IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Moon v. Vizi*,
2024 BCSC 1068

Date: 20240620
Docket: S240216
Registry: Vancouver

Between:

Maggie Moon

Petitioner

And

Virag Vizi

Respondent

Before: The Honourable Madam Justice W.A. Baker

On judicial review from: An order of the Residential Tenancy Branch, dated November 16, 2023 (File No. 910121385 and No. 910122327).

Reasons for Judgment

The Petitioner, appearing in person:	M. Moon
The Respondent, appearing in person:	V. Vizi
Place and Date of the Hearing:	Vancouver, B.C. March 1, June 11, 2024
Place and Date of Judgment:	Vancouver, B.C. June 20, 2024

[1] The petitioner Ms. Moon is a tenant seeking to set aside a decision of the Residential Tenancy Branch ("RTB") dated November 16, 2023, in which the arbitrator dismissed the tenant's applications, without leave to reapply.

[2] The Director of the RTB provided the record of the hearing before the arbitrator, and provided a response setting out jurisdictional considerations. The Director did not appear on the hearing of the petition.

[3] It became clear upon my review of the materials following the initial hearing that, while the respondent landlord, Ms. Vizi, was served with the petition, she was not served with the notice of hearing of the petition. The tenant explained that the landlord did not serve her response to the petition on the tenant, thus the tenant did not realize the landlord intended to dispute the petition. I required the tenant to serve the landlord with a new notice of hearing, and that hearing proceeded on June 11, 2024.

Background Facts

May 2023 RTB hearing

[4] In January and February 2023, the tenant disputed two different notices issued by the landlord pursuant to ss. 47 and 49 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 (the "*Act*"). The matter was heard in May 2023, and the decision was issued on May 24, 2023. The arbitrator noted that the tenant began living in the garage unit in September 2022. There was a second bedroom in the garage which was not part of the rental space enjoyed by the tenant. The arbitrator held that the first notice was not valid, and the second notice (own use by landlord) was not issued in good faith. The arbitrator held:

> Given all the doubts created by [landlord's] dubious testimony, and their lack of understanding when renting out their properties, I am satisfied that when they realized that the Act had jurisdiction over this tenancy, [landlord's] submissions were created to provide a false narrative in an effort to portray a scenario which did not exist, as they had never encountered this situation before. Considered in its totality, I do not find the Landlords to be credible as they failed to provide consistent, logical, compelling or persuasive testimony or documentary evidence. As the burden is on the Landlords to prove why the Notice was served, I am not satisfied by [landlord's] testimony that this Notice

> was served in good faith as it is clear that there was conflict between the Landlords and the Tenant, and that the Landlords wanted to end this tenancy because of it.

[5] After the May 24, 2023 decision, the landlord entered the garage and began using the space, including the kitchen, and sleeping in the second bedroom on and off.

[6] At the hearing before me, the landlord stated that the arbitrator at the May 2023 hearing told her she should move into the garage. There is no transcript or recording of that hearing before me, and I cannot receive this statement the landlord made during her submissions for any purpose in this appeal. However, even if there was admissible evidence before me as to what the previous arbitrator said in the May 2023 hearing, that would not change my decision in the appeal of the November 2023 RTB decision.

Events post May 2023 RTB decision

[7] Conflict between the landlord and the tenant began in June 2023, and included such things as dispute about the use of the internet and whether the tenant could install her own internet if not provided with internet by the landlord, removal of curtains in the garage, concerns about where the tenant's dog could be in the garage, etc.

[8] On July 23, 2023, the landlord issued a notice to move out to the tenant. In that notice, the landlord stated "I also recognize that you may wish to dispute this eviction notice with the Residential Tenancy Branch. However, as you are only renting a room from me and share bathroom/kitchen facilities with me, you are not covered under the Residential Tenancy Act. For that same reason, I do not need to seek an order of possession to evict you."

[9] By August 2023, things had deteriorated to the point that the police were called several times by both the tenant and the landlord.

[10] On August 4 and 10, 2023, the tenant issued notices to dispute the July 2023 eviction notice. The November 2023 decision was issued in respect of both notices of dispute, August 4, 2023 (No. 910121385) and August 10, 2023 (No. 910122327).

[11] In September 2023, matters continued to deteriorate between the tenant and landlord, with each accusing the other of various forms of bad behaviour. The situation was becoming intolerable.

