

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Najaripour v. Brightside Community Homes*,
2024 BCCA 250

Date: 20240703
Docket: CA49494

Between:

Theodora Neyereh Najaripour

Appellant
(Petitioner)

And

Brightside Community Homes

Respondent
(Respondent)

Before: The Honourable Mr. Justice Harris
The Honourable Justice Griffin
The Honourable Justice Winteringham

On appeal from: An order of the Supreme Court of British Columbia, dated November 21, 2023 (*Najaripour v. Brightside Community Homes*, 2023 BCSC 2032, Vancouver Docket S228720).

Appearing as representative for the
appellant by power of attorney:

G. Magdalena

Counsel for the Respondent:

O.P. Onyema

Place and Date of Hearing:

Vancouver, British Columbia
May 9, 2024

Place and Date of Judgment:

Vancouver, British Columbia
July 3, 2024

Written Reasons by:

The Honourable Justice Griffin

Concurred in by:

The Honourable Mr. Justice Harris
The Honourable Justice Winteringham

Summary:

The appellant appeals from her dismissal of an application seeking judicial review of a decision of the Residential Tenancy Branch (“RTB”). The appellant argues that the respondent landlord, a subsidized housing provider, unreasonably insisted on copies of bank statements to determine her eligibility for a rent subsidy, and then denied her a rent subsidy when she did not provide the statements. The landlord did not accept her claim that she no longer had a bank account, and required additional proof. The appellant refused to pay the full rent and so a notice to end tenancy was given by the landlord and the RTB enforced the notice. Held: Appeal dismissed. The standard of review of a decision of the RTB is governed by the Administrative Tribunals Act, and that standard of patent unreasonableness is not met. Based on the tenancy agreement, the question of whether the appellant provided sufficient documentation to the landlord to qualify for a rent subsidy was not an issue properly before the RTB for determination.

Reasons for Judgment of the Honourable Justice Griffin:

Overview

[1] Theodora Najaripour, the appellant, is a tenant at a rental property in Vancouver that is owned and operated by the respondent, Brightside Community Homes Foundation (“Brightside”). Brightside is a non-profit society that provides subsidized rental housing for low-income tenants.

[2] The present dispute arises out of Brightside’s conclusion that Ms. Najaripour no longer qualified for a rent subsidy, and decision to charge her full economic rent for her unit as of June 2021. This decision was because Brightside was not satisfied that Ms. Najaripour had provided the financial information it required to assess her eligibility for the subsidy, in particular, copies of her bank statements. Ms. Najaripour did not accept this decision, and insisted on paying only the subsidized portion of her rent.

[3] Eventually, in June 2022, Brightside served Ms. Najaripour with a ten-day notice to end tenancy for unpaid rent after she continued to pay only the subsidized rent amount. Under the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [RTA], a tenant may apply to the Residential Tenancy Branch (“RTB”) to dispute a notice to end tenancy. Ms. Najaripour did so, and after a hearing, the RTB upheld the notice in a

decision made October 17, 2022. The result was that the RTB ordered Ms. Najaripour to pay \$11,840.00 in unpaid rent arrears and also made an order that she deliver possession to Brightside.

[4] Ms. Najaripour's application for judicial review of the arbitrator's decision was dismissed by the chambers judge with reasons indexed at 2023 BCSC 2032. She appeals that decision.

[5] Ms. Najaripour's son, Gavrieal Magdalena, has been managing all her communications with Brightside regarding the tenancy. Although not a lawyer, he has also acted as her personal representative at the RTB, on judicial review, and on this appeal and acts under a power of attorney.

[6] It may be helpful to briefly outline some sections of the *RTA* that are relevant to the dispute.

Statutory Context: The *Residential Tenancy Act*

[7] The *RTA* governs arrangements between residential tenants and their landlords, and provides for each to have certain rights and obligations, as well as for some means of dispute resolution between them. The disputes are decided by a person described as an arbitrator, who is a delegate of the director: ss. 9, 9.1.

[8] The *RTA* restricts certain rent increases in Part 3, ss. 41–43.

[9] However, certain types of non-profit or subsidized housing providers, of which Brightside is one, are exempt from the rental increase restrictions in ss. 41–43 of the *RTA*, pursuant to s. 2(g) of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 [the "*Regulations*"].

