IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Thanassoulis v. Majithia,* 2024 BCSC 886

Date: 20240424
Docket: S233612
Registry: Vancouver

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

Between:

Ioannis Thanassoulis

Petitioner

And

Anoop Majithia and Sharlene Gill

Respondents

Before: The Honourable Justice Kirchner

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:	A.E. Syer
The Respondents, appearing in person:	A. Majithia S. Gill
Place and Date of Hearing:	Vancouver, B.C. April 24, 2024
Place and Date of Judgment:	Vancouver, B.C. April 24, 2024

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[1] **THE COURT:** This is an application for judicial review of a decision of an arbitrator under the *Residential Tenancy Act*, upholding a notice to end tenancy respecting a rental property on Hornby Street in Vancouver. I will refer to that as the "rental unit." The notice to end tenancy was issued under s. 49(3) of the *Residential Tenancy Act*, which permits the landlord to end a tenancy if the landlord or a family member intends in good faith to occupy the unit.

Background

[2] By way of background, the petitioner is the tenant and has been residing at the rental unit since December 1, 2016. On October 17, 2022, he was served with the two-month notice to end tenancy which was signed by the landlords and stipulated that the tenant was to move out by May 31, 2023. It was given under s. 49(3), which reads:

> 49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[3] The landlords said they intended to occupy the rental unit because they planned to renovate the home they were living in at the time. That home is a condominium on Georgia Street in downtown Vancouver. The landlords own two other units in that same building. These units are adjacent to the one they are living in. They planned to renovate to consolidate all three units into a single large unit. They said they planned to start doing this in June of 2023, and the renovations would take at least six months or more to complete. Thus, they needed to move into another unit pending the renovations. In fact, considered that they may not return to the unit once renovated. They said that they used to live in the rental unit at issue here and wished to move back into that unit during the renovations and potentially after as it had been their home in the past.

[4] The tenant was suspicious of the reasons, given what he considered to be a troubled history between the landlord and the tenant with what he says are efforts by the landlords to raise his rent on other occasions. His position, and this was his position before the Residential Tenancy Branch arbitrator, was that the landlords

were not acting in good faith and it was their intention to rent out the rental unit at a higher rate than what he was paying. In short, he said that he alleged they did not have a good faith intention to move into the unit for their own purposes.

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[5] In support of this, the tenant raised a number of points before the arbitrator, which I will briefly summarize. First, he alleged there was a history of attempts by the landlords to unlawfully raise his rent in the past, one of which was set aside by a Residential Tenancy Branch arbitrator in another hearing. He said the notice to end tenancy now under review was signed by the landlord the day after the decision setting aside that earlier decision, which he alleged indicates a lack of good faith.

[6] Second, he said that there was an incident where the landlords raised the rent for his parking stall from $100 to $450 a month and suggested this was an effort to effectively achieve a rental increase for the unit that could not be obtained under the *Residential Tenancy Act*.

[7] Third, he said the fact that the landlords had attempted to evict him by a one-month notice to end tenancy that had been issued earlier and had been set aside by the Residential Tenancy Branch provided evidence that their real wish was to have him out of the unit so that they could charge more rent.

[8] I should say briefly that the basis for this earlier attempt to end the tenancy was that the tenant had been late paying rent for more than three months. The Residential Tenancy Branch arbitrator, however, determined that the landlords were estopped from insisting that rent be paid on time because they had accepted late rent on a number of occasions in the past.

[9] Fourth, and related to this one-month notice to end tenancy that was set aside, the tenant led evidence that the landlords had advertised the unit for rent for an amount of $5,000 once they issued that on-month notice. This was about $1,300 a month more than what the tenant was paying. According to the arbitrator’s decision in the one-month notice, that rental listing was posted in anticipation of that notice to end tenancy being upheld.

[10] Fifth, the tenant argued that the landlords have many other vacant condominium or townhouses in the downtown Vancouver area that they could have moved into, including one in a building adjacent to the Hornby Street building where the rental unit is located. The tenant argued this suggests they did not have a good faith intention of moving into the unit he was renting because there were other *vacant* options that they could have moved into.

[11] Sixth, the tenant said, and this may be the most significant point, that the landlords had listed two of the three units in the Georgia Street building for rent starting April 1 and May 1, 2023. These were the two units they intended to consolidate into a single unit with the one in which they were living. The tenant pointed out that renting out those two units starting April 1 and May 1, 2023 is, or appears to be, entirely inconsistent with the idea that major renovations to consolidate them with the landlords' unit was to begin one or two months after posted dates of availability for the two units.

