IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Green v. Kooner,*
2024 BCSC 919

Date: 20240529
Docket: S248895
Registry: New Westminster

Between:

Steve Green

Petitioner

And

Surjit Kooner

Respondent

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

The Petitioner, appeared in person:	S. Green
Counsel for Respondent:	B. Meadows
Place and Dates of Hearing:	New Westminster, B.C. October 31, 2023 December 13, 2023
Place and Date of Judgment:	New Westminster, B.C. May 29, 2024

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Introduction

[1] This application arises under the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*] wherein the petitioner seeks to set aside a decision of the Residential Tenancy Branch ("RTB") and an Order for Possession (the "Order for Possession") made on April 5, 2023. The petitioner is a tenant in premises located at 13384-79 Avenue, Surrey, British Columbia. He resides in that premises with his wife and elderly mother. The respondent, Surjit Kooner, is the owner and landlord of those premises.

[2] I will address the factual background in more detail below. In short, following a hearing in front of an RTB arbitrator, the arbitrator, on April 5, 2023, found that the landlord was entitled to an order for possession of the premises effective two days after service on the tenants (the "Decision"). The petitioner now seeks a review of the Decision on the basis that the hearing was unfair.

Standard of Review

[3] The respondent through counsel submitted that the standard of review which this Court is required to apply is one of "patent unreasonableness".

[4] Pursuant to ss. 5.1 and 84.1 of the *RTA*, certain provisions of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 ["*ATA*"], including s. 58, apply to arbitrations under the *RTA*. In this case, the standard of review is patent unreasonableness pursuant to s. 58(2)(a) of the *ATA*:

> (2) In a judicial review proceeding related to expert tribunals under subsection (1)
>
> > (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable…

[5] The standard of patent unreasonableness is "highly deferential": *Momeni v. Percy*, 2024 BCCA 77 at para. 34. In *Momeni*, our Court of Appeal described the standard, in particular relation to an RTB arbitrator as follows:

> [34] The patent unreasonableness standard of review is a highly deferential one. In *Campbell v. The Bloom Group*, 2023 BCCA 84, a judgment arising from the dismissal of a challenge to a Notice to End Tenancy by an RTB arbitrator, Voith J.A. described the standard in this way:
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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 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.
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> [35] Even more recently, in another challenge to a decision of an RTB arbitrator, Fenlon J.A. stated that such a decision can be interfered with only if it "almost borders on the absurd", citing *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28: see *McNeil v. Elizabeth Fry Society of Greater Vancouver*, 2024 BCCA 2 at para. 5.
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> [36] For discretionary decisions, s. 58(3) of the ATA defines the patent unreasonableness standard in this way:
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> For the purposes of subsection (2)(a), a discretionary decision is patently unreasonable if the discretion
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> (a) is exercised arbitrarily or in bad faith,
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> (b) is exercised for an improper purpose,
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> (c) is based entirely or predominantly on irrelevant factors, or
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> (d) fails to take statutory requirements into account.

Issue

[6] The only issue to be determined is whether the Decision ought to be set aside because it is patently unreasonable. The petitioner submits that the Decision is patently unreasonable because the arbitrator's reasons are inadequate and there is no rational or tenable line of analysis supporting the arbitration's decision.

Legal Principles

[7] It is well established that expert tribunals such as arbitrators appointed at the RTB are entitled to significant deference. It is not this Court's obligation to reconsider the evidence heard by the arbitrator or to substitute the Court's own view of the evidence.

[8] There was evidence before the RTB and this Court regarding the personal circumstances of the petitioner and his family as well as the potential circumstances

if the Decision is not set aside. While this Court has sympathy for the petitioner's situation, the Court's decision must be based on applicable legal principles.

