IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kohli v. Van Essen,*
2023 BCSC 1710

Date: 20231006
Docket: S247764
Registry: New Westminster

Between:

Krishan Lal Kohli and Prem Kohli

Petitioners

And

Shemuel Van Essen and Margaret Hurst

Respondents

On judicial review from: An order of the Residential Tenancy Branch, dated January 4, 2023 (RTB File No. 310068330).

Before: The Honourable Mr. Justice Gibb-Carsley

Reasons for Judgment

The Petitioners, appearing in person:	K.L. Kohli
The Respondents, appearing in person:	S. Van Essen M. Hurst
Place and Date of Hearing:	New Westminster, B.C. September 15, 2023
Place and Date of Judgment:	New Westminster, B.C. October 6, 2023

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I. Introduction

[1] This is a petition brought by Krishan Lal Kohli and Prem Kohli for judicial review of a decision of a Residential Tenancy Branch ("RTB") arbitrator (the "Arbitrator") made January 4, 2023 (the "Decision"). The petitioners are spouses and were the landlords of two tenants, Samuel Van Essen and Margaret Hurst, the respondents to this judicial review.

[2] The main issue argued on this judicial review is whether the Arbitrator erred by concluding that the respondents provided Mr. Kohli with their forwarding address in an email on October 10, 2022 (the "Email") for the purpose of having a damage and pet deposit returned to them by Mr. Kohli. As will be described below, providing a forwarding address to a landlord is required as part of the process for the return of damage deposits. Mr. Kohli asserts that he did not receive the Email. He also argues that email is not a valid method to give or serve documents to him under the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*] unless he provided his email as an address for service, which he says he did not.

[3] Another issue raised by Mr. Kohli is that he asserts the Arbitrator erred by not ordering that the respondents pay for the cost of repairing damage to the rental unit that Mr. Kohli says was caused by the respondents.

[4] The respondents argue that they sent the Email. They also contend that they did not cause the damage as alleged by Mr. Kohli. As such, the respondents say the Arbitrator made no error.

[5] In my view, the issue before me in respect of the return of the deposits requires two considerations. First, I must determine whether the Arbitrator's factual conclusion that Mr. Kohli received the Email was patently unreasonable. Second, I must address whether, in the circumstances of this case, it was an error for the Arbitrator to determine that email was a proper method for the respondents to give Mr. Kohli their forwarding address. This will require an analysis of the *RTA* service requirements and how they were applied to the facts determined by the Arbitrator.

[6] I will begin with a brief description of the background facts of the tenancy and the events leading to the RTB proceeding. I will then review the RTB hearing and the Decision. Finally, I will turn to my analysis and determination.

II. Background Facts

[7] The following facts were before the Arbitrator and were again put before me on this judicial review.

A. The Tenancy

[8] The respondents began renting a property owned by Mr. and Mrs. Kohli (the "Rental Unit") on July 1, 2020. Immediately prior to moving in, the respondents completed a move-in inspection report with Mr. Kohli's son, Gaurav Kohli. They paid a security deposit of $600 and a pet damage deposit of $600 for a total of $1,200 (collectively, the "Deposit").

[9] The parties agree that the tenancy ended on September 30, 2021.

[10] The respondents started a move-out inspection with Mr. Kohli, but Mr. Van Essen stopped the process before it was completed because he said he wanted to do the inspection with Gaurav Kohli given he had done the move-in inspection report with Mr. Van Essen. The move-out inspection was never completed by Mr. Van Essen.

[11] Mr. Kohli claims he incurred $1,382.75 to repair damage to the Rental Unit that he says was caused by the respondents.

[12] The respondents assert they provided an email to Mr. Kohli on October 10, 2021 (defined above as the "Email") with an attached letter stating that the respondents wanted the Deposit returned. Mr. Kohli says he never received the Email and it was not a proper method of service for the respondents to provide their forwarding address for the return of the Deposit.