[10] Part 4 of the *RTA* governs how to end a tenancy.

[11] The type of notice that Brightside gave to Ms. Najaripour to end the tenancy was pursuant to s. 46. Pursuant to s. 46(1) of the *RTA*, a landlord may end a tenancy if rent is unpaid on any day after it is due, by giving notice to end the

tenancy that is effective not earlier than ten days after the notice is received by the tenant. The form and content of the notice must comply with s. 52. A tenant who disputes the notice must, within five days, make an application for dispute resolution: s. 46(4).

[12] Section 52 sets out the form and content of the notice to end tenancy for non-payment of rent:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

[13] However, the director has power to amend the notice pursuant to s. 68, as well as to set it aside:

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

(2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,

- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
- (b) set aside or amend a notice given under this Act that does not comply with the Act.

[14] Where a tenant disputes the landlord's notice to end tenancy, a potential outcome of such a dispute can include the arbitrator dismissing the application or upholding the notice and granting the landlord an order of possession and an order

of payment of rent, pursuant to s. 55. This was the basis for the order of the Arbitrator made October 17, 2022.

[15] Specifically, s. 55 provides in part:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

...

[16] Part 5 of the *RTA* deals with resolving disputes.

[17] Section 58(1) addresses the scope of the dispute resolution process:

58 ...

(1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

(a) rights, obligations and prohibitions under this Act;

(b) rights and obligations under the terms of a tenancy agreement that

(i) are required or prohibited under this Act, or

(ii) relate to

(A) the tenant's use, occupation or maintenance of the rental unit, or

(B) the use of common areas or services or facilities.

[18] Sections 59–61 address some of the formalities of an application for dispute resolution; and ss. 73–76 address aspects of the conduct of a hearing.

[19] Section 62 deals with the director's authority to determine disputes:

62 (1) Subject to section 58, the director has authority to determine

- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
 - (b) any matters related to that dispute that arise under this Act or a tenancy agreement.
- (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.
- (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.
- (4) The director may dismiss all or part of an application for dispute resolution if
- (a) there are no reasonable grounds for the application or part,
 - (b) the application or part does not disclose a dispute that may be determined under this Part, or
 - (c) the application or part is frivolous or an abuse of the dispute resolution process.

...

Standard of Review of a Decision of the RTB

[20] There is no right to appeal a decision of an arbitrator who decides a dispute under the *RTA*.

[21] However, there is a limited right for an affected party to bring an application before the court to judicially review the arbitrator’s decision. Pursuant to s. 5.1 of the *RTA*, these decisions are governed by the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [ATA].

[22] Pursuant to s. 58(2) and (3) of the *ATA*, the court is permitted only very narrow grounds to interfere in a decision made by an arbitrator under the *RTA*. These grounds are helpfully summarized by Justice Winteringham in a recent decision of this Court, *Li v. British Columbia (Residential Tenancy Director)*, 2024 BCCA 202 at paras. 29–34.

[23] In summary:

- a) A finding of fact or law or an exercise of discretion may not be interfered with unless it is patently unreasonable;

- i. An exercise of discretion is patently unreasonable if it: is exercised arbitrarily or in bad faith, or for an improper purpose; is based entirely or predominantly on irrelevant factors, or fails to take statutory requirements into account.
- b) If a decision is challenged based on the grounds of procedural unfairness, then the court cannot interfere unless it concludes, on the standard of correctness, that the decision was procedurally unfair having regard to common law rules of natural justice and procedural fairness, but considered in context of the decision being made, including its statutory, institutional, and social context.

[24] The question on appeal to this Court is whether the chambers judge correctly applied the standard of review. This Court will effectively step into the shoes of the lower court and focus on the administrative decision under review: *Ryan v. Mole Hill Community Housing Society*, 2022 BCCA 200 at para. 34; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para. 46; *Li* at para. 29.

Background

[25] Ms. Najaripour is approximately 78 years old. She lives alone in the apartment unit. English is not her first language. As tenant, she signed a tenancy agreement with Brightside as landlord on October 7, 2009 (the “Tenancy Agreement”).

[26] Brightside operates subsidized rental units in accordance with its agreements with the Canada Mortgage and Housing Corporation, the British Columbia Housing Management Commission and others.

