policy guideline they still would not have reached the Tenants who gave an incomplete address for service.

[34] This argument has some merit. It is hard to see how the Tenants have been prejudiced by the Landlord's failure to serve the documents in two separate packages when, by the Tenants' own error, they would not have received even properly served documents. However, I find it is unnecessary to decide whether this makes the Arbitrator's preliminary decision patently unreasonable because, as I have alluded to, the documents were unnecessary and ultimately do not assist the Landlord in making her case.

[35] The Landlord argues the documents are relevant to proving the alleged extenuating circumstances. Those circumstances were that the daughter was unable to leave Toronto because of the COVID travel restrictions and because she lost the job that allowed her to transfer to Vancouver. Once travel restrictions eased, the

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daughter did in fact come to Vancouver but she could not stay because she was offered another job in Toronto that she had to take.

[36] Let us look at the documents themselves to see if they are probative of these assertions.

[37] The first document is a letter dated March 24, 2020 from the daughter's employer notifying her that she was being temporarily laid off due to the pandemic. I am not persuaded this letter is necessary evidence as the Landlord could have testified about the lay-off herself without the letter.

[38] The second document is a letter dated November 13, 2020 from Providence Health Services advising the Landlord that she has been placed on a waitlist for cancer-treating surgery. The Landlord says this letter is necessary to prove her cancer diagnosis and her assertion that her daughter was planning to move to Vancouver to help her manage during the treatment.

[39] However, this Providence Health Services letter is neither necessary to prove the Landlord's medical condition nor probative of it being a reason to end the tenancy in January 2020. First, the Landlord could have given that evidence verbally without resorting to the letter. Second, the Arbitrator accepted as undisputed that the notice to end tenancy was served "with the intent of the landlord's daughter occupying the rental unit". The Arbitrator does not suggest this intention was not genuine when the notice to end tenancy was issued. Thus, the reason behind that intention was irrelevant. Third, the letter is dated more than nine months after the notice to end tenancy was issued and is therefore not probative of whether the Landlord's cancer diagnosis pre-dated the notice to end tenancy. If anything, the date of this letter might suggest the diagnosis came much later. In this respect, the letter appears potentially harmful to the Landlord's case. It certainly does not help it.

[40] The third document is an invoice for installing new flooring in the rental unit in August and September 2020. The Landlord argues this is relevant to show that her daughter made improvements to the unit so she may live there. However, the

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invoice is not issued to the daughter and is probative only of the fact that work was done on the rental unit in August and September 2020. There is nothing in the invoice to indicate this work was for the daughter's benefit. It is equally plausible that the Landlord made improvements to the unit so she could fetch a higher monthly rent from a new tenant. This document is therefore not probative of extenuating circumstances.

[41] The next document is a copy of a B.C. Hydro bill for the rental unit dated September 2, 2020 issued to the Landlord in the amount of $146.22. It covers the period of April 2, 2020 to August 31, 2020. The Landlord argues this bill is relevant to answer the evidence relied on by the Arbitrator of the April 8, 2020 B.C. Hydro letter stating that there was no active account associated with the rental unit as of that date. The Landlord says this document shows that she activated the B.C. Hydro account after this date.

[42] This bill is not probative of any issue in dispute. The B.C. Hydro letter tends to show that, as of April 8, 2020, no one was living in the unit. This supports the Arbitrator's finding that the daughter had not moved in by that date. The Landlord now acknowledges the daughter had not moved in by then so there is no need to refute any inference drawn from the April 8, 2020 B.C. Hydro letter.

[43] Moreover, all the September 2, 2020 bill shows is that at some point the Landlord activated the B.C. Hydro account in her name and this was made retroactive to April 2, 2020. This is not probative of whether or when the daughter moved into the unit. In fact, since the bill is in the Landlord's name and not the daughter's, it tends to support the Tenants' assertion that the daughter never moved into the rental unit.

[44] The next document is an offer of employment to the daughter which the Landlord says is probative of the fact that the daughter got a new job in Toronto and had to return there. However, the daughter returned to Toronto in September 2020 and this job offer is dated December 2, 2020 with a start date of January 1, 2021. It is not probative of why the daughter left Vancouver in September. This makes the

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document irrelevant to the Landlord's case and, in fact, undermines the credibility of the Landlord's affidavit evidence that the daughter had to leave Vancouver in September to start a new job in Toronto.

