IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *IMH 415 & 435 Michigan Apartments Ltd. v. Banman,* 2023 BCSC 448

Date: 20230323
Docket: S223162
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

IMH 415 & 435 Michigan Apartments Ltd. c/o Devon Properties Ltd.
Petitioner

And

Paul Banman
Respondent

Before: The Honourable Mr. Justice Coval

On judicial review from: A decision of the Residential Tenancy Branch, dated February 16, 2022 (File No. 110025175).

Reasons for Judgment

Counsel for the Petitioner:	R. Hans
Counsel for the Respondent:	M. Rozee
Place and Date of Hearing:	Vancouver, B.C. January 25, 2023
Place and Date of Judgment:	Vancouver, B.C. March 23, 2023

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Introduction

[1] The petitioner ("Landlord") seeks judicial review of an award obtained by its tenant, Mr. Banman, in an arbitration under the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*].

[2] The arbitrator awarded Mr. Banman $30,721.75 for rental abatement and damages due to the Landlord's lengthy and extensive renovation of the apartment building in issue.

[3] The Landlord challenges two components of the award:

(a) $9,242.62 rent abatement, for loss of quiet enjoyment from jackhammering and other noise; and

(b) $10,000 aggravated damages, for ongoing health concerns from asbestos exposure during construction.

[4] For the reasons that follow, the Landlord failed to demonstrate these awards were patently unreasonable or obtained from a breach of natural justice. The petition is therefore dismissed.

The Parties and the Tenancy

[5] The Landlord's apartment building is 13 storeys, with 122 units, at 435 Michigan Street, Victoria, British Columbia ("Building").

[6] Mr. Banman has resided in the Building since July 1, 2010. Under a periodic tenancy, he rents a one-bedroom apartment on the sixth floor. At the time of the arbitration, his rent was approximately $1,300/month.

[7] The Landlord acquired the Building in November 2015. It performed renovations from December 2015 to November of 2019, except for a break in the work from December 2016 to September 2017.

[8] The renovations consisted of repairs and capital work to many of the common areas (corridors, lobby and entrance), unit renovations, security and elevator upgrades, painting (building envelope, balconies, windows and doors), and

installation of energy-efficient systems and mechanical equipment ("Project"). It was performed in conjunction with similar work to other residential towers on an adjacent property also owned by the Landlord.

The Hearing

[9] On December 18, 2020, Mr. Banman filed an application for dispute resolution with the Residential Tenancy Branch ("RTB"), seeking rent abatement and damages. He relied on *RTA* ss. 27 (access to facilities), 28 (quiet enjoyment), and 32 (maintenance and repair).

[10] The hearing was conducted by conference-call over three days, April 29, August 30, and December 17, 2021. The parties submitted hundreds of pages of evidence and submissions. Mr. Banman represented himself. The Landlord was represented by its lawyer throughout.

[11] Mr. Banman also assisted many of his neighbours in separate RTB proceedings, or negotiations, relating to the Project.

The Decision

[12] On February 16, 2022, the arbitrator issued her 55-page decision ("Decision").

[13] After addressing preliminary procedural matters, the Decision describes the parties' evidence and submissions in detail. It divides Mr. Banman's claims into three parts: rent abatement, reimbursement for professional cleaning expenses, and aggravated damages.

[14] The arbitrator points out that, as the party seeking compensation, Mr. Banman must prove, on a balance of probabilities (p. 242)[1]:

1. that the Landlord violated the *RTA*, its regulations, or a tenancy agreement;

[1] The page numbers from the Decision refer to the pagination of the Chambers Record.

2. that the violation caused him to incur damages or loss as a result of the violation;

3. the value of the loss; and

4. that he did what was reasonable to minimize the damage or loss.

[15] Mr. Banman sought (in round numbers) $35,000, the main components of which were $19,500 for rent abatement and $15,000 for aggravated damages. In the result, he was awarded $30,600. The Landlord does not challenge the awards for failure to maintain the premises in reasonable condition, loss of balcony use, or for clean-up, totalling approximately $11,500.

The Evidence

Mr. Banman

[16] The arbitrator's summary of Mr. Banman's position included the following (p. 208):

> - The renovations and failure to maintain were extensive and had a significant impact on quality of life within the building for me and my neighbors.
> - Through wilful negligence or intent, the renovations were as maximally disturbing as possible, and may have dire implications on long-term health.
> - The Landlord failed in their responsibility to mitigate and cannot demonstrate any meaningful effort made to minimize discomfort or prioritize tenant well-being.