[13] Curiously, it appears that sometime before October 10, 2021, Mr. Kohli sent, via email, an electronic transfer to Mr. Van Essen for a return of the $600 pet

damage deposit. The evidence indicates that Mr. Van Essen misplaced the password to complete the electronic transfer and on October 28, 2021, requested Mr. Kohli to resend the password. Mr. Kohli did not respond. As such, the $600 pet damage deposit was not returned to the respondents.

[14] Given the Deposit was not returned to the respondents, they sent a letter dated March 18, 2022, by registered mail to Mr. Kohli demanding a return of the Deposit and providing their forwarding address.

[15] Upon receiving the March 18, 2022 letter demanding a return of the Deposit, Mr. Kohli filed for a hearing before the RTB to contest the return of the Deposit and to seek reimbursement for the damages he says the respondents caused to the Rental Unit. Mr. Kohli also sought reimbursement of his $100 RTB filing fee.

B. The Hearing and Decision

[16] A telephone hearing was held before the Arbitrator on December 5, 2022 (the "Hearing"). The evidence was presented by the parties electronically. In the Decision, the Arbitrator states that the procedure for the Hearing was explained to the parties and they were permitted to provide affirmed evidence. The Decision sets out that the Arbitrator provided an opportunity to the parties to present relevant evidence and make relevant submissions. Further, the Decision provides that the Arbitrator considered all the evidence provided but "will only refer to the evidence [the Arbitrator] find[s] relevant in this decision."

[17] The Arbitrator accepted that the respondents sent their forwarding address to Mr. Kohli on October 10, 2021 via email. The Arbitrator concluded:

> I accept based on the October 10, 2021 letter and email of the same date that the tenants sent their forwarding address in writing to the landlord October 10, 2021 by email. I find the landlord received the email because they acknowledged this. I find the evidence sufficient to show the October 10, 2021 letter was attached to the email. I find the landlord received the forwarding address October 13, 2021, considering section 44 of the *Regulations*.

[18] For context, and as is relevant to my analysis below, I note that s. 44 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 [*Regulations*] provides:

> 44 A document given or served by email in accordance with section 43, unless earlier received, is deemed to be received on the third day after it is emailed.

[19] The Arbitrator determined that given a finding that the respondents sent the Email to Mr. Kohli on October 10, 2021 that provided their forwarding address, Mr. Kohli was deemed to have received that information three days after it was emailed, being October 13, 2021.

[20] The Arbitrator reasoned that pursuant to s. 38 of the *RTA*, Mr. Kohli had 15 days from October 13, 2021 to repay the Deposits or file a claim with the RTB against them. As Mr. Kohli filed his application on April 4, 2022, it was well outside the 15-day deadline. Given this finding, the Arbitrator found Mr. Kohli failed to comply with s. 38(1) of the *RTA* and so ordered, pursuant to s. 38(6) of the *RTA*, that Mr. Kohli to pay the respondents $2,400 being double the amount of the Deposit.

[21] In the Decision, the Arbitrator did not provide the basis of the conclusion that email was a proper method to serve or give Mr. Kohli the respondents' forwarding address.

[22] The Arbitrator's conclusion that Mr. Kohli received the Email and attached letter was based on Mr. Kohli's apparent acknowledgement that he received the Email. I note that, while not referenced in the Decision, in the materials he submitted to the Arbitrator, Mr. Kohli provided his position regarding the Email:

> Tenant's request to return damage deposit by email of October 10, 2021 is not a valid request because we have not signed our TB 51 between us and more over tenant never provided the forwarding address until March 18, 2022.

[23] I will return to this in my analysis, but in my view, this statement made by Mr. Kohli to the RTB in his letter of November 14, 2022, could reasonably be interpreted as an acknowledgement that Mr. Kohli received the Email, which he now says he did not receive.

[24] In the materials before the Arbitrator, Mr. Kohli provided two emails he sent to Mr. Van Essen on October 10, 2021. Mr. Kohli sent these two emails to request that Mr. Van Essen complete the move-out inspection report. As such, the parties used email as a method to correspond with each other. Further, as set out above, Mr. Kohli attempted to return the $600 pet deposit through email by electronic transfer.