[12] As I say, the tenant suggests that this was all evidence that the landlord was not acting in good faith. The landlord responded to these points before the Arbitrator but I will address those responses in a moment. First, I will address the standard of review applicable on this application for judicial review.

<u>Standard of Review</u>

[13] It is agreed that the standard of review is patent unreasonableness. The Court of Appeal in *Campbell v. The Bloom Group*, 2023 BCCA 84, has recently restated the standard of review for RTB decisions at paras. 12 and 13, where Justice Voith wrote:

> [12] On judicial review from a decision of the RTB, and by operation of s. 84.1 of the *Residential Tenancy Act*, s. 58(2)(a) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 provides that an arbitrator's findings of fact or law or exercise of discretion cannot be interfered with unless they are patently unreasonable.
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> [13] A patently unreasonable decision has been described as "clearly irrational", "evidently not in accordance with reason", or "so flawed that no amount of curial deference can justify letting it stand": *Beach Place Ventures*

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> *Ltd. v. Employment Standards Tribunal*, 2022 BCCA 147 at para.17, quoting from *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52.

[14] The Supreme Court of Canada's decision in *Vavilov*, *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 does not alter the standard of review. However, it does direct courts to take a “reasons-first” approach to reviewing decisions from administrative tribunals and to do so from a posture of restraint. As explained in *Vavilov* at para. 84:

> [84] As explained above, where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion: See *Dunsmuir*, at para. 48, quoting D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286.

[15] In *Hollyburn Properties Limited v. Staehli*, 2022 BCSC 28, Justice Brongers provided a helpful summary of several points relating to the patently unreasonable standard. I do not propose to quote from that in length, but I will note a couple of the points identified by Justice Brongers.

[16] One is that as expert tribunals are entitled to significant deference, the standard of patent unreasonableness is an onerous one and an expert tribunal's decisions can only be quashed if there is no rational or tenable line of analysis supporting the decision.

[17] Another is that a decision is patently unreasonable if it is openly, evidently, and clearly irrational or unreasonable on its face, unsupported by evidence, or vitiated by failure to consider the proper factors or apply appropriate procedures.

[18] One ground on which a decision may be patently unreasonable is if the reason inadequately explain how and why the decision was reached. Again, from *Hollyburn*, Justice Brongers notes at para. 25(e):

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> The standard of patent unreasonableness also applies to the consideration of adequacy of reasons, which involves an assessment of the justification, transparency and intelligibility of the decision-making process.

And at para. 25(f):

> Under the *RTA* regime, the overriding test for adequacy of reasons is whether a reviewing court is able to understand how and why the decision was made (*Ganitano v. Yeung*, 2016 BCSC 2227, at para. 24).

[19] Reasons for decision given by an RTB adjudicator are not expected to live up to the standard of a superior court judge: *McDonald v. Creekside Campgrounds and RV Park*, 2020 BCSC 2095, at para. 49.

[20] Nor is an administrative decision maker required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII), 2011 SCC 62, at para. 16.

[21] However, there are minimal standards that a decision maker's reasons must meet, even on a patently unreasonable standard. Fundamentally those minimal standards are as summarized by Justice MacNaughton in *McDonald* at para. 49 as follows:

> For reasons to be sufficient, they must: (1) set out the applicable legal test, (2) set out the findings of fact and the evidence upon which those findings were made, and (3) apply the test to those facts in a way that makes clear how and why the final decision was arrived at: *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232 at para. 35.

<u>The Arbitrator’s Decision and the Tenant’s Submissions</u>

[22] I will turn, then, to the decision in this case and the tenant's challenge to it. The tenant submits that there are two components to s. 49(3) that the landlords must establish. First, the landlords must establish that they or a close family members intend to move into the rental unit; and second, they must establish that the intention is held in good faith.

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[23] The tenant argues that the arbitrator failed to substantively explain the second part of this, namely the good faith question. The tenant argues that it is not sufficient for the arbitrator to acknowledge the legal standard and say that it has been met without grappling with the evidence and the arguments as to how and why that test has been met. In other words, the tenant argues that on the face of the arbitrator's reasons, it is evident she has neither explained how or why she accepted that the landlords acted in good faith, and has not grappled with the evidence and the arguments that were made on that issue of good faith. Counsel argues that the arbitrator has not even made a specific finding that the landlord acted in good faith.

