# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Shuster v. British Columbia (Residential Tenancy Branch),* 2024 BCCA 282

Date: 20240801
Docket: CA49321

Between:

**Gary Shuster and Dana Shuster**

Appellants
(Petitioners)

And

**Director, Residential Tenancy Branch, and Prompton Real Estate Services Inc.**

Respondents
(Respondents)

Before: The Honourable Mr. Justice Willcock
The Honourable Mr. Justice Abrioux
The Honourable Madam Justice DeWitt-Van Oosten

On appeal from: An order of the Supreme Court of British Columbia, dated August 9, 2023 (*Shuster v. Prompton Real Estate Services Inc.*, 2023 BCSC 1605, Vancouver Registry Docket S-232799).

| | |
|---|---|
| Counsel for the Appellant: | A.D. Greer |
| Counsel for the Respondent, Director of the Residential Tenancy Branch: | T.A. Mason |
| Counsel for the Respondent, Prompton Real Estate Services Inc.: | C.A. Campbell |
| Place and Date of Hearing: | Vancouver, British Columbia May 22, 2024 |
| Place and Date of Judgment: | Vancouver, British Columbia August 1, 2024 |

**Written Reasons by:**
The Honourable Mr. Justice Abrioux

**Concurred in by:**
The Honourable Mr. Justice Willcock
The Honourable Madam Justice DeWitt-Van Oosten

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***Summary:***

*The appellants appeal the dismissal of their petition for judicial review of a Residential Tenancy Branch ("RTB") decision which dismissed their application disputing a series of rent increases. The appellants entered into a tenancy agreement for a two-year fixed term with the rent to be paid for the first year set at $5,500 and the rent for the second year set at $6,500. Three months before the fixed-term was set to end, the respondent provided the appellants a Notice of Rent Increase form in accordance with the Residential Tenancy Act and Regulation. The appellants dispute the validity of the first and second rent increase due to an alleged lack of notice provided for the first rent increase. Held: Appeal dismissed. The arbitrator's decision was not patently unreasonable. The appellants knew the terms of the tenancy agreement at the outset of the two-year fixed term which included the amount of rent payable in the first year and second year, respectively. The arbitrator reasonably concluded that s. 42 of the RTA was not engaged in these circumstances. Nor was the agreement unconscionable.*

**Reasons for Judgment of the Honourable Mr. Justice Abrioux:**

## Introduction

[1] The appellants, Gary and Dana Shuster, appeal the dismissal of their petition seeking judicial review of the decision of an arbitrator of the Residential Tenancy Branch ("RTB") which dismissed their application disputing a series of rent increases (the "Decision").

[2] The principal ground of appeal concerns the interpretation of the timing and notice of rent increase provisions in the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*] and *Residential Tenancy Regulation*, B.C. Reg. 477/2003 (the "Regulation"), specifically Part 3, s. 42 of the *RTA*. The appellants say that the chambers judge, in dismissing their petition for judicial review, erred in finding that the Decision was not patently unreasonable and that the arbitrator erred in applying the doctrine of estoppel.

[3] The Director of the Residential Tenancy Branch (the "Director") participated in the appeal pursuant to s. 15 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241. The Director took no position as to whether the Decision was patently unreasonable but provided the Court with submissions on the statutory framework

related to rent increases and case law concerning equitable estoppel and equitable remedies generally.

[4] For the reasons that follow I would dismiss the appeal.

## Background

[5] The judge succinctly summarized the salient facts relating to the tenancy agreement entered into by the parties (the "Tenancy Agreement") in her reasons for judgment which are indexed as 2023 BCSC 1605:

> [7] The relevant facts are as follows:
>
> a) The parties entered into a written tenancy agreement dated December 21, 2020 ("Tenancy Agreement");
>
> b) Clause 5 of the Tenancy Agreement stated that the tenancy was for a fixed term beginning January 1, 2021 and ending December 31, 2022;
>
> c) Clause 5 also included the following:
>
> > A two year lease. 2nd year from January 01, 2022-December 31, 2022 is the rate of $6500 per month with the option of a rent increase with the allotted amount by the [document cut off]
>
> d) Clause 7 of the Tenancy Agreement provided that the rent payable for the first year was $5,500 and also noted "2ND YEAR $6500 / MON".
>
> [8] It is undisputed that the Tenancy Agreement was entered into between the parties on these terms. It is also undisputed that the tenants paid rent in accordance with the Tenancy Agreement, namely $5,500 per month for the first year and $6,500 per month from January 1, 2022 onwards.
>
> [9] On September 22, 2022, Prompton provided a Notice of Rent Increase effective January 1, 2023 in the maximum 2% permitted by the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 [*Regulation*], namely an increase of $130 bringing the rent for January 1, 2023 onward to $6,630 per month. The petitioners have not paid this amount. They take the position that the legality of this rent increase is dependent on the January 1, 2022 increase from $5,500 to $6,500 being effective. If that increase was not permissible, then the January 1, 2023 increase is over five times the permitted amount, and therefore also impermissible under the *RTA* and the *Regulation*.
>
> [10] The Tenancy Agreement was in the standard form, and thus also contained the standard terms, including Clause 14, which incorporates the provisions of s. 42 into the Tenancy Agreement. Clause 14 provides in relevant part as follows:
>
> > RENT INCREASE. Once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12

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> months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy Branch or ServiceBC office. A landlord must give a tenant 3 whole months notice, in writing, of a rent increase. …
>
> The landlord and tenant may agree in writing to a rent increase greater than the amount permitted by the regulation.