[12] On September 25, the tenant gave the landlord a notice that she would be vacating the suite on October 31, 2023.

[13] By the time of the November 2023 hearing, the tenant had moved out of the suite.

Standard of Review

[14] Pursuant to ss. 5.1 and 84.1 of the *Act*, the standard of review on this hearing is set out in s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45. For findings of fact or law, or an exercise of discretion, the decision must not be interfered with unless it is patently unreasonable. For questions of natural justice and procedural fairness, the question must be decided having regard to whether the tribunal acted fairly. For all other matters, the standard of review is correctness.

[15] In determining whether a decision is patently unreasonable, this court will not second guess the tribunal, or substitute different findings of fact or inferences to be drawn from the facts. *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80 at para. 33 sets out the following principles, which have application before me:

a) patently unreasonable means "openly, clearly and evidently unreasonable", and

b) a decision based on no evidence is patently unreasonable, but a decision based on insufficient evidence is not.

[16] The reasons for decision are the starting point in a judicial review. This has been described as a "reasons first" approach. In *Guevara v. Louie*, 2020 BCSC 380, the court held:

> [48] In *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65 [*Vavilov*], the Court emphasized that it is the duty of a reviewing court to determine whether the decision maker's reasons meaningfully account for the central issue and concerns raised by the parties. While these comments were made in the context of a review on a reasonableness standard, it is my view that they also apply to a review of reasons on the standard of patent unreasonableness. What constitutes a patently unreasonable decision may be "understood in the context of the common law jurisprudence" regarding judicial review generally "and will necessarily continue to be calibrated according to general principles of administrative law:" *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12 (S.C.C.) at para 19.

[17] The importance of the reasons for decision is underscored in *Pereira v. British Columbia (Labour Relations Board)*, 2023 BCCA 165, where the court confirmed the role of the reviewing court in assessing the line of analysis set out by the decision maker:

> [93] As explained in *Team Transport Services Ltd. v. Unifor, Local No. VCTA*, 2021 BCCA 211 (at paras. 28–29), the patent unreasonableness standard is a deferential standard:
>
> > Patent unreasonableness is the standard that is most highly deferential to the decision maker. There are many descriptions of the standard. The explanation found in *Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 (aff'd *Victoria Times Colonist, a Division of Canwest Mediaworks Publications Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 25-G*, 2009 BCCA 229) is useful:
> >
> > > [65] When reviewing for patent unreasonableness, the court is not to ask itself whether it is persuaded by the tribunal's rationale for its decision; it is to merely ask whether, assessing the decision as a whole, there is any rational or tenable line of analysis supporting the decision such that the decision is not clearly irrational or, expressed in the *Ryan* [*Law Society of New Brunswick v. Ryan*, 2003 SCC 20] formulation, whether the decision is so flawed that no amount of curial deference can justify letting it stand. If the decision is not clearly irrational or otherwise flawed to the extreme degree described in *Ryan*, it cannot be said to be patently unreasonable. This is so regardless of whether the court agrees with the tribunal's conclusion or finds the analysis persuasive. Even if there are aspects of the reasoning which the court considers flawed or unreasonable, so long

> as they do not affect the reasonableness of the decision taken as a whole, the decision is not patently unreasonable.
>
> In other words, the standard is at the most deferential end of the reasonableness standard …
>
> [Emphasis added.]

The Decision under Review

[18] In the November 16, 2023 decision, the arbitrator described the issue before them as follows:

> This dispute relates to the Tenant's August 3, 2023 and August 10, 2023 Applications for Dispute Resolution seeking remedy under the *Residential Tenancy Act* (*Act*) pursuant to Section 62(3) of the *Act* for an order that the Landlord comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.
>
> …
>
> As I informed the Tenant during the hearing, I cannot proceed on her applications for dispute resolution, as the tenancy ended on the date she vacated the rental unit on October 31, 2023, as provided in section 44(1)(d) of the *Act*. As to the Tenant's request for the orders against the landlord, I find the request relates to a continuing tenancy. As the tenancy has ended, it was no longer necessary to consider this request as the matters are now moot points. Therefore, the Tenant's applications were moot. I make no findings on the Tenant's applications.
>
> The Tenant stated that she sought an award for compensation for loss of quiet enjoyment during the tenancy. However, again as noted to the Tenant during the hearing, she had not made that claim in her applications. I make no findings on the Tenant's request for compensation for loss of quiet enjoyment during the tenancy.
>
> I dismiss the Tenant's applications, without leave to reapply.