[9] The case of *Hollyburn Properties Limited v. Staehli,* 2022 BCSC 28, provides a helpful summary of the jurisprudence and legal principles relating to the standard of patent unreasonableness, as follows:

> [25] As the *ATA* does not define patent unreasonableness as it applies to a tribunal's factual or legal findings, however, guidance regarding its meaning must be sought from the case law. In *Kong* at paras. 58 – 65, Madam Justice MacDonald set out a number of jurisprudential holdings which provide content to the notion of patent unreasonableness including:
>
> > (a) as expert tribunals are entitled to significant deference, the standard is an onerous one and their decisions can only be quashed if there is no rational or tenable line of analysis supporting them (*Victoria Times Colonist v. Communications*, Energy and Paperworkers, 2008 BCSC 109 at para. 65; aff'd 2009 BCCA 229);
> >
> > (b) 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 the appropriate procedures (*Gichuru v. Palmar Properties Inc.*, 2001 BCSC 827 at para. 34, citing *Lavender Co-Operative Housing Association v. Ford*, 2011 BCCA 114);
> >
> > (c) a patently unreasonable decision is one that almost borders on the absurd (*Voice Construction Ltd. v. Construction & General Workers' Union*, *Local 92*, 2004 SCC 23 at para. 18 and *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28);
> >
> > (d) it is a possible that a great deal of reading and thinking will be required before the problem in a patently unreasonable decision is apparent, but once its defect is identified, it can be explained simply and easily, leaving no real possibility of doubting that the decision is defective (*Yee v. Montie*, 2016 BCCA 256 at para. 22);
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> > (e) 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 (*Vavilov*); and
> >
> > (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).

[10] Further, in the case of *Ahmad v. Merriman*, 2019 BCCA 82, leave to appeal to SCC ref'd, 38655 (26 September 2019), the Court of Appeal held:

> [37] Section 58(2)(a) of the *ATA* requires that a decision of an expert tribunal, such as the RTB, may not be interfered with unless it is patently unreasonable. The standard of patent unreasonableness requires the decision under review be accorded "curial deference, absent a finding of fact or law that is patently unreasonable": *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, 2016 SCC 25 at para. 29. Stated otherwise, it must be "clearly irrational" or "evidently not in accordance with reason": *Canada (Attorney General) v. Public Service Alliance of Canada*, 1993 CanLII 125 (SCC), [1993] 1 S.C.R. 941 at 963–64. A patently unreasonable decision is one that is "so flawed that no amount of curial defence can justify letting it stand": *Ryan v. Law Society (New Brunswick)*, 2003 SCC 20 at paras. 52–53.

[11] Counsel for Mr. Kooner directed this Court to the decision of our Court of Appeal in *Holojuch v. Residential Tenancy Branch*, 2021 BCCA 133, where the following appears:

> [17] The meaning to be given to patent unreasonableness under this legislative scheme depends on the nature of the decision under review. If it is a discretionary decision, s.78(3) of the *Administrative Tribunals Act* explains how this standard is to be applied:
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> > For the purposes of subsection (2)(a), a discretionary decision is patently unreasonable if the discretion
> >
> > (a) is exercised arbitrarily or in bad faith,
> >
> > (b) is exercised for an improper purpose,
> >
> > (c) is exercised entirely or predominately on irrelevant factors, or
> >
> > (d) fails for make statutory requirements into account.

[12] In *Holojuch*, the Court of Appeal then considered the situation where a decision contains a finding of fact that is disputed. It held that the standard of review is still patent unreasonableness, but the content of that standard is defined by the common law rather than a statutory provision: at para. 18, citing *Ahmad*.

[13] Regarding the requirement that the RTB provide adequate reasons, the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, noted the following:

> [86] … In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

[14] Further, on the issue of reasons, this Court held, as follows, in *Christiansen v Harwood*, 2015 BCSC 1440:

> [20] It has been held that reasons will be adequate when they set out the legal test to be met by the party advancing its claim, the findings of fact and the principal evidence on which those findings were made, and an application of those findings to the legal test: *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232. It has also been held that in residential tenancy disputes, it is important to assess the sufficiency of reasons in the proper context. In many of these kinds of cases, the legal test will be fairly straightforward and expressed in plain language terms, and the issue to be decided may involve only an assessment of whether a party has given sufficient evidence to support a finding of fact in his or her favour. The primary goal is for the parties and a reviewing court to be able to understand how and why the decision was made: see *Khan v. Shore*, 2015 BCSC 830.

