

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Andre v. Chau*,
2024 BCSC 796

Date: 20240509
Docket: S40195
Registry: Chilliwack

Between:

Eric Bernard Andre

Petitioner

And

Thanh Long Chau

Respondent

Before: The Honourable Justice E. McDonald

Oral Reasons for Judgment

The Petitioner, appearing in person:

E. Andre

Counsel for the Respondent:

M. Golden

Place and Date of Trial/Hearing:

Chilliwack, B.C.
May 7, 2024

Place and Date of Judgment:

Chilliwack, B.C.
May 9, 2024

Introduction

[1] This is a landlord-tenant dispute. In his amended petition filed on March 21, 2024, Mr. Andre seeks an order setting aside the adjudicator’s decision made on behalf of the Director of the Residential Tenancy Branch (“RTB”).

[2] The main issue concerns whether Mr. Andre received material served on him by registered mail. Mr. Andre’s position is that he was not properly served and as such, he was unable to participate or present the adjudicator with his evidence to dispute the landlord’s claims.

[3] For the reasons that follow, I am dismissing the amended petition.

Background

[4] Mr. Andre rented a property on acreage that is located at 9455 Gibson Road, Chilliwack, British Columbia (the “Property”). The landlord is Thanh Long Chau.

[5] On August 7, 2022, the parties entered into a residential tenancy agreement for the Property. The rent is \$7,000 per month. The tenancy agreement includes some greenhouses located on the Property.

[6] There is a dispute over the terms of the tenancy agreement. There is also a dispute over whether the copy of the tenancy agreement relied on by the landlord is a true copy of the document that the parties signed. However, the parties agree that the tenancy began in August 2022 when the tenancy agreement was signed.

[7] Mr. Andre alleges that after moving in, he learned the greenhouses were inoperable due to mechanical issues with the boilers. Mr. Andre alleges the landlord refused to fix the boilers, with the result that the greenhouses could not be used to grow vegetables.

[8] Mr. Andre alleges that he decided to, among other things, allow trailers to be stored on the Property “for farm workers and people who wanted to stay on the Property as a means to offset the financial burden of \$7,000 monthly rent considering the inability to utilize the greenhouses” for growing vegetables.

Mr. Andre alleges the landlord supported his plan to store trailers and allow others to stay on the Property.

[9] The present dispute is not the first dispute between the parties regarding the tenancy agreement. The earlier dispute was resolved in October 2023 when an adjudicator cancelled notices to end tenancy that the landlord issued in 2023.

[10] Mr. Andre alleges that on October 30 or 31, 2023, the landlord performed an inspection of the Property. During that inspection, Mr. Andre says he informed the landlord that he would be out of the country from November 23 to December 9, 2023.

[11] On December 1, 2023, the landlord signed a one-month notice to end tenancy (the “December One Month Notice”). The reasons in the December One Month Notice included that the tenant allowed an unreasonable number of occupants in the Property and put the Property at significant risk. The reasons also included that the tenant engaged in illegal activity that jeopardized the Property.

[12] In the details of the events set out in the December One Month Notice, it states, among other things, that the tenant has permitted or invited an unknown number of people to park and live in approximately 13 recreational vehicles and trailers on the Property in violation of zoning bylaws and provisions of the *Agricultural Land Commission Act*.

[13] The landlord’s counsel served the December One Month Notice on Mr. Andre by registered mail. The Canada Post tracking information attached as Ex. K to Mr. Andre’s affidavit made March 21, 2024 indicates the December One Month Notice was accepted at the post office on December 1, 2023. The tracking document also states that a notice card, and final notice card, were left at Mr. Andre’s address at the Property on December 4 and December 14, 2023, respectively.

[14] Mr. Andre was out of the country from November 23 to December 9, 2023. In his affidavit made March 21, 2024, Mr. Andre describes checking his mail at the Property after his return to the country as follows:

28. On or about December 9, 2023, I arrived at the Rental Property from my trip to Costa Rica. When I arrived at the Rental Property, I checked the mail. I did not receive a notice card.

29. I check the mail every other two days. I never received the final notice card on or about December 14, 2023. If I did, then I would have had two more days to file a notice of dispute [to] the December One Month Notice.

30. I did not receive the December One Month Notice and as such I missed the 10-day timeline in which to dispute the December One Month Notice.

[15] On January 3, 2024, the landlord applied to the RTB by direct request for an order for possession. The RTB issued a notice of dispute resolution proceeding – direct request in respect of the landlord’s application (the “Direct Request Application”). On January 9, 2024, Mr. Andre received the Direct Request Application by registered mail.

[16] On January 10, 2024, Mr. Andre submitted a notice of dispute resolution proceeding to the RTB. It states that Mr. Andre seeks to dispute a one-month notice to end tenancy for cause and he needs more time to dispute the one-month notice. Mr. Andre served the notice of dispute resolution proceeding on the landlord’s counsel.

[17] However, in the meantime on January 12, 2024, the arbitrator rendered a decision on the landlords’ direct request that granted an order for possession in respect of the December One Month Notice (the “January 12, 2024 Decision”). On January 15th, Mr. Andre received the January 12, 2024 Decision by email.