[24] In short, the tenant's submission is that the decision is patently unreasonable because on its face, the arbitrator failed to grapple with a critical question before her, namely the issue of good faith; and further, that the reasons themselves are inadequate because insofar as the arbitrator might have grappled with that issue, she did not explain how or why she arrived at the conclusion that she did.

[25] In view of the submissions and the direction that the Supreme Court of Canada that a reviewing court must take a “reasons-first” approach to judicial review, I will now turn to the arbitrator’s reasons themselves.

[26] After setting out some preliminary matters, including stating that she had considered all the evidence provided and that she would only refer to evidence that she found relevant in the decision, the arbitrator in a section entitled "Background and Evidence" provides a summary of the evidence that was presented before her. I do not propose to read all of that, but I will read some of the critical points.

[27] With respect to the landlord's evidence, she summarized it as follows:

> [The landlords] testified as follows. They used to live in the rental unit. They currently live in a unit that is going to be renovated and amalgamated with two other units such that it will be a major renovation. The City has issued permits for the renovation and amalgamation of their current unit. They cannot live in their current unit anymore and want to return to the rental unit. They are likely going to sell their current unit once it is renovated and amalgamated with the two other units. They want to move back into the rental unit long term, not just during the renovation and amalgamation of their current unit.

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[28] The arbitrator then summarized the evidence given by the tenant:

> The tenant testified that they do not believe that [the landlords] want to move back into the rental unit. The tenant submitted that the notice was actually issued because of their low rent amount. The tenant testified that issues started with [the landlords] in September of 2021 when [the landlords] wanted to raise the cost of parking because they were losing money on the rental unit given the low rent amount. The tenant testified that [the landlords] subsequently issued the tenant a one-month notice for repeated late payment of rent, which was cancelled by the RTB.
>
> The tenant testified that they were also successful in disputing a rent increase. The tenant testified that seven days later, they received a notice. The tenant submitted that the company landlord owns hundreds of units that [the landlords] could move into. The tenant disputed that [the landlords] currently live in the unit they say they do. The tenant testified that the units [the landlords] are going to be amalgamated with their current unit are actually for rent on the company's landlord's web site.
>
> The tenant submitted that the evidence shows that [the landlords] received their building permit three months after they issued the notice. The tenant submitted that [one landlord] has a history of evicting tenants unlawfully in order to raise rent.

[29] The arbitrator then summarized the reply evidence of the landlords stating as follows:

> In reply, [the landlords] testified as follows. The company landlord's web site list properties as available for rent when the current tenancy ends and the current tenancies for the units being amalgamated with theirs do end as shown on the web site. The rental units listed on the company landlord's web site are owned by different people, not just [the landlords]. Renovations on the current unit are starting in early summer. They want to move back to the rental unit because [one of the landlords] works five minutes away, and [the other landlord] works a short drive away.

[30] The arbitrator the provides her analysis (under a heading "Analysis") which included her reasons for upholding the notice to end tenancy. After dealing with an issue respecting service of the notice, she turned her mind to the test that must be met under s. 49(3) of the *Act*. She said:

> The tenant has raised the issue of bad faith, and this is addressed in RTB policy guideline 2A. [The landlords] must prove they are acting in good faith.

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[31] I pause here to note that the arbitrator has correctly stated the legal test in that it is the landlords' onus to prove that they are acting in good faith in moving into the unit.

[32] Carrying on in the analysis of the arbitrator, she said:

> I accept that [the landlords] previously lived in the rental unit because the tenant did not dispute this, and the documentary evidence supports this. I accept that [the landlords] currently live in the unit they say they live in. I find [the landlords] to be in the best position to know where they currently live.

[33] She then provided a summary of evidence that supported the landlords' testimony on this point.

[34] She then turned to the issue of the renovation and said this:

> [The landlords] have provided documentary evidence from third parties showing they plan to renovate and amalgamate their current unit, that this will take more than six months, and they cannot reside in their current unit during the renovation and amalgamation.

[35] The arbitrator then provided in what I will call the critical paragraph of her analysis as to why she was upholding the notice to end tenancy. She stated this:

> Given the above, I accept that [the landlords] cannot remain in their current unit and intend to move back to the rental unit where they previously lived. I acknowledge the points made by the tenant. However, I found no issues with the credibility of [the landlords]'s testimony, and they provide documentary evidence to support their testimony and the reasons they intend so move back into the rental unit.
>
> I find it particularly relevant that [the landlords] used to live in the rental unit. I find it accords with common sense that [the landlords] would return to the rental unit given their current unit will not be habitable for at least six months and given that they live in the rental unit.