[15] In written submissions, the petitioner asserted that the adjudicator acted with bias against the petitioner. This claim presents a significant difficulty because neither the adjudicator nor the Province was named as a party in this proceeding. By way of example, the case of *Christiansen*, noted above, included both the Arbitrator under the *RTA* and the RTB as parties. Relief cannot normally be granted against someone who is not named as a party.

Factual Background

[16] On September 23, 2022, the respondent appointed Canadian Tenant Inspection Services Ltd. (“CTI”) to act as his agent for the subject property. Jim Garnett was appointed by CTI to have communication with the tenant and to represent the respondent’s interests in dealing with matters pursuant to the *RTA* or any other statute related to the tenancy at the aforementioned premises. Anna Garnett and another named individual were authorized by CTI to make inquiries with the RTB on matters related to the tenancy of the premises.

[17] On October 19, 2022, on behalf of CTI, Jim Garnett sent a “caution” letter by registered mail to Mr. Green and his wife, detailing two alleged breaches of the Residential Tenancy Agreement for the premises, dated February 13, 2013. The first breach alleged was that the tenants had a pet in the premises contrary to paragraph 4 of the Residential Tenancy Agreement, which states: “NO PETS ALLOWED”. To that end, the caution letter stated: “On October 14, 2022, an inspection was carried out at your home and you have a very large dog that you are concerned about getting out of the yard due to the disrepair of the fence. Furthermore, the Landlord received a letter from the City of Surrey dated August 30, 2022, regarding a barking dog at your residence causing an ongoing disturbance in the neighbourhood”.

[18] The second alleged breach referred to in the caution letter was set forth as follows: “During your tenancy, the locks of the home have been changed and the Landlord has never been given a key.” The letter then set out s. 31 of the *RTA*, which provides, at subsections (2) and (3):

> (2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.
>
> (3) A tenant must not change a lock or other means that gives access to the tenant's rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

[19] CTI on behalf of the landlord stated the tenants were required to comply with the following remedies to avoid the possibility of the landlord serving them with a One Month Notice to End Tenancy for Cause. First, effective immediately the tenants were to find another home for their dog. Second, the tenants were to provide the landlord with keys for any and all entrance doors to the residence by not later than 1:00 p.m. on October 31, 2022. Or, in the absence of doing so, the landlord would engage a locksmith to rekey the locks.

[20] On November 6, 2022, Mr. Garnet on behalf of CTI sent a further caution letter by registered mail to Mr. Green and his wife complaining of a further breach of the Residential Tenancy Agreement where as a result of an inspection on October 14, 2022, it was noted a pet cat was located in the premises.

[21] On November 19, 2022, as agent for the Landlord, Anna Garnett of CTI filed a One Month Notice to End Tenancy for Cause (Form RTB-33) with the RTB and served a copy of the One Month Notice to the petitioner and his wife by registered mail to the address of the premises. The One Month Notice provided that the petitioner and his wife were to vacate the rented premises by December 31, 2022. A Proof of Service of the One Month Notice to End Tenancy (Form RTB-34) was also filed with the RTB on behalf of the landlord which specified that service of the Notice on the Tenants was made at 4:01 p.m. on November 20, 2022, by registered mail service.

[22] On December 2, 2022, Mr. Green filed a Tenant Request to Amend a Dispute Resolution Application in RTB file No. 310086995, in which he stated “I want to dispute another Notice to End Tenancy that I was served and added to my existing Application for Dispute Resolution”. On the same form, Mr. Green indicated that the prior matter had been settled.