[45] The next document is a text message exchange between one of the Tenants and the Landlord. According to the Landlord, the exchange was on March 29, 2020. It begins with the Tenants advising the Landlord that they could get out of their new rental arrangement and stay in the rental unit if the Landlord did not need it for the daughter. They wrote:

> I know this is last minute, I spoke with the new landlord, they are okay with cancelling the contract to move-in, if we want with everything going on. Just wanted to know if you still wanted the unit so your daughter can move in, if not we can continue living here.

The Landlord responded to this as follows:

> … I asked you just a few days ago and you said you were moving out April 1st.
>
> I also had agreed to give you extra time if needed you said no and did not pay rent last month cause you were moving out.
>
> So I am confused and feel if you might be trying to take advantage of my kindness.

[46] This exchange is not probative of any of the extenuating circumstances. It merely emphasizes that the Landlord expected the Tenants to move out by April 1. If anything, it undermines the Landlord's assertions of extenuating circumstances because it suggests she turned down the opportunity to have the Tenants stay even after the COVID travel restrictions were in place and after the daughter was laid off.

[47] The next document is a text message exchange in which the upstairs tenants give one month's notice that they will be moving out on September 7, 2020. The Landlord says this exchange is relevant to explain why a "For Rent" sign was posted outside the property in early to mid August. I agree this text exchange might help explain the sign but this evidence could also have been given verbally by the Landlord. Moreover, other evidence before the Arbitrator indicated that new tenants moved into the downstairs rental unit on or about September 1, 2020 so the fact that

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a “For Rent” sign was posted sometime in August is really not probative of whether the daughter was expected to be living in the unit. She clearly was not by September.

[48] The next document is a reservation confirmation for Flair Airlines confirming the daughter’s travel back to Toronto. The itinerary indicates it was booked on September 3, 2020 and she travelled to Toronto on September 10, 2020. The Landlord says this is relevant to show that the daughter had to move back to Toronto. However, the itinerary is probative only of the fact that the daughter flew to Toronto on September 10 but does not explain the reason for doing so. As I have said earlier, she did not receive a job offer in Toronto until December 2, 2020 for a job starting January 1, 2021 so travel in September was not necessary to take up a new job. If anything, this itinerary undermines the Landlord’s assertion that the daughter was expected to live in the rental unit for at least six months. In fact, she went back to Toronto for no apparent reason.

[49] The final document is a Canada Post receipt for sending the document package to the Tenants by registered mail. However, it is not disputed that the Landlord sent a package of documents by registered mail to the Tenants. The issue was that two separate packages were not sent. Thus, this receipt is not probative of any point in issue before the arbitrator.

[50] In short, I find that none of the documents that the Landlord was precluded from relying upon is probative of any fact in issue. If anything, this collection of documents adds support to the Tenants’ position. Thus, even if it might be said that it was patently unreasonable for the Arbitrator to deny the Landlord the opportunity to rely on those documents (and I make no finding in this respect), any such error could not have affected the outcome.

[51] I therefore dismiss this first ground of judicial review.

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2. Did the Arbitrator unfairly deny the Landlord an opportunity to give evidence about the extenuating circumstances?

[52] The Landlord's next argument is that she was denied the opportunity to give evidence about the extenuating circumstances. She also alleges in her reply affidavit that the Arbitrator did not allow her or her agent to call any witnesses "including but not limited to [the] daughter's friends". She says these witnesses "would have testified that my daughter lived in the suite."

[53] I am not persuaded by these arguments or the Landlord's evidence.

[54] I find the Landlord's assertion that she was denied the opportunity to call material witnesses is not credible. The Arbitrator states at the outset of his reasons that all parties "were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses." This may be standard language that RTB arbitrators include in their decisions but the Landlord has not presented compelling evidence to disprove the accuracy of this statement.

[55] For example, there is nothing in the record to suggest the daughter's friends or any other witnesses were sitting on the phone line waiting to testify during the hearing. If that had been the case, I would have expected affidavit evidence directly from those witnesses confirming that they were ready to testify but were not called or permitted to speak. The absence of evidence from these alleged witnesses undermines the Landlord's assertion that she was denied the right to call them.