[25] I note that included in the Petition Record was a printout of the Email and the attachment the respondents say was sent to Mr. Kohli on October 10, 2021. While the paper copy of the document provided in the printed materials before me was of such poor quality that the date it was sent was illegible, I understand that during the Hearing, the Arbitrator had access to a digital copy of the Email and its attachment that was legible.

[26] In respect of Mr. Kohli's claim for compensation for the repair costs he says he was required to incur due to damage caused by the respondents, the Arbitrator awarded Mr. Kohli $300 of his $1,382.75 claim on the basis that Mr. Kohli had not sufficiently proved with specificity the amount of the claim. The Arbitrator also found that given the Rental Unit was three years old by the time the respondents moved out, there would also be some expected damage to the Rental Unit.

[27] The Arbitrator found that Mr. Kohli experienced some success at the Hearing and so awarded him the return of his $100 filing fee. In total, the Arbitrator ordered that Mr. Kohli pay the respondents $2,000, being the $2,400 double Deposit amount less $300 in repair costs and the $100 RTB filing fee.

[28] On January 11, 2023, the petitioners sought a review consideration of the Decision through the RTB. On January 12, 2023, a different arbitrator than the initial arbitrator determined that the new evidence Mr. Kohli sought to have the RTB consider was an attempt by him to re-argue the matter that was before the initial Arbitrator at the Hearing. The "new" evidence was determined to have been available to Mr. Kohli at the time of the original Hearing, but not relied upon. The arbitrator at the review consideration hearing determined that "…the failure of the applicant to provide documentary evidence to support their claim at the original

hearing is not a ground for review." Accordingly, the application for review consideration was dismissed and the Decision of January 4, 2023 was confirmed.

III. Legal Principles

[29] It is settled law that a decision of the RTB on questions of fact are to be given deference by the reviewing court. The court should only set aside findings of fact or law if they are patently unreasonable.

[30] Section 84.1 of the *RTA* provides that RTB decisions are protected by a privative clause:

> 84.1 (1) The director has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding or in a review under Division 2 of this Part and to make any order permitted to be made.
>
> (2) A decision or order of the director on a matter in respect of which the director has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

[31] Section 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*] applies to tribunals, like the RTB, that are protected by a privative clause. Section 58(1) provides that such tribunals must be considered expert in relation to all matters within their exclusive jurisdiction. Subsection (2) clarifies that an expert tribunal's findings of fact or law, or an exercise of their discretion, must not be interfered with unless patently unreasonable.

[32] Section 58(3) of the *ATA* only defines the standard of patent unreasonableness in relation to exercises of an expert tribunal's discretion, and not in relation to their findings of fact or law. However, it is well-settled that patent unreasonableness calls for a high degree of deference to both the discretionary and non-discretionary decisions of an administrative decision-maker: e.g., *Pacific Newspaper Group Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2014 BCCA 496 at paras. 39–44, leave to appeal to SCC ref'd, 36305 (29 October 2015).

[33] Courts have variously described a decision as patently unreasonable only if it is "openly, clearly, evidently unreasonable", if it is "so flawed that no amount of curial deference can justify letting it stand", if on its face it is unsupported by the evidence, or if it "almost borders on the absurd": see *Campbell v. The Bloom Group*, 2023 BCCA 84 at para. 13 and *Kong v. Lee*, 2021 BCSC 606 at paras. 58–60.

[34] In respect of the adequacy of reasons of the decision-maker, the standard of patent unreasonableness also applies, "which involves an assessment of the justification, transparency and intelligibility of the decision-making process": *Hollyburn Properties Limited v. Staehli*, 2022 BCSC 28 at para. 25; see also *Shuster v. Prompton Real Estate Services Inc.*, 2023 BCSC 1605 at paras. 20–21. The reasons must provide sufficient detail to allow a reviewing court the ability to understand how and why the decision was made: *Ganitano v. Yeung*, 2016 BCSC 2227 at para. 24.