[17] Mr. Banman's extensive evidence included:

- photographs and videos of the disturbances caused by the Project;
- media articles;
- affidavits from three individuals who worked on the Project;
- affidavits from other tenants;
- affidavit from a certified industrial hygienist and former occupational hygiene officer with WorkSafeBC ("WSBC");
- prior RTB decisions;

- WSBC orders; and
- reports from the Vancouver Island Health Authority ("VIHA") about the asbestos assessment and clean-up at the Project.

[18] Regarding loss of quiet enjoyment due to noise, Mr. Banman's evidence was that the noise from jackhammering, drilling, table-saws, etc., was "horrendous" and often continued until 8:00 p.m., six days a week.

[19] He provided a detailed, chronological table, describing the Landlord's various alleged breaches of quiet enjoyment, including by noise disturbance, throughout the four years of construction, and submissions about the appropriate rent abatement for each stage of the Project (pp. 212-215).

[20] The arbitrator summarized the disruptions Mr. Banman experienced as follows (p. 222):

- Installation of cedar planks over the front entrance;
- Tile work floor in lobby;
- Drywalling - near mail boxes;
- Failure of new sliding doors - popped out in the wind more than once;
- Demolition of plywood entrance;
- Construction of new entrance;
- Construction of concrete post by entrance;
- Wind-block wall from entrance - construction of;
- Installation of black metal siding - extensive drilling - very loud;
- Drilling for insulation of intercom overhang;
- Loud table saws;
- Building wide toilet replacement;
- Installation of cameras in common space;
- Reduced elevator access;
- Cutting down of large old trees in front of building;
- Jackhammering - front stone retaining wall;
- Framing, pouring new front concrete for retaining wall and benches – and all the same at neighbouring tower across from the pool;

- Anytime you're dealing with jackhammering – loud from neighbouring and our towers, too;
- Ongoing renovations to suites - hard to tell if above or below you; and
- Cutting door frames for new fobs.

[21] Regarding the hazards from asbestos, Mr. Banman's evidence was that, in 2016, it was impossible for tenants and workers to avoid dangerous exposure.

[22] He deposed that the first WSBC stop work order, in January 2016, occurred because tenants reported workers carting asbestos materials through the hallways in open containers. He described the Building as loaded with contaminated airborne dust while it was wrapped in a construction “shroud” from July to December 2016. After a fourth stop work order, on December 14, 2016, the asbestos levels were so high that, on January 24, 2107, the Landlord was forced to evacuate all tenants for six weeks of remediation and cleaning of the Building (pp. 234-235).

[23] The arbitrator quoted Mr. Banman’s evidence of ongoing distress from this exposure:

> I now lay in bed at night considering the possibility that I may… have my quality of life rapidly decline and quickly end… There is no doubt my lungs are loaded with asbestos fibres and silica crystals, it’s not possible to have occupied this building in 2016 and avoided exposure, that is now clear…. After exposure to asbestos or silica there is never an “all clear” diagnosis. (pp. 234-35)
>
> …
>
> I will now forever suffer a lingering fear that one day, prematurely, my lung health will rapidly decline as a result of the asbestos, lead and silica I’ve been exposed to. (p. 241)

[24] Mr. Banman retained Ray Merriman, a certified industrial hygienist, to provide expert evidence about the severity of asbestos exposure in the Building. As a former WSBC officer, Mr. Merriman was involved in WSBC’s inspections of the Building after the December 2016 stop work order. He also consulted with VIHA on the testing and cleaning requirements for re-occupancy after the Building’s remediation.

[25] Mr. Merriman tested debris samples from numerous suites and common areas of the Building. In his opinion, the number of asbestos structures in some samples were "extremely high". His evidence about the risk of disease was:

> For an individual tenant, that has been exposed to hazardous materials such as asbestos, respirable crystalline silica and/or lead, their relative risk of developing a disease due to the exposure is 50:50 with the disease developing or not.
>
> Diseases that can develop due to exposure to construction dusts include lung cancer, asthma, Chronic Obstructive Pulmonary Disease (COPD) and silicosis as well as the diseases associated with exposure to asbestos.
>
> [Emphasis in the Decision.]

[26] The arbitrator summarized Mr. Merriman's review of the WSBC inspections and orders, relating to failure of appropriate precautions for work involving hazardous materials, including the stop work orders which Mr. Merriman said were unusual. She quoted Mr. Merriman's statement that the contractors performing asbestos abatement activities seemed inexperienced and "This resulted in… an absence of qualified persons to effectively manage the hazardous materials…" (pp. 240-41).