[56] I also find it significant that there is no evidence on this judicial review from the Landlord's agent who represented her at the hearing. If the hearing was as grossly unfair as the Landlord suggests, I would have thought the agent would provide an affidavit confirming this. The agent is not a lawyer so concerns about an officer of the court putting their credibility in issue is not a factor. However, there is no such evidence on this application.

[57] I also observe that even though the hearing before the Arbitrator was by telephone, there is no suggestion that the daughter – perhaps the most material

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witness – was going to testify. Nor is there any evidence from the daughter on this judicial review.

[58] This lack of evidence to support the Landlord's assertions in her affidavit undermines the credibility of those assertions and, more generally, the Landlord's evidence of what transpired at the hearing. I frankly do not believe that the Landlord was denied the opportunity to call material witnesses and this assertion, made in sworn affidavit, taints the credibility of the balance of the Landlord's evidence.

[59] For the same reason, I also reject the Landlord's argument that the main issue at the hearing was the alleged extenuating circumstances. The Arbitrator's Decision indicates that the central issue – perhaps the only issue – was whether the daughter had moved in to the unit in April 2020. The Arbitrator states in his decision that "[t]he landlord stated her daughter moved to the rental unit on April 01, 2020 and occupied it for six months." The Landlord says this statement is simply wrong. However, in view of my findings as to the credibility of the Landlord's assertions of what transpired at the hearing, I do not accept that the Arbitrator misstated what the Landlord (or her agent) said at the hearing.

[60] For these reasons, I find the Landlord's account of what occurred at the hearing unpersuasive and her evidence does not satisfy me that the Arbitrator denied her the opportunity to call witnesses or other evidence or to make submissions on extenuating circumstances.

[61] I dismiss this second ground for judicial review.

3. Are the Arbitrator's reasons in adequate?

[62] The final ground for review is whether the Arbitrator's reasons are inadequate (and thus patently unreasonable) for failing to address the issue of extenuating circumstances.

[63] The Arbitrator's reasons are silent on the issue of extenuating circumstances. Had that been a significant issue at the hearing, I might have found the reasons to be inadequate. However, as I have just explained, I am not persuaded that the

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Arbitrator has misstated the central issue before him. On my read of the decision and the record as a whole, I am satisfied that the Landlord's primary position was that the daughter had moved into the unit and occupied it for some time between April 2 and at least September 2020 if not later.

[64] I have found the Landlord's affidavit evidence lacking credibility as to what was argued or sought to be argued at the hearing. I am not persuaded that extenuating circumstances were advanced as a serious issue. Consequently, I am not persuaded the Arbitrator's decision was patently unreasonable for failing to address that issue in the reasons.

[65] However, even if extenuating circumstances had been asserted as part of the Landlord's response, I find the result would not have been any different. Thus, even if the reasons inadequately address the extenuating circumstances issue, I would nevertheless decline to set the decision aside.

[66] It is certainly plausible that the daughter did not move into the rental unit on April 2, 2020 because of COVID travel restrictions. However, she was able travel to Vancouver by June. Despite this, she returned to Toronto on September 10, 2020, almost three months before she received a job offer in that city and almost four months before she was to start that job. No explanation has been offered for her early departure from Vancouver. In fact, the Landlord asserts in her reply affidavit that the daughter returned to Toronto in September to start a new job but that is patently incorrect in the face of the Landlord's own documents. There is no evidence or even an assertion of another job offer before December 2, 2020.

[67] Extenuating circumstances must explain why the family member did not move into the rental unit within a reasonable time after the tenancy was ended ***and*** why the family member did not reside in the rental unit for a period of six months thereafter. The COVID 19 travel restrictions might help to explain the first point but not the second.

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[68] Thus, to the extent that extenuating circumstances were asserted and argued before the Arbitrator (and I am not persuaded that they were) I find the circumstances as asserted by the Landlord, having regard to her own collection of documents, would not have changed the result in any event.

[69] For these reasons I dismiss this third ground for judicial review.

D. Conclusion

[70] The Petition for judicial review is dismissed with costs to the Respondents at scale B.

"Kirchner J."

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