[35] With these legal principles in mind I now turn to my analysis and determination.

IV. Analysis and Determination

[36] The Arbitrator found as fact that the Email provided valid notice to Mr. Kohli of the respondents' forwarding address. This is clear from the Arbitrator's conclusion set out above that, "I find the landlord received the email because they acknowledged this."

[37] Also, as set out above, Mr. Kohli in his materials presented to the Arbitrator stated that the Email "was not a valid request" because it was sent by email. I accept that, at the Hearing, Mr. Kohli's statement provides some acknowledged that he received the Email from Mr. Van Essen, but disagreed that it provided proper notice to him of Mr. Van Essen's forwarding address. I accept it is possible there was a miscommunication between Mr. Kohli and the Arbitrator on Mr. Kohli's admission, but I also find that the Arbitrator considered a number of facts when concluding that the Email was received by Mr. Kohli.

[38] Mr. Kohli contends he did not receive the Email. At the judicial review, he adduced what he says is an email log that purports to show his email activity on October 10, 2021. He asserts that the email activity log demonstrates he did not receive the Email. On the record before me, it appears that these materials were not put before the Arbitrator. As such, although there was no application to do so, Mr. Kohli is seeking to adduce new evidence on the judicial review.

[39] Evidence on an application for judicial review is generally "confined to the record before the decision maker": *Beaudoin v. British Columbia*, 2021 BCSC 512 at para. 80. If evidence "could or should have been before the tribunal, but which was not in fact before it," then that evidence is "generally not admitted in judicial review proceedings": *Sobeys West Inc. v. College of Pharmacists of British Columbia*, 2016 BCCA 41 at para. 52 (emphasis in original); see also *R. v. Palmer* (1979), [1980] 1 S.C.R. 759 at 775, 1979 CanLII 8. There are limited exceptions where new evidence may be adduced for providing general background information, bringing procedural defects to the court's attention that cannot be found in the evidentiary record, or to identify or reconstruct the record that was before the decision-maker, including materials which demonstrate a complete absence of evidence concerning a particular finding: *Dane Developments Ltd. v. British Columbia (Forests, Lands and Natural Resources Operations)*, 2015 BCSC 1663 at para. 46.

[40] There is no evidence before me that evidence of Mr. Kohli's email inbox activity was unavailable to him at the time of the Hearing. Mr. Kohli could have put that evidence before the Arbitrator, but did not. Further, as described above, in other materials Mr. Kohli put before the Arbitrator he appears to have acknowledged receipt of the Email, but argued that it was not proper service.

[41] I find that the Arbitrator's finding of fact that Mr. Kohli received the Email is not patently unreasonable on the evidence presented at the Hearing. As such, no intervention is warranted on this finding. However, in my view, that is not the end of the analysis because Mr. Kohli asserts that, in the circumstances of this case, the Email was not a proper method for the respondents to provide him with their forwarding address pursuant to the *RTA* and the associated *Regulations*.

[42] I will now turn to that issue.

A. Return of Security Deposits Under the *RTA*

[43] The requirements for the return of a security deposit are set out in ss. 38, 39, 88, and 71 of the *RTA*. Section 38(1) provides:

> 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> [Emphasis added.]

[44] Section 38 does not specify that a tenant must provide the forwarding address in any particular manner. Instead, it provides that the landlord must "receive" the tenant's forwarding address in writing. However, the *RTA* contains provisions establishing the manner that documents are to be served or given. Section 88 of the *RTA* provides that documents may be served by the following methods:

> 88 All documents, other than those referred to in section 89, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
>
> (a) by leaving a copy with the person;
>
> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
>
> (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
>
> (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

> (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
>
> (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
>
> (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
>
> (i) as ordered by the director under section 71 (1); and
>
> (j) by any other means of service provided for in the regulations.