[27] Her summary of the WSBC orders included the following:

a. Jan 13, 2016
   i. Renovation work without a site inspection report for hazardous materials.
   ii. Contractor was relying on a report for other suites and was deemed to be inadequate as the sites that were assessed were not properly assessed.

b. Jan 13, 2016
   i. Significant deficiencies with the site inspection for hazardous materials report that was prepared.
   ii. Assessment not conducted in accordance with procedures acceptable to WSBC.

…

d. Apr 6, 2016
   i. Vacated suites undergoing renovations were posted with Clearance letters from an asbestos abatement contractor yet disturbed materials suspected to contain asbestos were evident in the suites.

ii. Order was for failure to implement an effective exposure control plan for asbestos.

e. May 6, 2016

…

ii. "Based upon the violation(s) cited in this Inspection Report, the Board has reasonable grounds to believe there is a high risk of serious injury, serious illness or death to a worker at this workplace."

…

g. July 5, 2016

…

ii. The pressure differentials exerted on the shrink wrapped scaffolding containment would render the air handling equipment ineffective in maintaining a reduced pressure to ensure airborne contaminants do not escape from the contained area.

h. July 13, 2016

i. "A partially demolished balcony wall was left standing and not adequately braced ... a substantial (approx. 10' x 3' x 2.75") concrete component fell approximately 60 feet to the ground below."

i. July 18, 2016

i. STOP WORK order issued to prime contractor due to deficiencies with asbestos abatement contractor's containment area within the enclosed scaffolding.

j. July 18, 2016

i. STOP WORK order issued to exterior asbestos abatement contractor due to use of an uncertified HEPA air handling system which was redirecting potentially contaminated air into a shrink wrapped enclosed space where unprotected workers were located and no monitoring was being conducted.

k. July 19, 2016

i. Order issued for failure to conduct air monitoring of high risk asbestos abatement work in accordance with procedures considered acceptable to WSBC.

ii. Location. frequency and duration samples were to be collected were not being conducted as required.

…

m. Sep 26, 2016

i. "Start Date as listed would indicate work proceeded before WorkSafeBC was notified of the work activity."

n. Dec. 14, 2016

i. STOP WORK order issued for failure to ensure appropriate safe work procedures are used when asbestos is disturbed and failure to ensure that a qualified person confirms in writing that asbestos containing materials have been safely contained or removed.

…

q. Jan 24, 2017

i. Assessment of dust in suites 303,403,406, 505, 1206 and common areas. Identified hazardous materials include Chrysotile Asbestos, Actinolite Asbestos, and Tremolite Asbestos.

…

[Emphasis in the Decision.]

The Landlord

[28] The arbitrator summarized the Landlord's evidence and arguments at pp. 210, 218-19, and 223-24 of the Decision.

[29] The Landlord's evidence described the Building's construction in the 1960s, and its need for extensive repairs. Its evidence said the work was carried out by recommended contractors, all of whom were expected to abide by applicable laws and legislation, including the *RTA* (pp. 210, 218).

[30] The Landlord argued that its work was to be held to a reasonable standard, not perfection, and it was entitled to perform the repairs without vacating the tenants. This necessarily included disruptive work such as jackhammering and drilling, and so some disturbance and inconvenience were inevitable but minimized as much is possible (pp. 218-219).

[31] Regarding noise disruption, the Landlord's evidence from its building manager was that exterior renovations and jackhammering occurred during permissible hours and pursuant to applicable bylaws. The manager's evidence was that "she did not receive numerous complaints from residences" and that work necessitating excessive noise was generally performed between 8:00 a.m. and 3:30 p.m. (p. 225).

[32] In his reply evidence, Mr. Merriman disputed this, saying that video evidence and work schedule notices indicated jackhammering continuing beyond 3:30 p.m. (p. 226).

[33] Regarding asbestos, the Landlord submitted two letters obtained for re-occupancy of the premises after the six-week evacuation. The first letter, March 7, 2017, from a medical health officer with VIHA, advised that testing found no elevated chance of exposure, though it could not be determined whether this was representative of all suites or at other times in the past. The second letter, March 8, 2017, from an environmental consultant, confirmed completion of the clean-up and testing and concluded that "the asbestos dust has been effectively cleaned and the building is safe for occupancy." (pp. 219-220).