[36] She goes on to say "given the above," she was satisfied that the landlords have proven the ground for the notice.

[37] As he said, the tenant submits that nothing in that paragraph, being the critical paragraph, states a specific finding that the landlords have acted in good faith. Nor, the tenant says, does this paragraph explain how or why the arbitrator

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arrived at the conclusion that she did with respect to good faith, particularly in light of the issues raised by the tenant.

Analysis

[38] Having regard to the very substantial deference I must give the arbitrator's decision and the fact that the reasons given by a Residential Tenancy Branch arbitrator need not live up to the standard that might be expected of a superior court judge, I am satisfied that the reasons adequately explain the basis for the arbitrator's decision and demonstrate that she understood the legal test, made findings of fact that were relevant to it, and applied those facts to the legal test to reach her conclusion.

[39] In short, while the reasons are brief, I am satisfied that they demonstrate that she grappled with the factual and legal issues placed before her, and I find her decision is not patently unreasonable. I will briefly explain why I have arrived at this conclusion.

[40] First, on the face of the critical paragraph and the paragraph that precedes it, the arbitrator has expressly found and accepted that the landlords intend to move into the rental unit and that there is reason for wanting to move into that rental unit in particular. She accepted that they plan to renovate the unit they were living in at the time along with the other two units, and that they cannot reside there during their renovations.

[41] She also accepted that they wanted to move into this specific rental unit because they used to live in it. That provides an explanation justifying why they would want to move into this unit in particular and not other vacant units. In my view, it may be inferred quite clearly from the critical paragraph and from the fact that the arbitrator earlier made specific reference to the requirement to prove good faith that she concluded that this satisfied the good-faith element of the test. While she did not state that expressly, the reasons make it clear that she was alive to that good-faith issue. She concluded based on her findings in the critical paragraph that the landlords intended to move into the unit and they had provided a reason that she

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found acceptable for why they would want to move into that unit specifically. It follows that she accepted they were doing so in good faith.

[42] She also found the landlords to be credible in their testimony, and in my view that would necessarily imply that she has accepted their evidence as summarized earlier in her reasons. While the reasons are separated out into two sections – “Background and Evidence” and “Analysis” – it can be readily inferred that in finding the landlords' evidence to be credible, she accepted the evidence that she had summarized in the “Background and Evidence” section and that evidence met the test for good faith.

[43] If there is a weakness in the arbitrator's reasons, it is in how she dealt with the evidence that the landlords had listed for rent the two units adjacent to their own that they said would be consolidated with their own unit in a renovation that would start imminently. On the face of the listings, this fact would seem to be very compelling evidence that would call into question the good faith of the landlords because the units could not be rented out and renovated at the same time.

[44] The tenant is right that the arbitrator did not expressly deal with that point in the critical paragraph containing her analysis. However, the reasons are not silent on this point. I return to the summary she provided of the evidence, and, in particular, the reply evidence given by the landlords. I repeat her summary of the landlords’ key evidence on this point:

> The company landlord's website lists properties as available for rent when the current tenancy ends, and the current tenancies for the units being amalgamated with theirs do end as shown on the website.

[45] In other words, the evidence was that the landlord's company's website lists those units for rent automatically when they become available once a current tenancy ends. Since the tenancy for those two units had ended, as I read the reasons, the website would automatically list those for rent, but the landlords’ evidence was that this does not necessarily mean they will be rented out.

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[46] When that is pieced together with the arbitrator's finding that the landlords' evidence was credible, I conclude that she accepted the landlord's explanation for why those two units were listed. The listing of those units for rent does not necessarily mean they would be rented out and the arbitrator obviously found that they would not have been rented out because she accepted the explanations given by the landlords that they intended to consolidate those units with the renovation.

[47] Perhaps it would have been better if the arbitrator had explained that expressly in the critical paragraph, but in my view the fact that she did not do that does not make the reasons "so defective that it is not possible for the reviewing court to understand why the Arbitrator concluded as she did": *Hollyburn,* para. 26. When I read her summary of the evidence together with her findings with respect to credibility and her ultimate conclusion, I am not able to find this is a defect that is so substantial that I cannot understand why she reached her conclusion. In my view, the reason for that conclusion is apparent on the face of the reasons.

[48] I will briefly deal with some of the other points that the tenant raised, and in doing so I reiterate that the arbitrator was not obliged to address every point raised and every piece of evidence in the decision. There are, in fact, some points that the arbitrator did not expressly address except by stating that she had acknowledged the points made by the tenants but found the landlords to be credible. By implication, she did not accept all of these arguments. I will briefly address these points since the tenant has raised them.