[27] Under the terms of the Tenancy Agreement, the initial economic rent for the unit was \$1,300 per month.

[28] However, the Tenancy Agreement gives Brightside discretion to settle on an amount payable by the tenant that is less than economic rent, considering the tenant’s gross income and/or total assets, income and assets of any other

occupants, subsidized housing agreements with government agencies that provide a contribution toward rent, and Brightside’s costs.

[29] The Tenancy Agreement did not incorporate any policies of any particular subsidy program or any subsidy formulas.

[30] The Tenancy Agreement states that the economic rent, and Ms. Najaripour’s contribution towards it, is subject to change by Brightside, and that Brightside has the ability to increase the tenant’s monthly rent contribution to 100% of the full economic rent.

[31] The Tenancy Agreement provides that the tenant must provide information and documentation regarding annual income and assets to the landlord when requested. Specifically, it states:

The Tenant must provide complete and truthful annual income and asset information and supporting documentation to the Landlord for every occupant of the Suite, as and when the Landlord requests. Failure by the Tenant to fully and promptly cooperate in making a declaration as required by the Landlord, or any misrepresentation by omission or commission, is an important breach of the tenancy agreement and shall be cause for termination of this Tenancy.

[Emphasis added.]

[32] The Tenancy Agreement sets out that the tenant’s failure to provide the information requested gives the landlord the right to terminate the tenancy or subsidy. It provides:

48. Specific Termination Rights. In addition to all other rights under this tenancy agreement or the Act, the Landlord has the right to terminate this tenancy if the Tenant:

...

(b) fails to fully and correctly provide any income, asset or occupant information. The Tenant has been selected for tenancy on basis of the number of Tenants and Occupants and the Tenant’s and Occupant’s Income and assets. Any change in the number of Tenants or Occupants or in the Tenant’s or Occupant’s income or assets is material and of great importance to the decision to continue or terminate tenancy. It is a condition of this agreement that in the event of a change in the number of Tenants or Occupants in the Premises or the Tenant’s or Occupant’s income or assets, the Lessor shall have

the right to terminate this Tenancy Agreement. The Tenant agrees to notify the Lessor promptly of any change in the number of Tenants or Occupants in the Premises and in the Tenant's or Occupant's income or assets. The Tenant agrees from time to time as required by the Landlord, on a on a form provided by the Landlord, to declare the number of Tenants and Occupants in the Premises and their names, ages, gross incomes and assets. Proof of income and assets must be provided with the declaration. The declaration and information provided with the declaration shall be part of this Tenancy Agreement and the information contained in the declaration and provided with the declaration shall be material to this Tenancy Agreement any misinterpretation by omission or commission shall be cause for termination of the tenancy. Failure by the Tenant to make a declaration as required by the Landlord or to provide or cause to be provided such information or documentation as requested by the Landlord shall be cause for termination of this Tenancy Agreement and/or the termination of the subsidy. The Tenant will be then required lo pay the full economic rent.

[Emphasis added.]

[33] Brightside initially considered Ms. Najaripour's rent as subject to subsidy. In 2018, Brightside assessed Ms. Najaripour's base rent amount as \$779, with an additional \$34 for cable television.

[34] Brightside gave evidence that pursuant to its requests for financial information in 2018, Ms. Najaripour provided bank statements from a joint bank account that she shared with Mr. Magdalena.

[35] On April 21, 2021, Brightside sent a letter to Ms. Najaripour regarding the financial documents required to determine her rent subsidy eligibility:

...

Unfortunately, you have not provided us with any of the documents required in order to calculate your rent subsidy. We may still have the time to adjust your rent if the documents are received by May 15, 2021. Please find enclosed a list of required documents.

You are reminded that the building you live in is subsidized by Brightside Community Homes Foundation, and you therefore must comply with the terms of your tenancy – which include an annual income review. Please be advised if we do not receive the above documents by May 15, 2021, your rent

will be increased to \$1553.00 (market rent) effective June 1, 2021. [...] There will be no exceptions.

...

[Emphasis in original.]