Notices of Dispute filed by Tenant

August 4, 2023

[19] In the notice of dispute filed by the tenant on August 4, 2023, the tenant stated:

> I want the landlord to comply with the Act, regulation and/or tenancy agreement.
>
> Description: My landlord is attempting to avoid and contract out of the RTA permanently which is unwarranted based on our verbal tenancy agreement. [URL cite for youtube video] – this is proof she has her own house and I live

> in the garage. She is now pursuing to EVICT ME without following binding orders and obligations. She wants eviction by AUGUST 31st, locking me out of my rental unit. * Help me resolve this matter for enforcement of section 5 in the RTA, due to her non-compliance.

August 10, 2023

[20] In the notice of dispute filed by the tenant on August 10, 2023, the tenant stated:

> I want the landlord to comply with the *Act*, regulation and/or tenancy agreement.
>
> Description: My landlord suddenly & without notice moved into a living situation with me (sharing kitchen and bathroom) when that was not part of our tenancy agreement. It was never part of our tenancy agreement. She has + had her own house (for kitchen and bathroom) with her family. I am facing eviction by her on August 31st with a notice for her to lock me out and remove my belongings. I spoke with a lawyer finally & this is an emergency for EXPEDITION, please.

Is the Decision Patently Unreasonable?

[21] What is clear from the tenant's notices of dispute, and her evidence at the hearing, is that the tenant was disputing the landlord's decision to move into the garage following the first RTB hearing, which the tenant felt was a deliberate attempt by the landlord to avoid the application of the *Act*.

[22] The issue of whether the *Act* was applicable to the rental unit was squarely before the arbitrator. This is clear from the written submissions of the landlord in the hearing, where she stated the only purpose of the hearing was to determine whether the *Act* applied to the rental unit, given she, as owner, was sharing accommodation with the tenant.

[23] Section 4(c) of the *Act* makes the *Act* inapplicable to living accommodations where the tenant shares a bathroom or kitchen facilities with the owner of the accommodation.

[24] Section 5(2) of the *Act* states: "Any attempt to avoid or contract out of this *Act* or the regulations is of no effect."

[25] In this case, the parties were not represented by counsel. This created a challenge for the arbitrator.

[26] While not directly analogous, I find the decision of the Ontario Court of Appeal in *R. v. Morillo*, 2018 ONCA 582 is instructive. In *Morillo*, the Court held:

> [10] In my view, appellate courts ought not to take a rigid or technical approach when identifying the grounds of appeal that a self-represented litigant is raising when seeking leave to appeal under *POA*, s. 139.
>
> [11] The Canadian Judicial Council's *Statement of Principles on Self-Represented Litigants and Accused Persons* has been endorsed by the Supreme Court of Canada in *Pintea v. Johns*, 2017 SCC 23, [2017] 1 S.C.R. 470, at para. 4, and by this court in *Moore v. Apollo Health & Beauty Care*, 2017 ONCA 383, at paras. 42-45, and in *R. v. Tossounian*, 2017 ONCA 618, 354 C.C.C. (3d) 365, at paras. 36-39. According to these principles, self-represented persons are expected to familiarize themselves with relevant legal practices and to prepare their own case. However, self-represented persons should not be denied relief on the basis of minor or easily rectified deficiencies in their case. Judges are to facilitate, to the extent possible, access to justice for self-represented persons.
>
> [12] Appellate judges should therefore attempt to place the issues raised by a self-represented litigant in their proper legal context. In my view, when this is done it is evident that Mr. Morillo is appealing errors of law, and that there is a foundation in the record that those errors may have occurred.

[27] While *Morillo* addressed principles applicable to the courts, these principles have equal application in disputes before administrative bodies, such as the RTB.

[28] In RTB disputes, it is very common for the parties to be self represented. The requirement for the arbitrator to determine the actual dispute between the parties, not necessarily limited to the language used in the notice of dispute, is confirmed in s. 64(2) of the *Act*, which requires the director to "make each decision or order on the merits of the case as disclosed by the evidence admitted".

[29] Self represented parties do not always articulate the basis of their complaints on their originating documents with a level of precision that allows an adjudicator to easily understand what is truly being sought. This can be challenging for adjudicators. However, fairness does require adjudicators to analyze and consider the evidence and positions of the self represented parties to fully understand the

issues raised for consideration, and not take a rigid or technical approach when identifying the issues before them.