[49] One is that the rental unit was listed for rent at $5,000 which is $1,300 more than the tenant was paying. In my view, this is not a material issue since it was listed after the one-month notice to end tenancy had been issued and in anticipation of that one month to end tenancy would be upheld. That does not necessarily evince bad faith and is not something that I would necessarily expect the arbitrator to specifically address in her reasons. This does not make her conclusion patently unreasonable.

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[50] Next is argument that the landlords' earlier one-month notice to end tenancy for late payment of rent evinces an intent to seek a higher rent for the unit, undermining the claim of good faith intent to move into the unit. In my view, that does not necessarily evince a history of bad faith efforts to remove the tenant. That one-month notice was based on the fact the tenant had been late in paying rent more than three times. The decision to set aside the one-month notice did not find otherwise. It was based on the principle of estoppel that the landlords had a pattern of accepting rent late with a penalty in the past and that they were therefore estopped from insisting on their strict legal rights having done that.

[51] With respect to the parking stall issue, this strikes me as a fairly minor point. It is an irritant in the history of this tenancy relationship, but it does not strike me as being so substantial to establish bad faith on the part of the landlords or merit being specifically addressed by the arbitrator.

[52] Lastly, I will deal with the point about the landlord having or owning a number of other rental properties that they could have moved into, and in doing that, I will address the tenant's argument with respect to Policy Guideline 2A.

[53] The tenant argues the arbitrator's decision is patently unreasonable because it fails to explain why she departed from RTB Policy Guideline 2A, which concerns ending of a tenancy so that a family member can move into the rental unit.

[54] The Policy Guidelines, as the tenant concedes, are not binding on an arbitrator. They are issued by the Residential Tenancy Branch to provide some policy guidance to arbitrators but arbitrators are not compelled to follow them. Nevertheless, there is authority that where an arbitrator deviates from or does not follow a Policy Guideline, they should explain in their reasons why they are not following it. A failure to give that explanation may make the decision patently unreasonable: *McDonald*, para. 53.

[55] In this case, Policy Guideline 2A, which was specifically identified by the arbitrator, provides guidance with respect to what might suggest a lack of good faith.

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One of the points stated in the Policy Guideline is that if there is evidence of "comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith".

[56] I am not persuaded that the arbitrator has departed from Policy Guideline 2A. I say this for three reasons. First, the evidence does not show that there are vacant rental units <u>in the same property</u> as the rental unit. The evidence at best shows that there are available units in other buildings around downtown Vancouver. One is located in the building adjacent to the Hornby Street Building where the rental unit is but not in the building itself. On the face of the Policy Guideline, that does not fit within what is contemplated.

[57] Second, the evidence does not indicate that the other units that are available are comparable to the rental unit, which is also a requirement or at least a stipulation in the policy guideline.

[58] Third, and more fundamentally, the arbitrator accepted that the landlords specifically wanted to move into this rental unit because they had lived in it previously, and they wanted to live in it again. In their evidence before the arbitrator, they called it their "previous home". In my view, once an explanation for wanting to move into the specific unit at issue rather than some other vacant unit is provided and accepted by the arbitrator, the inference suggested by Guideline 2A falls away. That is because, even if there are comparable vacant rental units in the property that the landlord <u>could</u> occupy, once the arbitrator accepts as valid the landlord's explanation for wanting to move into <u>this</u> rental unit, it can no longer be inferred that the landlord is acting in bad faith by not moving into a different rental unit.

[59] While the arbitrator here did not specifically say this was the reason for not following Policy Guideline 2A, it is clear from her reasons that she accepted that the landlords had a good faith reason for wanting to move into this particular unit.

[60] So for all of those reasons, I find that the arbitrator's decision is not patently unreasonable, and I would dismiss the application for judicial review.

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[61] I would like, though, to address a date to give up vacant possession. Obviously that date has long passed. In my view, a new date should be set that is a reasonable time from after today's date. Do either of you wish to make submissions on that?

[Discussion with counsel and the landlords]

[62] The application for judicial review is dismissed and the order for possession will take effect at 1:00 p.m. on Sunday, June 30, 2024. As to the ongoing payment of rent until then or any entitlement to a rental credit as a result of the end of the tenancy, all provisions of the *Residential Tenancy Act* continue to apply to this tenancy.

"Kirchner J."

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