[34] The Landlord argued that Mr. Merriman's report was inconsistent with the findings of the VIHA and WSBC and offered only probabilities and speculation (p. 228). The arbitrator quoted the following from the Landlord's submissions:

> [Mr. Merriman] concludes that there is a risk – of course there is a risk – it was present, but small. [Mr. Merriman] concedes that it was construction workers who were at the most risk, rather than tenants, themselves.
>
> …
>
> Due to the dose/response relationship, relatively short exposure duration (compared to working situations) and anticipated fibre levels it is unlikely, but not impossible, tenants will develop lung cancer due to this event. (p. 228)

Standard of Review

[35] On judicial review, an RTA arbitrator's decision, findings of fact or law, or exercise of discretion may be interfered with only if "patently unreasonable" (*Campbell v. The Bloom Group*, 2023 BCCA 84).[2]

[2] This is based on s. 84.1 of the *RTA* and s. 58(2)(a) of the *Administrative Tribunals Act,* S.B.C. 2004, c. 45.

[36] To be patently unreasonable, a decision must be "clearly irrational", "evidently not in accordance with reason", or "so flawed that no amount of curial deference can justify letting it stand" (*Campbell*, paras. 12-13).

[37] Regarding procedural fairness, s. 58(2)(b) of the *Administrative Tribunals Act* says all "questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly". (See also *Campbell*, para.14.)

Was the Award for Renovation Noise Patently Unreasonable?

Positions of the parties

[38] This claim was for loss of quiet enjoyment due to daily renovation noise plus extreme noise from jackhammering and concrete drilling.

[39] The Landlord submits this award was patently unreasonable because it failed to identify what findings were relied on regarding jackhammering and concrete drilling. It also submits the arbitrator erroneously placed the onus on the Landlord to demonstrate mitigation of the construction noise, whereas the onus to mitigate is actually on Mr. Banman who never raised his noise complaints during construction.

[40] The Landlord further argues that the arbitrator's clarification decision, July 6, 2022 ("Clarification Decision"), provided at the request of Mr. Banman, exceeded her powers under *RTA* s. 78(1). It says the decision "expands her reasoning for awarding compensation" for jackhammering noise, and demonstrates the insufficient findings in the Decision itself."

[41] Mr. Banman says the reasons are adequate. They explain the findings on which the award was made, all of which were readily available on the evidence. He says the Clarification Decision simply repeats, in a clearer manner, what was already apparent in the award.

Analysis

[42] After reviewing the parties' evidence and submissions, the arbitrator quoted RTB Policy Guideline 6 regarding the right to quiet enjoyment, including that a breach requires substantial interference -- meaning more than temporary discomfort or inconvenience -- and such an assessment must take account of a landlord's right and responsibility to maintain their premises. She also referred to s.65 of the *RTA,* authorizing deductions to rent otherwise payable if a landlord's work unreasonably disturbs the tenant's use and enjoyment of the property (pp. 242-43).

[43] The arbitrator accepted Mr. Banman's description of the 25 types of disturbance he suffered, many of which were noise-related, and the depiction on his extensive chart of the noise he endured at various intervals from October 2015 to November 21, 2019. She also accepted his evidence that what he endured during the Project negatively affected his enjoyment and use of the rental unit. Based on his evidence, she found that "the scale and length of the Project must have been overwhelming for the tenants" (pp. 246-47).

[44] The arbitrator found "limited if any evidence… demonstrating how the Landlord minimized or mitigated" the impact on the tenants while they remained in their units. She was critical of the Landlord replacing the two live-in building managers with one absent manager responsible for the large construction projects on a number of buildings all at the same time. She concluded that the evidence as a whole "shows a bizarre failure to recognize the impact of the Project on the tenants." She found the exception to this was the Landlord's generous treatment of the tenants during the six-week evacuation, during which the Landlord housed the tenants in a hotel, waived rent and provided breakfast, parking, and gift cards (pp. 244-47).

[45] Based on her findings about the extent and length of the noise disturbance and lack of the Landlord's efforts to reduce it, she accepted the analysis of the appropriate rent reduction in Mr. Banman's tables, for December 2015-October 2020, totalling $9,292.62, as "reasonable in the circumstances". She found

Mr. Banman's claims for reduced rent reasonable and supported by "sufficient evidence to meet the burden of proof on a balance of probabilities" (pp. 247, 253-255).