[36] Whether or not the “list of required documents” and required form was actually enclosed with the April 21, 2021 letter is disputed on this appeal. Ms. Najaripour submits that the list was never enclosed and therefore, she would not have been notified at that time when Brightside required her bank statements. Brightside contends that this is a new argument on appeal. Brightside submits that Ms. Najaripour has never denied in the underlying proceedings that she knew that Brightside wanted her to disclose bank statements as part of the financial disclosure.

[37] In June 2021, Brightside adjusted Ms. Najaripour’s rent to \$1,553 per month, taking the position this was 100% of the current economic rent. This was done based on Brightside’s conclusion that Ms. Najaripour had failed to provide requested financial information and so no longer qualified for a rent subsidy.

[38] On August 3, 2021, Mr. Magdalena sent to Brightside copies of Ms. Najaripour’s 2019 and 2020 Notices of Assessment from Canada Revenue Agency.

[39] On September 16, 2021, after Ms. Najaripour failed to pay the adjusted amount of rent, Brightside served Ms. Najaripour with a ten-day notice to end tenancy for unpaid rent (the “September 2021 Notice”) pursuant to s. 46 of the *RTA*.

[40] As was her right, Ms. Najaripour applied to the RTB pursuant to s. 55 to dispute the landlord’s September 2021 Notice. Mr. Magdalena appeared as Ms. Najaripour’s agent by telephone at the RTB hearing, held on February 10, 2022.

[41] In the resulting February 10, 2022 decision (the “February RTB Decision”), Arbitrator Martin accepted Ms. Najaripour’s arguments that there were flaws in the September 2021 Notice and some insufficiencies in Brightside’s evidence, and therefore did not enforce the notice. Had the Arbitrator rejected Ms. Najaripour’s

arguments, the Arbitrator had the authority under s. 55(4) to grant the landlord an order for possession and an order requiring payment of the rent. Since Ms. Najaripour's application was granted, no such orders were granted to the landlord.

[42] The submissions at the February 10, 2022 RTB hearing made it clear that it was Brightside's position Ms. Najaripour had failed to provide bank statements, which it required to assess her income and assets. Brightside's written submissions stated that it had requested Ms. Najaripour's banks statements for three months, and that Ms. Najaripour had refused to provide the same, claiming it was a joint account and the information could not be shared.

[43] Arbitrator Martin noted in the reasons that Ms. Najaripour "failed to provide bank statements to complete an income assessment for three months, so she was charged the full market rent, instead of a subsidized rent". As background, Arbitrator Martin indicated Ms. Najaripour made the submission that she did "not have a bank account and it is not in her name, so she has no control over it".

[44] Therefore, it was clear, at least by the time of the February 10, 2022 RTB hearing, Ms. Najaripour had notice that Brightside was not satisfied with the income and asset information provided by her and requested her bank account statements or some additional proof that she did not have a bank account.

[45] The Arbitrator noted Ms. Najaripour had liberty to reapply to dispute the rent due. This identified that if the landlord sought to enforce its position as to the rent that was due, by issuing a new notice to end tenancy, Ms. Najaripour was still free to dispute the new notice. It was not, however, a ruling that the increased rent was not due.

[46] Another RTB hearing took place in May and July 2022, initiated by Ms. Najaripour, who complained that the landlord was not fulfilling its responsibilities in respect of the condition of the premises. The Arbitrator accepted some, but not all of Ms. Najaripour's arguments. This resulted in an order in August 2022 that

Brightside compensate Ms. Najaripour in the amount of \$1,925.00 (the “August RTB Decision”).

[47] In his subsequent correspondence to Brightside, Mr. Magdalena expressed his position that Ms. Najaripour did not have a bank account and so could not deposit any such compensation cheque in her name.

[48] Meanwhile, on May 31, 2022, Brightside sent Ms. Najaripour a letter advising her that by failing to submit her income documents and financial information when requested, she had lost her rent subsidy, and her rent had been adjusted to market rates of \$1,553 per month since June 2021 (based on the adjusted economic rent as at that time). The letter asked for her income review documents by June 15, 2022, in order to allow Brightside to calculate the subsidy for the months moving forward. The letter advised that Ms. Najaripour was still in significant rent arrears, and asked her to work with them to address outstanding amounts, otherwise there would be another ten-day notice to end tenancy.