[45] While s. 88 does not provide that a document may be given or served by email, s. 88(j) states that documents may be given or served by other means of service provided in the *Regulations*. Section 43 of the *Regulations* provides that email may be used to give or serve documents in certain circumstances:

> 43 (1) For the purposes of section 88 (j) of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.
>
> [Emphasis added.]

[46] As such, email can be a proper method to serve or give documents, but only if the person to be served has provided his or her email address for that purpose. Mr. Kohli argues that he never provided his email address as a method of service and as such, the Email providing the respondents' forwarding address was not properly given to him.

[47] Sections 71(2)(b)–(c) of the *RTA* allow for the director to order that a document has either "been sufficiently served for the purposes of [the *RTA*]" or "that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of [the *RTA*]."

[48] I acknowledge that there was email correspondence between the respondents and Mr. Kohli. Indeed, it appeared to be their preferred method of communication after the tenancy ended. However, there was no evidence put before me, or the Arbitrator, that Mr. Kohli specifically provided his email address to the respondents as an address for service.

[49] As set out above, in determining when Mr. Kohli received the Email, the Arbitrator concluded, "I find the landlord received the forwarding address October 13, 2021, considering section 44 of the *Regulations*." To reiterate, s. 44 of the *Regulations* provides that a document given or served by email in accordance with s. 43 is deemed to be received on the third day after it is emailed. The Arbitrator concluded that Mr. Kohli received the email on October 13, 2021, three days after it was sent by the respondents.

[50] However, the Arbitrator does not reference s. 43 of the *Regulations* which requires the Arbitrator to find that email was a proper method of serving or giving Mr. Kohli the respondents' forwarding address. Nor does the Arbitrator make any factual findings that Mr. Kohli provided his email address for the purpose of being given documents. Further, the Decision does not provide potential alternate explanations for why the Arbitrator considered email was a proper method for the respondents to provide their forwarding address, such as through the Arbitrator's jurisdiction under s. 71(2) of the *RTA* to find that email was a proper method for service.

[51] With great respect, in my view, the Arbitrator erred by failing to grapple with the issue of why email was considered a proper means for the respondents to give or serve their forwarding address to Mr. Kohli. The Decision contains no reference to this issue or the rationale for the Arbitrator's conclusion.

[52] In *Ganitano*, Justice Griffin (as she then was), set out the importance of a decision maker providing adequate reasons:

> [21] The requirement to give written reasons is a facet of the duty of fairness. Analytically, an investigation into the adequacy of reasons may bleed into substantive review. Where reasons are inadequate, it may be difficult for a reviewing court to ascertain a delegate's justification for an outcome; however, where reasons are adequate an arbitral outcome may nevertheless be unreasonable or patently unreasonable.
>
> [22] Reasons allow individuals to know why, how, and on what evidence a decision-maker reaches his or her decision; see D.J.M. Brown & J.M. Evans, *Judicial Review of Administrative Action in Canada*, loose-leaf (Toronto: Canvasback, updated 2014) at c. 12 at 70.
>
> [23] In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, a union sought judicial review on the basis that the arbitrator provided inadequate reasons for the arbitral award. The Court at para. 16 held that "a decision-maker is not required to

> make an explicit finding on each constituent element, however subordinate, leading to its final conclusion". Reasons are adequate, the Court held, if a reviewing court can ascertain the rationale of the decision.

[53] Justice Griffin also recognized that in residential tenancy disputes the standard applied to the adequacy of reasons is lowered because the governing regime is relatively straightforward: para. 24. However, I would characterize the service requirements under the *RTA* as less than straightforward. There are many methods of service available for landlords and tenants which vary depending on the type of document or the nature of process to which the documents relate. Further, as is evident in the case at bar, the service requirements may involve reference to both the *RTA* and its *Regulations*.

[54] While it may be that the Arbitrator had a reasonable basis for considering that email was a proper method for the respondents to give Mr. Kohli their forwarding address, the Decision does not explain why. I find that the Decision is deficient because it does not provide, "why, how, and on what evidence" the Arbitrator reached the conclusion: *Ganitano* at para. 22. Respectfully, I find this component of the Decision patently unreasonable.