[46] I agree with Mr. Banman's counsel, Ms. Rozee, that in finding the Landlord did not reasonably minimize or mitigate the impact of its work on the tenants, she did not impose an illegitimate duty to mitigate. Rather, she was assessing the Landlord's position that it took reasonable steps to reduce the disturbance of its tenants, which is a relevant consideration in circumstances of a claim for loss of quiet enjoyment during renovation (RTB Policy Guideline 6).

[47] I disagree with the Landlord's argument that the arbitrator failed to set out her findings of fact about disruption from the jackhammering and drilling noise. On p. 245 of the Decision, the arbitrator says that she has combined the claims for loss of quiet enjoyment from frequent or daily construction noise with the jackhammering and drilling. She says she did so because Mr. Banman did so in his claim and she agreed they were related.

[48] In the analysis on p. 246, she accepts Mr. Banman's evidence about the 25 aspects of the Project that undermined his quiet enjoyment. These 25 items, listed on p. 222, included jackhammering and extensive drilling.

[49] Based on this evidence, she says "I find it more likely than not that the scale and length of the Project must have been overwhelming for the tenants of the residential property" (p. 246). She also accepts (p. 247) the reasonableness of his various claims in Mr. Banman's tables, which included detailed descriptions of the jackhammering and drilling noise at various stages of the Project.

[50] Regarding the Clarification Decision, *RTA* s. 78 allows for clarification of a decision or order, correction of typographic, arithmetic or similar errors, and correction of obvious errors or inadvertent omissions.

[51] I agree with Ms. Rozee that what the Clarification Decision seeks to clarify is already apparent in the Decision itself, and it therefore does not go beyond s. 78. As

I read the Clarification, it makes the point that the arbitrator's analysis on pp. 246-247 refers back to, and accepts, Mr. Banman's 25 categories of complaints on p. 222. In my view, that is already clear in the Decision itself (pp. 222, 246).

[52] Regarding the Landlord's argument that the arbitrator failed to deal with Mr. Banman's lack of mitigation, by not bringing the noise to the building manager's attention, the arbitrator quotes Mr. Merriman's response that:

> Her statement that she 'did not receive numerous complaints' is vague and out of context. What constitutes numerous? Were tenants able to contact her? Why would tenants contact her to complain about noise they had been informed would be occurring, what would they think she could do about it?

[53] The extent, length and timing of construction noise should have been manifestly obvious to the building manager throughout the renovation. In addition, the Decision refers to Mr. Banman's letter of January 11, 2018 to the building manager complaining of, among other things, "noise disturbance" and "renovation noise during quiet hours" (p. 218). In these circumstances, it cannot be said that no finding of failure to mitigate was patently unreasonable.

[54] In my view, the Landlord has not demonstrated anything approaching patent unreasonableness for this award. The award reasonably reflected the arbitrator's findings about Mr. Banman's loss of quiet enjoyment due to the lengthy, severe construction noise he endured. The findings she made, and conclusions reached therefrom, were all available to her on the evidence.

Was the Award for Aggravated Damages Patently Unreasonable?

Positions of the parties

[55] The Landlord argues the award of aggravated damages was patently unreasonable due to the absence of any finding of high-handed or oppressive conduct, or any medical evidence to support Mr. Banman's claim of significant upset and depression from his concerns about asbestos exposure. It also argues there is no clarity about how the amount of the award was arrived at.

[56] Mr. Banman submits that the arbitrator found high-handed conduct, sufficient for aggravated damages, in the Landlord's reckless disregard for the tenants' health and safety in handling of hazardous materials and evacuations. He says his own uncontradicted evidence of distress caused by his exposure was sufficient, and that the $10,000 award was appropriate in the circumstances. He points to the arbitrator's appropriate reliance on *Sahota v. Director of the Residential Tenancy Branch*, 2010 BCSC 750, as supporting his position on these issues.

Analysis

[57] The arbitrator referred to RTB Policy Guideline 16, which says "Aggravated damages are for intangible damage or loss… Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application".

[58] She quoted at length from *Sahota,* in which a judicial review challenge of a similar RTB award of aggravated damages was dismissed by this Court. On judicial review, the Court upheld aggravated damages for tenants forced to evacuate their rental premises due to flooding caused by the landlord's unskilled workers.

[59] In *Sahota,* the Court stated that aggravated damages were compensatory for intangible injuries, such as distress, which are sufficiently significant in depth or duration that they significantly influence the plaintiff's life and are measured by his or her suffering. The defendant's conduct need not be harsh, vindictive, reprehensible or malicious. Instead, it need only be high-handed, which includes "acting with reckless disregard to welfare of the tenants". The Court accepted the tenants' own evidence of distress and impact on their lives from the flood without the need for medical evidence in support (*Sahota,* paras. 48-56) .