[49] There is no evidence Ms. Najaripour or anyone on her behalf wrote back to Brightside and submitted additional financial information, or questioned what financial information would suffice. It is Brightside’s position that it made it clear that it was not satisfied with the assertion that Ms. Najaripour did not have a bank account, and wanted more evidence to corroborate this assertion.

[50] By cheque dated May 1, 2022, signed by Mr. Magdalena, Mr. Magdalena purported to pay the subsidized rent amount to Brightside for that month for Ms. Najaripour. Brightside points out the cheque created suspicions that Ms. Najaripour was still a joint bank account holder with her son: the cheque was written on the same account as was the previously known joint account; and there was a name blacked out on the cheque above Mr. Magdalena’s name, where normally another person’s name would be.

[51] Mr. Magdalena has not produced anything from the bank to support the proposition that Ms. Najaripour was no longer a joint bank account holder with him.

For example, he has not produced monthly bank statements to show that the account changed from being a joint account to being an account in his name only.

[52] Brightside sent a further letter on June 6, 2022, advising Ms. Najaripour that she owed \$10,946 in rent arrears, calculated from July 2021. The letter stated that Ms. Najaripour’s failure to communicate with Brightside left it with no choice, and that it would be issuing a ten-day notice for nonpayment of rent if she failed to pay her outstanding rent in full by June 13, 2022.

[53] On June 15, 2022, Brightside served Ms. Najaripour with a ten-day notice to end tenancy for unpaid rent (the “June 2022 Notice”). The June 2022 Notice indicated that Ms. Najaripour owed rent arrears totalling \$10,946.

[54] Ms. Najaripour applied to the RTB pursuant to s. 55 to dispute the June 2022 Notice on June 21, 2022. Again, s. 55 of the *RTA* gives the arbitrator the authority to determine the validity of the notice, and if valid, to grant the landlord an order of possession and an order requiring payment of rent due.

[55] The resultant RTB hearing took place on October 7, 2022. Mr. Magdalena represented Ms. Najaripour at the hearing.

[56] In a decision published on October 17, 2022 (the “October RTB Decision”), Arbitrator Selbee (the “Arbitrator”) dismissed Ms. Najaripour’s application to cancel the June 2022 Notice, issued an order of possession to Brightside, and a monetary order to Brightside in the amount of \$11,840 for rent arrears (slightly higher than initially claimed due to unpaid rent in the months between the notice and the hearing).

[57] Several arguments were advanced by Mr. Magdalena at the hearing, in support of his argument that Ms. Najaripour did not need to pay the market rent, only the subsidized rent. The Arbitrator summarized these arguments at page 3 of the October RTB Decision.

[58] Mr. Magdalena's submissions included an argument that the August RTB Decision was premised on a finding that the landlord was not allowed to raise the rent from the subsidized amount to economic rent. This was not in fact the premise of the August RTB Decision which did not address the subsidy, as noted by the Arbitrator in the October RTB Decision (p. 10). The Arbitrator also rejected the argument that the change to economic rent was a rent increase subject to a freeze issued during the pandemic (p. 10). These arguments are not pursued on appeal.

[59] Mr. Magdalena also disputed that Ms. Najaripour had not paid any rent in April, May and June 2022, and called two witnesses: her caregiver, who testified about dropping off rent cheques for her; and the other, a friend, who testified about seeing the rent cheques. The Arbitrator accepted this evidence. These payments however were only the subsidized rent amounts, not the economic rent which Ms. Najaripour had continuously refused to pay since June 2021.

[60] In the October RTB Decision, the Arbitrator reviewed the evidence and submissions regarding whether Ms. Najaripour had met the landlord's requirements to provide financial documentation. The Arbitrator wrote:

During the hearing, G.M. sought to call the witnesses a second time to provide evidence about whether the Tenant has a bank account. I told G.M. I would not hear the witnesses on this issue. This issue relates to the argument of G.M. that the Tenant provided the necessary financial documentation to the Landlord despite the Landlord's position otherwise. As explained to the parties during the hearing, the issue of whether the Tenant has a bank account is not the issue before me. The issue is whether the necessary financial documentation was provided to the Landlord which is a different issue from whether the Tenant does or does not have a bank account.

[Emphasis added.]

