

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Contreras v. More Than a Roof Mennonite
Housing Society*,
2024 BCSC 1161

Date: 20240516
Docket: S242736
Registry: Vancouver

Between:

Ruben Ricardo Castelblanco Contreras

Petitioner

And

More Than a Roof Mennonite Housing Society

Respondent

Before: The Honourable Madam Justice Ahmad

On Judicial Review from: Residential Tenancy Branch Arbitrator,
dated April 15, 2024

Oral Reasons for Judgment

In Chambers

The Petitioner, appearing on his own behalf:

R. Contreras

Counsel for the Respondent:

B.J. Lorimer

Place and Date of Hearing:

Vancouver, B.C.
May 16, 2024

Place and Date of Judgment:

Vancouver, B.C.
May 16, 2024

I. Overview

[1] **THE COURT:** This is an application for judicial review of a decision of the Residential Tenancy Branch (the “RTB”) dated April 15, 2024 (the “Decision”) pursuant to which an RTB arbitrator: (a) dismissed the petitioner's application to cancel a 10-day notice to end his tenancy, (b) granted the landlord an order for possession effective April 30, 2024, and (c) granted the landlord a monetary order in the amount of \$1,477.12, being the net balance of unpaid rent.

[2] The petitioner alleges that the arbitrator erred in her misunderstanding and misapplication of the law and equity with regard to his obligation to pay "rent". In brief, he argues her conclusion that the lease agreement required him to pay rent by way of money, and not by way of a type-written document prepared by the tenant, was flawed.

II. Standard of Review

[3] In *Campbell v. The Bloom Group*, 2023 BCCA 84, the court recently re-stated the standard of review for RTB decisions as follows:

[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.

[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": [citations omitted.]

III. The Decision

[4] In the Decision, the arbitrator refers to the written lease agreement made between the parties on October 1, 2018. She notes:

The tenancy agreement states at paragraph 8(a) that "[u]nless otherwise stated in a written amendment to this Tenancy Agreement, rent is payable by PreAuthorized Payment or Post Dated Cheques to be determined at the beginning of the Tenancy.

[5] On page 4 of the Decision, the arbitrator sets out the evidence before her:

From the start of the tenancy until January 2024, the Tenant paid rent with money. The Tenant testified that before February 2024 he paid rent "as anybody does". The Tenant decided to change his method of payment because he upgraded his information.

On February 1, 2024, the Tenant provided to the Landlord a document titled "Notice of Claim to Interest - 1st Attempt". The Tenant testified that this document was a "tender of payment" and that it was a financial asset. The Notice of Claim to Interest - 1st Attempt directed the Landlord to "apply this tender of payment to my account...". This document was accompanied by a document called "Notice of Subrogation and Substitution of Creditors to Social Insurance Number [number redacted] - 1st Attempt".

[6] I pause to note that the "Notice of Claim to Interest - 1st Attempt" is a typewritten document which appears to have been prepared and signed by the tenant.

[7] The arbitrator noted that on February 7, the landlord sent a letter to the tenant informing him that they did not accept the "Notice of Claim to Interest - 1st Attempt" as payment of rent. Although the tenant responded to that letter, "he did not provide any money as rent".

[8] The arbitrator sets out the tenant's position before the RTB as follows:

The Tenant argued that he had paid rent to the Landlord with his tender of payment, being the "Notice of Claim to Interest 1st Attempt".

[9] Her analysis of that position commences on page 5:

The Tenancy agreement specifically stated the forms of payment that were acceptable to the Landlord, and a "Notice of Claim to Interest" is not an acceptable form or payment.

Section 1 of the [RTA] defines rent as "money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities..."

I find that, the Tenant's "Notice of Claim to Interest - 1st Attempt" was not money paid or value given and thus it was not a payment of rent.

IV. Discussion

[10] As he did at the hearing before the RTB, on this judicial review, the tenant argues that he was entitled to pay rent in the manner he did (i.e., by presentment of

the self-prepared typewritten document titled "Notice of Claim to Interest - 1st Attempt"), and without any payment of money, by way of pre-authorized payment, cheque, or otherwise. He argues that the arbitrator's dismissal of that position ignores what he says is the law regarding, among other things, secured instruments and what constitutes "value given".

[11] In that regard, he cites certain provisions of the *Personal Property Security Act*, R.S.B.C. 1996, c. 245, the *Law and Equity Act* R.B.S.C., 1996, c. 253, the *Securities Transfer Act*, S.B.C., 2007, c. 10, and the *Bills of Exchange Act*, R.S.C., 1985, c. B-4, among others.

[12] Although none of those statutes were expressly referenced in the Decision, I am satisfied that the RTB adjudicator considered the referenced provisions and the tenant's argument regarding their application. Indeed, in his submissions today, the tenant conceded that the arbitrator heard his submissions and asked for clarification, he says, about nine times.

[13] That the arbitrator understood the tenant's argument is evident from her summary of the tenant's position as follows:

The Tenant testified that this document [the "Notice of Claim to Interest - 1st Attempt"] was a "tender of payment" and that it was a financial asset.

[14] A question posed during the RTB hearing is indicative of the consideration the arbitrator gave to the tenant's argument and demonstrates her attempt to allow the tenant to justify his position:

During the hearing, the Tenant was asked if he could establish the value of the Notice of Claim to Interest 1st Attempt. The Tenant could not, because he did not know how that part of it worked.

[15] I have myself considered the tenant's legal arguments on this judicial review. Generously characterized, the arguments were confusing and difficult to follow; more accurately, they demonstrated a seriously misconstrued understanding of the statutes cited and significantly strained the bounds of any reasonable interpretation

of their provisions. The arguments were so misconceived and convoluted that they are difficult, if not impossible, to summarize.

[16] Notably, in his submissions on the law, the tenant ignores the basic concept of contract law that there must be a consensus *ad idem* as to its terms. In this case, given the express lease terms and the history between the parties, there can be no doubt that the parties agreed that rent was to be paid by the payment of money (i.e., by pre-authorized payment or post-dated cheque).

[17] I am satisfied that the arbitrator heard and gave due consideration to the tenant's argument regarding the purported validity of the "Notice of Claim to Interest - 1st Attempt" as "rent". I am also satisfied that her conclusion that the tenant's "Notice to Claim to Interest - 1st Attempt" was not money paid or value given, and thus was not a payment of rent, was not patently unreasonable.

[18] Accordingly, this petition is dismissed.

[19] Those are my reasons. Thank you.

[20] Are you seeking costs, Mr. Lorimer?

[21] CNSL B. LORIMER: Yes.

[22] THE COURT: Costs are going to be awarded against the petitioner for this proceeding, this judicial review, and the signature of the petitioner will be dispensed with on the order.

[23] Mr. Lorimer, though, you are going to please provide a copy of the order to --

[24] CNSL B. LORIMER: Absolutely.

[25] THE COURT: Thank you very much. Thank you.

"Ahmad J."