[23] The RTB Notice of Dispute Resolution Proceeding, which provided for a hearing scheduled for Tuesday, April 4, 2023 at 9:30 a.m., was filed and served on the applicants. The Notice of Dispute Resolution Proceeding required that the applicants, Steve Green and Pam Green, provide RTB with proof that the Notice of Dispute Resolution Proceeding document package and copies of all supporting documents were served on the respondent in accordance with the RTB Rules of Procedure. Under the heading “Supporting Evidence”, the applicants set out the following words appear “No evidence submitted the time of the application”.

[24] On April 4, 2023, a hearing was conducted by conference call in front of C. Arnsdorf, RTB Arbitrator in respect to two matters which had file numbers 130093157 and 910097758. At the opening of the arbitrator’s decision (defined above as the “Decision”), the following text appears: “Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me”.

[25] Thereafter, the arbitrator stated:

> At the outset of the hearing, service of documents was discussed, in detail. The Tenants filed two applications, and were provided with two Notice of Dispute Resolution Proceeding document packages by the RTB, which they were required by mandatory language to serve the Landlord as provided in Rule 3.1…

[26] Rule 3.1 was then set out in full, followed by Rule 2.5].

[27] In the Decision, the arbitrator found, in the last paragraph on p. 2:

> I note the Tenants failed to provide a copy of the 1 Month Notice to End Tenancy for Cause (the 1-Month Notice) and instead uploaded a rude and profane picture under the 1 Month Notice heading in the dispute access web portal. In any event, the Tenants failed to provide a copy of the 1 Month Notice as required by Rule 2.5 and instead appear to have made a joke out of their obligations under the Rules of Procedure.

[28] The arbitrator found is a matter of fact that the tenants "failed to prove service of the Notice of Dispute Resolution Proceeding document packages on the landlord pursuant to Rule 3.1 of the Rules of Procedure".

[29] Following a review of the evidence submitted for the hearing, the arbitrator found made the following findings, at p. 3 of the Decision:

> I find the Tenants inappropriate and rude documents uploaded in place of the 1 Month Notice is an abuse of the dispute resolution process. The Tenants filed an application to cancel a 1 Month Notice, but rather than provide a copy of that Notice, they opted to make a joke. I hereby dismissed both of the Tenants' applications, in full, without leave, pursuant to section 62(4)(c) of the Act.
>
> Further, I note Tenants provided a scattered and unclear explanation as to what was served and when, in terms of their Notice of Dispute Resolution Proceedings and evidence. They initially stated it was served by registered mail, but could not provide a copy of any proof of mailing, then they said it was served in person. The Landlord stated that they never received anything from the Tenant. Without further proof of service, I find there is insufficient evidence the Tenants served any of the required documents or their evidence, and the Tenant's applications are also being dismissed on that basis.
>
> I note the RTB provided the hearing details to the Landlord over the phone as a courtesy and the Landlord provided a copy of the 1 Month Notice prior to the hearing. This will be addressed further below.

[30] The arbitrator then reviewed the provisions of s. 55 of the *RTA* which provides, among other things, that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the arbitrator must grant the landlord an order for possession if the tenants application is dismissed in circumstances where the arbitrator is satisfied that the Notice to End Tenancy complies with the requirements of s. 60. The arbitrator in this case found that the Notice issued by the landlord on November 2022 met the requirements for the contents of the *RTA*, the landlord was thereby entitled to an order for possession effective two days after service on the Tenants.

[31] In conclusion, the tenants' application was dismissed in full, without leave to reapply. The landlord was granted an order for possession effective two days after service on the tenants. An order that the tenants deliver full and peaceable vacant and occupation of the rental unit to the Landlord not later than two days after service of the order upon the tenants was prepared and signed that day.

[32] On April 6, 2023, on a without notice application, Justice Norell extended the stay of proceedings from April 6 to April 23, 2023.

[33] According to the RTB Dispute Resolution Service documents, the tenants applied for a review consideration of the Decision, dated April 11, 2023, (the "Review Decision"). Mr. Green appeared to dispute that he had requested this Review Decision, and insisted that he was unable to upload or otherwise communicate grounds for review to the RTB. The Review Decision stated that the tenant requested that the Decision be reviewed on the grounds of "new or relevant evidence not available at the time of the hearing" and that "False information was submitted (Fraud)".