[18] In the January 12, 2024 Decision, the arbitrator finds:

- a) that Mr. Andre was served on January 4, 2024 by registered mail and it is deemed to have received the proceeding package on January 9, 2024, which is the fifth day after the registered mailing; and

- b) that the one month notice was served on December 1, 2023 and is deemed received by Mr. Andre on December 6, 2023 and no application for dispute resolution was made within 10 days after the receipt of the one month notice.

[19] In the January 12, 2024 Decision, the adjudicator found that Mr. Andre is conclusively presumed to have accepted that the tenancy will end on January 31, 2024, which is the effective date of the December One Month Notice. The adjudicator grants an order for possession to the landlord effective by 1:00 p.m. on January 31, 2024.

[20] On January 16, 2024, Mr. Andre submitted an application for review consideration.

[21] On January 22, 2024, Mr. Andre filed his petition in the Supreme Court of British Columbia seeking judicial review. Mr. Andre was granted an interim stay of the order for possession pending determination of the judicial review application.

[22] The application for review consideration submitted by Mr. Andre to the RTB states the reason for the review request are “unable to attend, new and relevant evidence”. Further, in the grounds for review, the application states Mr. Andre did not receive a copy of the landlord’s notice to end tenancy sent by registered mail because he was out of the country when attempted delivery of registered mail was made and he did not sign for the registered mail. The new and relevant information not available at the time of the hearing that Mr. Andre attached to the application for review consideration were his flight itinerary and a copy of the October 12, 2023 hearing related to the landlord’s previous unsuccessful attempts to end the tenancy.

[23] In the hearing before me, Mr. Andre submits that he has additional evidence demonstrating that the electrical work he undertook at the Property for purposes of accommodating the trailers and RVs was done by a qualified electrician. This evidence is apparently intended to dispute the landlord’s allegation that allowing trailers and RVs places the Property at serious risk.

[24] However, I note that there is no evidence to show that this information, or any other information disputing the allegation of illegal use or putting the Property at risk, was part of the new evidence that Mr. Andre submitted with the Review application. In other words, there is nothing to show this was put before the adjudicator as part of the application for review consideration.

[25] On January 17, 2024, the adjudicator made the decision on the application for review consideration denying the review consideration (the “Review Decision”).

Which Decision is Under Review?

[26] As mentioned, in his amended petition, Mr. Andre seeks judicial review of the January 12, 2024 Decision. However, the respondent submits that the decision under review should be the Review Decision.

[27] After hearing the submissions of respondent’s counsel, Mr. Andre clarified that he seeks to seek judicial review of the decision(s) that, if successful, would allow him the opportunity to oppose the order for possession.

[28] Since it was the adjudicator who decided the application for review consideration that considered Mr. Andre’s submissions, including the allegedly new and relevant evidence, I find the Review Decision is the decision that is subject to judicial review, with the January 12, 2024 Decision forming part of the “contextual matrix”: *Ndachena v. Nguyen*, 2018 BCSC 1468 at paras. 34-36; *Hughes v. Pavlovic*, 2011 BCSC 990 at paras. 9-11; *Martin v. Barnett*, 2015 BCSC 426 at paras. 15-25.

Should the Review Decision be set aside?

[29] The Review Decision mentions requiring the applicant to show how the decision would change if the applicant’s grounds were to be accepted. The adjudicator acknowledges that Mr. Andre’s flight itinerary shows that he was out of the country from November 23 to December 9, 2023.

[30] The adjudicator goes on to state:

Although the tenant has demonstrated that they were out of the country when the landlord sent the notice to the tenant by registered mail, I find the Tenant has not provided any evidence to refute the Landlord's claims as noted in the One Month Notice.

I note the landlord's previous unsuccessful attempt(s) to end the tenancy does not invalidate the One Month Notice to End Tenancy of December 1, 2023.

[31] The Review Decision finds "the tenant has not sufficiently proven that the outcome of the decision would change if a new hearing were to be granted and the application for review consideration is dismissed". In the Review Decision, the decision and order for possession and monetary award are confirmed.

[32] The standard of review that applies to this application for judicial review is "patent unreasonableness" or "procedural unfairness": s. 58(2), *Administrative Tribunals Act*.

[33] Section 81(1)(b)(iii) of the *Residential Tenancy Act* states that an application for review of a decision or order may be dismissed or refused for reasons including that the application "discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied". In my view, the adjudicator clearly considered the information submitted by Mr. Andre. The adjudicator explains why it fails to disclose a basis on which the original decision should be set aside. I find there is nothing clearly irrational in the adjudicator's conclusion.

[34] While Mr. Andre may have had other evidence, he submitted only the flight itinerary and the October 12, 2023 hearing information. Mr. Andre now says that he did so on legal advice. However, that is not a basis for finding the Review Decision patently unreasonable.

[35] The Review Decision is clear that Mr. Andre's application for review consideration failed to refute the grounds set out by the landlord in the December One Month Notice, such as, allowing an unreasonable number of occupants on the Property or engaging in illegal activity.

[36] I conclude that the petitioner has not demonstrated that the Review Decision is patently unreasonable. As such, I dismiss the petition with costs.

“E. McDonald J.”