[6] I will refer to the rent increase from $5,500 to $6,500 as of January 1, 2022 as the “First Increase” and the September 22, 2022 Notice of Rent Increase as the “Second Increase”.

## The Arbitrator’s Decision

[7] The appellants applied pursuant to s. 43(5) of the *RTA* for a monetary order for overpayment of rent.

[8] The hearing proceeded by telephone with the appellants appearing on their own behalf with the landlord being represented by their property manager, Prompton Real Estate Services Inc. (“Prompton”).

[9] The appellants disputed the First Increase and argued that the legality of the Second Increase was dependent on the legality of the First Increase, since without the latter the former would be in excess of the allowable maximum permitted by the *RTA* and the Regulation. They contended that the First Increase failed to comply with applicable sections of the *RTA*. In particular, it exceeded the maximum allowable increase permitted by s. 43. Furthermore, Prompton failed to provide proper notice of the First Increase as mandated by s. 42, which prescribes certain notice and timing requirements. Central to the appellants’ position was that these requirements applied notwithstanding the terms of the Tenancy Agreement.

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[10] The arbitrator made a number of conclusions that were summarized by the judge:

- the Tenancy Agreement, which reflected the parties' understanding as to the amount of rent due throughout the two-year period, was signed on December 21, 2020: at para. 11;
- the appellants had paid rent of $5,500 during the first year of the lease, that is between January 1, 2021 and December 1, 2021: at para. 12;
- the parties had agreed to the rent increase in writing in the Tenancy Agreement and as such s. 42 of the *RTA* did not apply: at para. 16;
- in the event that the rent increase did not comply with the *RTA*, the appellants would be estopped from disputing the rent increase as they (1) paid the agreed upon rent throughout the tenancy and (2) failed to make an application for dispute resolution within a reasonable time: at para. 17; and
- the rent increase during the fixed term was agreed to by the parties and as such the Second Increase complied with the *RTA*: at para. 19.

**The Judge's Reasons**

[11] The appellants argued that the arbitrator's conclusion with respect to s. 42 of the *RTA* was patently unreasonable. The judge rejected this argument. First, she found that the arbitrator's finding was "a rational conclusion that was available to them on the evidence and within the applicable statutory framework": at para. 33. A contrary finding would permit the *RTA* to negate clear and unambiguous language in tenancy agreements. The *RTA* has been recognized to control rent increases within subsisting tenancies, not the amount of rent established between tenancies when a unit is newly occupied: *Vancouver (City) v. Pender Lodge Holdings Ltd.*, 2024 BCCA 37 at para. 44. The judge found that the "function and purpose of the timing and notice requirements of s. 42 was thus fulfilled by the Tenancy Agreement itself": at para. 36.

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[12] The judge went on to conclude that the arbitrator had considered whether the parties had attempted to contract out of the *RTA* contrary to s. 5. The judge found that it was reasonable for the arbitrator to conclude that, given the uncertainty in the rental market due to COVID-19, “the lower rent during the first year of the fixed term tenancy reflected a concession on the part of the landlord”: at para. 37.

[13] The appellants also argued that the arbitrator erred in applying the doctrine of estoppel. The judge disagreed. She found that a contrary finding would have the effect of allowing the *RTA* to “operate to permit the petitioners to avoid their contractual obligations under the Tenancy Agreement in respect of a fundamental term”: at para. 46.

[14] The appellants also contended that the hearing was procedurally unfair in that the arbitrator applied the doctrine of estoppel on their own without the parties raising it: at para. 49. The judge did not accept this argument in that the transcript of the proceedings before the arbitrator supported Prompton’s submission that the doctrine was in fact raised at the hearing before the arbitrator: at para. 50.

**<u>On Appeal</u>**

[15] The appellants’ position is that the judge erred in:

(a) interpreting s. 42 of the *RTA* in a vacuum, inconsistent with the overall objectives of the *RTA*;

(b) finding that the arbitrator had authority to apply the doctrine of estoppel despite their jurisdiction being confined to resolving disputes in accordance with statutory provisions of the *RTA*; and

(c) misapplying the test for patent unreasonableness.