[30] The failure of the arbitrator to make clear inquiries of the tenant to understand the nature of her complaint could be construed as an issue of procedural fairness and natural justice: *Moore v. Apollo Health & Beauty Care*, 2017 ONCA 383, at paras. 42-45. The decision under review does not on its face disclose the nature of any such inquiries made by the arbitrator. The tenant did not obtain the certified transcript of the hearing, and so I am not able to determine whether the arbitrator complied with their obligation of procedural fairness in this case.

[31] In any event, whether the arbitrator correctly stated the issue before them is an issue of fact and law, which can be assessed on the face of the decision. Where the initiating documents are ambiguous, as I find they were in the case before the arbitrator, the adjudicator's analysis in the decision must articulate how they determined the issues before them, in addition to setting out their rationale for decision on the issues.

[32] While the tenant articulated her complaint in her notices of dispute as wanting the landlord to comply with the *Act*, regulation and/or tenancy agreement, it is clear from the whole of the evidence and the positions taken by the parties at the hearing that the tenant was asserting that the landlord was subject to the *Act* throughout the tenancy and was seeking a ruling that the landlord's obligations under the *Act* applied to the tenancy up until the date she vacated the suite. She argued that the landlord's actions in moving into the garage were not legitimate. It is clear that the tenant was arguing that the landlord was attempting to avoid the application of the *Act* by taking advantage of the exemption in s. 4(c) of the *Act*.

[33] It is clear from the record that the landlord understood the issue for determination. The landlord opposed the tenant and argued that the *Act* had no application to the tenancy, because she was living in the rental unit. In other words, the landlord defended her position by relying on s. 4(c) of the *Act* (although she did not expressly reference the section).

[34] At the time the notices were filed, the tenant was opposing eviction. However, by the time of the hearing, the tenant was no longer a tenant, and was not seeking relief with respect to an ongoing tenancy. It is clear from the record before the arbitrator, that by the time of the hearing, the tenant was intending to seek compensation for actions taken by the landlord during the tenancy. Her notice of dispute was not amended to reflect her change in circumstances prior to the hearing. However, the application of the *Act* to the tenancy during the time the tenant lived in the rental unit was clearly an important live issue with respect to the tenant's anticipated claim for compensation. In other words, the application of the *Act* to the tenancy was not moot.

[35] Section 62(3) of the *Act* states:

> (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

[36] The foundation of the arbitrator's decision appears to be that s. 62(3) has no application because the tenant was seeking relief in relation to a continuing tenancy. The arbitrator simply stated the bald conclusion that she finds "the request relates to a continuing tenancy".

[37] The arbitrator provided no analysis for how they reached the conclusion that the tenant's dispute relates to a continuing tenancy, and therefore her claims were moot. It was clear that the tenant was seeking a ruling on whether the *Act* applied to the tenancy between the date of the May 2023 RTB decision, and October 31, 2023 when she moved out. This ruling was important to the subsequent claim she was contemplating, namely a claim for compensation in the face of breaches by the landlord. There was no suggestion in the evidence at the hearing that the tenant was seeking to be reinstated as a tenant in the rental unit, i.e. she was not approaching the hearing as a continuing tenant.

[38] Because the arbitrator found the tenant was making a request in relation to a continuing tenancy, but was no longer a tenant, the arbitrator found that s. 62(3) had

no application. The arbitrator provided no analysis as to why s. 62(3) was not available to make a declaratory order as to the application of the *Act* to the tenancy at issue, up until October 31, 2023. Such an order would seem to be available within the broad language of the section.

[39] It is impossible for me to discern any rational or tenable line of analysis supporting the arbitrator's decision. There is no analysis supporting the finding that the dispute related to a continuing tenancy. There is no discussion in the decision as to the actual issue raised for determination, namely whether the tenancy was subject to the *Act* during the relevant period. There is no analysis in relation to the application of s. 62(3) to the actual issue raised for determination. As such, I find the decision of the arbitrator to be clearly irrational and patently unreasonable.

Disposition

[40] The petition for judicial review is allowed. The decision of the RTB dated November 16, 2023, is set aside, and the matter is remitted to the RTB for reconsideration.

Costs

[41] I make no order for costs.

"W.A. Baker J."