[34] With respect to the new evidence ground of review, the adjudicator concluded the evidence put forward by the applicant was substantially available at the time of the original hearing, and therefore that part of the application did not disclose sufficient evidence of a ground for review

[35] With respect to the allegation of obtaining an adjudicator's decision by fraud, the adjudicator discussed the contents of Residential Tenancy Policy Guideline 24, which outlines the test to be met for demonstrating that the decision or order was obtained by fraud. It was noted that a review may be granted if the person applying for a review provides evidence meeting all of the three following tests:

1. Information presented at the original hearing was false;
2. the person submitting the information knew that it was false; and,
3. the false information was used to get the outcome desired by the person who submitted it.

[36] At page 6 of 7 in the Review Decision, the following text appears: "In the review consideration application, the applicant claimed that: The Landlord knows my Dog is a registered and protected service pet and that I have a disability. The Landlord did not prove reasons for eviction. The Landlord knows he was told to get the door repaired and that doors security has been part of a dispute with the RTB for over a year. The Landlord nor his agents have followed the Privacy Act to obtain my documents so violate the Human Rights Code with this notice of end tenancy." An RTB fact sheet was attached by the applicant as supporting evidentiary material.

[37] The Review Decision adjudicator concluded that supplying the RTB fact sheet did not prove fraud in any way. The Review Decision adjudicator found that the applicant failed to provide any supporting evidence to support a fraud as defined by the RTA. As a result, the application for review based on fraud was dismissed.

[38] Ultimately, having considered the factual allegations from Mr. Green for review based on new evidence and on fraud, the adjudicator dismissed both, and the application for review consideration was dismissed. The Decision and order made on April 5, 2023 were confirmed.

Guide or Service Dog

[39] On several occasions, arguments were advanced concerning the dog owned by the Greens. Mr. Green asserted that the dog in question was a service dog. He relied upon the contents of a document entitled "Medical Form Confirming

Requirement for Guide Dog or Service Dog", a document bearing two signatures. One signature is of an "Examining Physician". That signature is dated June 9, 2022. The physician's opinion, according to the printed form, was that Mr. Green has "a condition that requires a fully trained guide dog (for visual impairment) or fully trained service dog (for other conditions) to assist them in daily living…". Under the heading "Additional Documents", the doctor apparently wrote "Chronic Left wrist pain, weakness has had multiple surgeries. Needs the guide/service dog for assisting with getting up, carrying item [sic] to another person, retrieving items, carrying items and holding them." In the contents of the form, the doctor did not indicate whether it was specifically a guide dog or a service dog which was required. No dog was specifically named or otherwise identified, and nor was any history of training of that animal noted in the tenants' evidence.

[40] In the testimony of an agent for Mr. Kooner, a number of complaints had been reported by the City of Surrey to the agent that a dog at the premises was constantly barking. I would note that common sense indicates a constantly barking dog is very unlikely to have the qualities required by a guide or service dog.

Conclusions and Costs

[41] In the case before this court, the reasons of the arbitrator explain the basis for the decision by setting out the issues, describing the evidence or lack of evidence before the arbitrator as well as the evidence which supported the conclusions of the arbitrator. I find that the reasons generally explain how and why the decision was made. Considering the highly deferential review as outlined in *Momeni* at paras. 34–36, for all of these reasons, I am unable to conclude the arbitrator acted unfairly or that his decision was patently unreasonable such that a remedy is available to Mr. Green. Therefore, the present application is dismissed.

[42] Effectively, the tenancy has come to an end based on the reasons of the arbitrator, which are hereby upheld. Given the length of these proceedings, it is necessary for the Court to specify the date upon which Mr. Green and Mrs. Green

must provide vacant possession to Surjit Kooner. That date is fixed as June 30, 2024.

[43] Given the apparent lack of resources of Mr. and Mrs. Green, I am satisfied that this is a case where no order for costs shall be made.

"Ball J."