[61] The Arbitrator found that the primary issue regarding the validity of the June 2022 Notice was whether Ms. Najaripour provided the financial documents required by Brightside when requested.

[62] The Arbitrator determined that pursuant to the *RTA*, the *Regulations* and the terms of the Tenancy Agreement, including clause 48(b), Brightside could adjust Ms. Najaripour's rent from the subsidized amount to economic rent if she did not

provide the information Brightside required when requested. As well, the Tenancy Agreement provided that economic rent was subject to change. Therefore, because she did not provide her bank statements or any evidence that she did not have a bank account when Brightside requested an income assessment, Ms. Najaripour had no basis to withhold from paying the economic rent charged by the landlord.

[63] In interpreting the Tenancy Agreement, the Arbitrator noted it provides that “if the Tenant no longer qualifies for subsidized housing for any reason”, the landlord could require the tenant to pay economic rent (p. 9). The Arbitrator held (at p. 9):

I find the Tenant was properly notified in the April 21, 2021, May 31, 2022, and June 06, 2022, letters that rent changed from the subsidized amount to \$1,553.00 effective June 01, 2021. I find it clear that the change was due to the Tenant not providing the required documents to the Landlord and therefore losing their subsidy.

An issue arose at the hearing about whether the Tenant had provided the required bank account information to the Landlord. G.M. testified that the Tenant provided the required documentation and the Landlord disputed this. The issue was the Tenant providing a bank statement or proof they no longer have a bank account. In my view, it is not within my purview to decide whether the Tenant provided the Landlord the documents the Landlord required to determine eligibility for a rent subsidy. However, even if this is within my purview, I am satisfied the Tenant did not provide the Landlord bank statements or proof the Tenant no longer has a bank account. G.M. tried to prove during the hearing that the Tenant no longer has a bank account, which is not the issue.

The issue is whether the Tenant provided the required information to the Landlord when requested. The Landlord has submitted documentary evidence, the letters already noted, to support their position. There is no documentary evidence before me showing the Tenant provided the Landlord their bank statements or proof they no longer have a bank account. In the circumstances, I am satisfied the Tenant did not provide the required documentation to the Landlord to obtain a rent subsidy.

[Emphasis added.]

[64] On October 20, 2022, Ms. Najaripour applied for a review consideration of the October RTB Decision, arguing that there was new and relevant evidence and there had been fraud in that decision. The new evidence included an undated letter from Ms. Najaripour to Brightside stating that she no longer owns a bank account and cannot provide bank statements and another letter from Ms. Najaripour’s caregiver stating that he personally delivered that letter in November 2018. However, these

letters did not enclose any bank statements or other bank documents to support the assertion that Ms. Najaripour's name had come off the joint account held with Mr. Magdalena.

[65] On October 25, 2022, the Arbitrator dismissed the application for review consideration on the basis that it did not disclose sufficient evidence of any grounds for review (the "Review Consideration Decision").

[66] On October 20, 2022, Brightside applied for a correction to a math error in the October RTB Decision. The Arbitrator issued a correction decision on November 1, 2022, correcting certain omissions and typographical errors but declining to adjust the decision or correct math errors.

[67] On October 28, 2022, Ms. Najaripour, represented by Mr. Magdalena, filed a petition for judicial review of the October RTB Decision.

The Underlying Decision

[68] There were three grounds advanced on judicial review. Ms. Najaripour argued that the October RTB Decision was patently unreasonable because of the Arbitrator's statement: "it is not within my purview to decide whether the Tenant provided the Landlord the documents the Landlord required to determine eligibility for a rent subsidy". She further argued that the Arbitrator's reasons were inadequate; and that she was denied procedural fairness because she was not permitted to recall her witnesses and not permitted to cross-examine Brightside's agent.

[69] The chambers judge identified the correct standard of review at paras. 43–46.

[70] The chambers judge determined that the October RTB Decision, not the Review Consideration Decision, was the subject of judicial review on the basis that the Review Consideration Decision did not review the merits of the October RTB Decision: para. 53. No challenge is taken with the same focus on appeal. Further, Ms. Najaripour does not challenge the adequacy of the Arbitrator's reasons on appeal.