[55] Given the foregoing, I remit the Decision regarding whether the Email was properly given or served on Mr. Kohli in accordance with the *RTA* and *Regulations* to the Arbitrator for reconsideration and to determine what, if any, consequences flow from the result of that reconsideration.

[56] I will now turn to the errors Mr. Kohli alleges were made by the Arbitrator in denying him reimbursement of the repair costs he says he incurred repairing the Rental Unit.

B. Alleged Errors Regarding Repair Costs

[57] At a starting point, I recognize that the focus of the judicial review before me was on Mr. Kohli's argument regarding the Email. However, his Petition Record also contained materials supporting his argument that the Arbitrator erred by denying the expenses he claimed he incurred to repair damages he says the respondents caused to the Rental Unit.

[58] The Arbitrator awarded Mr. Kohli only $100 related to the countertop replacement on the following basis:

> … Cannot tell from the landlords invoice how much it cost replace the section of countertop because the person [who] created the invoice did not separate out amounts for different issues. I do not accept the landlords are entitled to the full cost of replacing the countertop because it is clear there was some wear and tear on it already. Further, the countertop was more than three years old according to the landlord and this would reduce the amount awarded to the landlords.

[59] The Arbitrator also considered the damage Mr. Kohli claimed was caused by the respondents with respect to the following:

a) damage to the cooking hood;

b) damage to the exhaust duct;

c) damage to the bath and kitchen faucets;

d) damage window blinds; and

e) costs of cleaning the Rental Unit.

[60] The Arbitrator limited Mr. Kohli's award to a total of $300 (including the damage to the countertop) in respect of damage to certain items on the basis that there was no itemized list provided by Mr. Kohli as to the specific costs of each item. Further, the Arbitrator recognized that the items in the Rental Unit were more than three years old at the end of the tenancy and so the amount should be reduced. The Arbitrator properly recognized that pursuant to s. 6.6 of the *Residential Tenancy Branch Rules of Procedure*, Mr. Kohli, as the applicant, has the onus to prove his claim for compensation for damage to the Rental Unit and that he must do so on a balance of probabilities.

[61] In my view, the Arbitrator carefully considered the evidence and made a conclusion based on the evidence and submissions of the parties. The Arbitrator determined that Mr. Kohli had failed make his claim with sufficient specificity and in a manner that reflected the previous wear and tear on the Rental Unit.

[62] The Arbitrator's decision regarding Mr. Kohli's claim for reimbursement for expenses is not patently unreasonable and cannot be considered "openly, clearly,

evidently unreasonable". No intervention is warranted and I dismiss this aspect of Mr. Kohli's petition.

V. Conclusion

[63] In summary, I find that the Arbitrator's factual determination that Mr. Kohli received the Email was not patently unreasonable based on the evidence before the Arbitrator. It is not for me to reweigh the evidence or make a fresh determination on the facts relating to whether the Email was sent by the respondents on October 10, 2021.

[64] I also find that the Arbitrator's decision regarding Mr. Kohli's claims for reimbursement of repair expenses was not patently unreasonable. As such, I find no basis to disturb that aspect of the Decision.

[65] However, I conclude that the Arbitrator's reasons regarding whether the Email was given or served on Mr. Kohli in accordance with the *RTA* and *Regulations* are inadequate and patently unreasonable. As such, I stay the order of the RTB made January 4, 2023, and remit the matter back to the RTB for a reconsideration of whether the Email sent by the respondents to Mr. Kohli on October 10, 2021, was properly given or served to Mr. Kohli and what, if any, consequences arise from that determination.

[66] I will leave it to the RTB to determine the procedure for the reconsideration including whether an additional hearing is required on the issue for reconsideration or if the determination can be made on the existing record.

VI. Costs

[67] In my view, there has been mixed success in this petition. Accordingly, I order that the parties shall bear their own costs.

"Gibb-Carsley J."