[60] After quoting from *Sahota,* the arbitrator awarded aggravated damages to Mr. Banman based on her conclusion that the Landlord's mismanagement of the Project exposed the tenants to hazardous levels of asbestos and silica fibres, and

caused Mr. Banman serious, ongoing distress and anguish. This was based on the following findings:

> (a) The Landlord failed to properly protect tenants, through improper testing for hazardous materials, non-compliance with legislation and required safety protocols, and faulty containment and handling of the expulsion of asbestos dust from the worksite. This culminated in the six-week stop work order and evacuation of the Building from December 12, 2016 to March 9, 2017 (pp. 225, 251).
>
> (b) Before the evacuation, due to the Landlord's failures, tenants resided in the Building while asbestos dust and silica fibres were released during construction (pp. 251-52).
>
> (c) This exposure created a real and substantial risk of disease, based on the expert evidence of Mr. Merriman. The arbitrator preferred Mr. Merriman's evidence regarding levels of contamination to that of the Landlord. The Landlord's evidence measured contamination levels after the evacuation and remediation. She found that, before that, WSBC found multiple violations regarding the hazardous materials; the workers did not manage the shroud or expulsion of the asbestos dust properly; and the levels must have been extreme for the Landlord to evacuate all tenants for six weeks (pp. 249-50).
>
> (d) Based on the expert evidence of Mr. Merriman, damage to a person's lungs from such exposure is not typically evident until years afterwards (p. 252).
>
> (e) Mr. Banman, she said, was "left with an ongoing fear for his health, which I find will affect him in the long-term. Please note that I am saying that the fear will affect the Tenant and not that he will incur lung cancer or other health ailments, as a result. I find that this fear or concern is an injury to the Tenant caused as a direct result of the mishandling of the Landlord's Project." (p. 252).
>
> (f) In determining the appropriate amount of aggravated damages, the arbitrator considered "the seriousness of what the Tenant has experienced, including the length of his exposure to the asbestos dust and silica fibres. I also note the fear that will accompany the Tenant for the rest of his life. Further, I note the significance of the Landlord's safety violations, which affected so many tenants and workers" (p. 252).

[61] In my view, there is nothing unreasonable about the $10,000 aggravated damages award in these circumstances. The award was well supported by the

arbitrator's findings and conclusions summarized above, all of which were available to her on the evidence.

Was There a Breach of Natural Justice?

[62] The Landlord argues for a breach of natural justice due to: (a) Mr. Banman receiving more time to present his evidence and submissions; and (b) the Landlord being unable to cross-examine Mr. Merriman or call its property manager, Elizabeth Spratt, both of whom were absent on the third hearing day when the Landlord presented its case.

[63] In my view, the evidence does not support a finding of unfairness to the Landlord.

[64] First, the Decision indicates a fair approach to the parties' presentation of their evidence and submissions (p. 209):

> I assured the Parties that I had every intention of allowing them equal time to present their cases and to respond to each other's testimony. In order to save time, and with the agreement of the Parties, I allowed the Tenant to present his evidence fully, and then Counsel presented the Landlord's position fully without interruption of either. I advised the Parties to take good notes of questions that arose for them during the other's submissions in anticipation of their opportunity to respond.

[65] There is no evidence contradicting this description.

[66] Second, the Landlord was represented by counsel throughout and submitted an extensive record into evidence, the key aspects of which are referred to in the Decision, as summarized above.

[67] Third, in our hearing, the Landlord's counsel acknowledged that, when presenting its case on the third day of the RTB hearing, the Landlord did not raise any objection to proceeding without Ms. Spratt or Mr. Merriman, raise any concern about its allotted time, or request any extension of the hearing for any reason. The Landlord responded to Mr. Merriman's evidence in its own evidence and submissions. The Landlord also submitted extensive affidavit and documentary evidence from its building managers, as quoted in the Decision (pp. 219-226).There

is no evidence that the Landlord requested Mr. Merriman for cross-examination, or requested any adjournments due to his or Ms. Spratt's absence on the third hearing day.

[68] The Landlord provided no legal authority for a finding of breach of natural justice in these circumstances, and I see no basis for such a finding.

Conclusion

[69] The petition is dismissed.

[70] Subject to the parties wishing to make submissions regarding costs, Mr. Banman is awarded costs of the proceeding at Scale B.

"Coval J."