[71] In considering whether the October RTB Decision was patently unreasonable, the chambers judge considered the reasons as a whole, and found that the Arbitrator's statement about her "purview" related to her inability to interfere with the substance of Brightside's policy on how it assesses whether an individual meets the financial requirements for a subsidy. She found the statement did not relate to the Arbitrator's jurisdiction to decide whether the banking information was given to Brightside when requested: para. 54.

[72] The chambers judge cited *Hu v. Red Door Housing Society*, 2016 BCSC 1238 at paras. 8, 18, 23–25, 30 for the proposition that the *RTA* and *Regulations* do not permit an arbitrator to scrutinize the housing provider's internal policy for assessing income for the purposes of granting or removing a subsidy, nor do such issues fall under the interpretation of a tenancy agreement if that agreement does not incorporate terms relating to the subsidy. In *Hu*, Holmes J. found:

[23] Red Door is exempt from the rent restrictions in sections 41-43 of the [*RTA*], and there is no other provision in the [*RTA*] dealing with the removal of a rent subsidy. The rent increase that resulted from the removal of Ms. Hu's subsidy was, therefore, an increase unrelated to any right, obligation, or prohibition under the [*RTA*], and, accordingly, s. 58(1)(a) was not engaged.

[24] Nor was s. 58(1)(b) engaged. Red Door's removal of the subsidy did not involve a right or obligation under the terms of tenancy agreement, as s. 58(1)(b) requires. The tenancy agreement does not purport to deal with Ms. Hu's subsidy.

[25] Since, therefore, nothing in s. 58 provided a basis for Ms. Hu's application concerning the cancellation of her subsidy, sections 58 and 62 did not require the director to accept the application or the arbitrator to determine it.

[Emphasis added.]

[73] The chambers judge found that the Arbitrator framed the issue as whether Ms. Najaripour provided current information about her bank account, or proof that she no longer had one, to Brightside when requested. The issue was not whether Ms. Najaripour had a bank account: para. 57.

[74] The chambers judge rejected the argument that Ms. Najaripour could not have done more to prove the non-existence of a bank account: para. 60. She found

the fact Ms. Najaripour may have informed Brightside that she did not have a bank account in 2018 did not satisfy Brightside's request for current information. This was because her subsidy entitlement was reviewable on an ongoing basis, as requested by Brightside: para. 61.

[75] In relation to procedural fairness, the judge concluded that the Arbitrator did not act unfairly in refusing to allow Ms. Najaripour to recall her two witnesses or cross-examine Brightside's agent, Silvia Romano. The chambers judge highlighted that Rule 7.17 of the *RTB Rules of Procedure* [*RTB Rules*] gives the Arbitrator the authority to determine the relevance, necessity, and appropriateness of evidence and found it was not a breach of procedural fairness for the Arbitrator to conclude that additional evidence about a bank account was not necessary. Further, she noted that the opportunity to question another party's witness at an RTB hearing is not as of right, and it was within the Arbitrator's discretion to not permit the cross-examination of Mr. Romano: at paras. 68–72.

Grounds of Appeal

[76] The appellant advances two grounds of appeal:

- a) the chambers judge erred in law in failing to find that the Arbitrator was patently unreasonable in making the October RTB Decision, by refusing to interpret the Tenancy Agreement; and
- b) the chambers judge erred in law in failing to conclude that the October RTB Decision was procedurally unfair, by refusing to allow the appellant's witnesses an opportunity to give additional evidence.

Analysis

First Ground: Patent Unreasonableness

[77] Ms. Najaripour argues that the chambers judge erred in law in applying the patent unreasonableness standard to the October RTB Decision. She submits that the Arbitrator's refusal to interpret the Tenancy Agreement was patently unreasonable.

[78] Ms. Najaripour’s argument is based on the proposition that the Arbitrator refused to interpret the Tenancy Agreement, despite it being within the Arbitrator’s jurisdiction to do so pursuant to s. 58(1)(b) of the *RTA*. She draws this conclusion based on the Arbitrator’s statement that “it is not within my purview to decide whether the Tenant provided the Landlord the documents the Landlord required to determine eligibility for a rent subsidy”.

[79] The proposition that the Arbitrator refused to interpret the Tenancy Agreement is incorrect. Rather, the Arbitrator properly understood that the Tenancy Agreement did not determine what documents a tenant was required to give the landlord to satisfy the landlord that the tenant qualified for the subsidy: those matters are not dictated by the Tenancy Agreement.

[80] It is apparent from reading the October RTB Decision as a whole that the Arbitrator interpreted the Tenancy Agreement to the extent it applied, including the issue of whether or not Ms. Najaripour provided her financial information “when requested”. The Arbitrator set out the relevant parts of the Tenancy Agreement in her decision, and found that Ms. Najaripour entered into the Tenancy Agreement knowing the terms of the agreement, including that she was obliged to provide financial information to Brightside when requested.

[81] Contrary to Ms. Najaripour’s submissions, the Tenancy Agreement does not require the landlord to accept a tenant’s mere assertions as to their income and assets. Rather, clause 48 of the Tenancy Agreement gives the landlord the right to request documentation, and to terminate the subsidy if the documentation it requests is not provided:

Failure by the Tenant to make a declaration as required by the Landlord or to provide or cause to be provided such information or documentation as requested by the Landlord shall be cause for termination of this Tenancy Agreement and/or the termination of the subsidy.

[82] Ms. Najaripour submits that this case is distinguishable from *Hu* on the basis that the tenant’s subsidy in that case was based on an unwritten policy, and her subsidy terms were clearly stated in the Tenancy Agreement. I disagree. While

clause 48 and other sections of the Tenancy Agreement set out Ms. Najaripour's obligation to disclose financial documents at Brightside's request, like in *Hu*, the Tenancy Agreement here does not set out Brightside's internal policy regarding what specific documents it will require for income and asset assessment and how subsidy eligibility is to be calculated.

[83] Ms. Najaripour further submits that Brightside did not request her bank statements as part of their demand for documentation as part of her income assessment, or at least provide evidence of such requests. The list of required documents for income assessment, pursuant to the April 21, 2021 letter, is not in evidence.

[84] However, by the time of the February RTB Decision, it was clear that Ms. Najaripour's failure to provide her bank statements upon Brightside's request was the main issue in relation to her subsidy eligibility. In that Decision, Arbitrator Martin recognized that Ms. Najaripour "failed to provide bank statements to complete an income assessment for three months, so she was charged the full market rent, instead of a subsidized rent".

[85] Ms. Najaripour clearly had notice that, as part of their income assessment to determine her subsidy eligibility, Brightside required her bank statements, or some documentary proof from a bank that went beyond Ms. Najaripour's mere assertion that she no longer had a bank account.

[86] For these reasons, the chambers judge did not err in finding that the October RTB Decision was not patently unreasonable.

Second Ground: Procedural Unfairness

[87] Ms. Najaripour further contends that the chambers judge made an error of law in determining that the Arbitrator acted fairly in deciding not to recall her two witnesses for further testimony.

[88] Ms. Najaripour submitted evidence at the Review Consideration Decision of an undated letter from Ms. Najaripour to Brightside stating that she no longer owns a bank account and cannot provide bank statements. Her caregiver's evidence was that he dropped this letter off with Brightside in 2018.

[89] However, the issue was not whether Ms. Najaripour told Brightside she did not have a bank account; assuming she did so, the issue was that Brightside was not satisfied with this assertion and requested some additional documentation (for example from the bank) that would support it. There is no dispute that Ms. Najaripour failed to provide any documentation from her bank to support her assertion that her joint account had become a sole account of her son's.

[90] The Arbitrator did not deny Ms. Najaripour procedural fairness in refusing to recall these witnesses, as their evidence was not helpful to disprove the point that Brightside had requested and had not received documentation from Ms. Najaripour and for this reason had decided she was no longer eligible for a rent subsidy.

[91] The chambers judge did not err in finding that the *RTB Rules* permit the Arbitrator to determine the relevance, necessity, and appropriateness of evidence. There was no procedural unfairness.

Disposition

[92] I would dismiss the appeal.

[93] The parties agreed to a consent stay of the RTB and judge's orders, on condition that Ms. Najaripour continue paying rent at the subsidized rate. It follows

from this decision and the terms of that stay order that the stay will expire 14 days after the date of this decision.

“The Honourable Justice Griffin”

I AGREE:

“The Honourable Mr. Justice Harris”

I AGREE:

“The Honourable Justice Winteringham”