[16] In my view, the real issue on appeal is whether the judge erred in concluding that the Decision was not patently unreasonable.

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**Standard of Review**

[17] The role of an appellate court is to "step into the shoes" of the lower court and focus on the administrative decision under review: *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 at para. 36.

[18] Under s. 58(2)(a) of the *Administrative Tribunals Act* S.B.C. 2004 c. 45 [*ATA*], the standard of review to assess the Decision is patent unreasonableness.

[19] A decision is patently unreasonable if there is no rational or tenable line of analysis supporting the decision, or if it "is so clearly flawed that no amount of curial deference may justify letting it stand": *Maung v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCCA 371 at para. 42. By making legal findings inconsistent with mandatory statutory provisions, a tribunal fails to consider the language of its enabling statute, and interprets the statute in a manner that is patently unreasonable: *The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board*, 2022 BCCA 10 at para. 199.

**Discussion**

***Did the Judge Err in Concluding that the Decision was not Patently Unreasonable?***

*(1) Legal Framework*

[20] As recently explained by this Court in *Sayyari v. Provincial Health Authority*, 2023 BCCA 413:

> [27] The basic rule of statutory interpretation is that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21.
>
> [28] The usual first step in interpreting a statute is to examine the text of the provision to determine its plain or ordinary meaning. Ultimately, however, the true meaning of the words being interpreted can only be determined contextually by considering other indicators of legislative meaning—context, purpose, and relevant legal norms: *La Presse Inc. v. Quebec*, 2023 SCC 22 at para. 23; *R. v. Alex*, 2017 SCC 37 at para. 31. Put differently, a court engaged in an exercise of statutory interpretation must not construe a provision in isolation. Instead, individual provisions must be considered in

> light of the Act as a whole, with each provision informing the meaning to be given to the rest. As the Supreme Court of Canada explained in *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at para. 45, the rule ensures that the statutes are read as coherent legislative pronouncements.

*(2) Position of the Parties and the Director on Statutory Interpretation*

[21] The appellants submit that the judge erred in not finding the Decision patently unreasonable since the arbitrator failed to consider what they say are the mandatory statutory requirements contained in s. 42 of the *RTA*. Specifically, they contend that s. 40 of the *RTA* provides limited exceptions to the definition of rent increase and a written agreement is not one of them.

[22] They also submit that the requirement to issue a Notice of Rent Increase is a standard term prescribed and scheduled to the Regulation. In their factum, they argue that s. 13 of the *RTA* has the effect of mandating the Notice of Rent Increase in all tenancy agreements and that s. 14 precludes the ability of parties "to amend the term in any circumstances".

[23] They point to the RTB's Policy Guideline 37B, as amended from time to time, which they assert has always been to the effect that rent increases implemented pursuant to a tenant's written agreement to a rent increase must still comply with statutory timing and notice requirements.

[24] Relying on s. 43 of the *RTA* and s. 22.1 of the Regulation, they say that the First Increase was implemented without the prescribed notice and exceeded the allowable rent increase percentage in the absence of an agreement in writing. Therefore, because the First Increase was unenforceable as it violated the *RTA* and the Regulation, it follows that the subsequent Second Increase was also unenforceable for exceeding the allowable rent increase percentage. The RTB should have ordered the respondent to pay compensation to the appellants for the rent paid above $5,500 per month.

[25] Prompton's position is that the Tenancy Agreement was for a two-year term being: January 1, 2021 to December 31, 2021; and January 1, 2022 to December

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31, 2022. In compliance with s. 13(2)(iv) of the *RTA*, the rent payable for each specified period is set out in the Tenancy Agreement.

[26] It argues that there was no attempt by either of the parties to avoid or contract out of the *RTA* and that they agreed that any notices of rent increases after the specified periods were to be made in accordance with s. 42 of the *RTA*, which is what occurred.

[27] The Director submits that this issue should be framed as to whether a term of a tenancy agreement that provides for a change in the rental rate during the term of the lease is a "rent increase" to which the provisions of Part 3 of the *RTA* apply. In considering whether the Decision was patently unreasonable, the Director raises three possible interpretations that may be helpful to consider the possible interpretations:

> (a) A term of the tenancy agreement that changes the amount of rent owed to another specific amount for a specified period during the term of the lease is not a "rent increase" subject to Part 3 of the *RTA*;
>
> (b) A term of the tenancy agreement that changes the amount of rent owed is a "rent increase" and Part 3 applies, including the notice and timing requirements; or
>
> (c) A term of the tenancy agreement that changes the amount of rent owed is a "rent increase" and some of Part 3 applies but not the notice and timing requirements in s. 42.

[28] The Director observes that, in their view, the arbitrator in this case applied interpretation (c). The appellants argue that (c) is patently unreasonable and favour interpretation (b) while Prompton appears to support interpretation (a) or (c).

[29] The Director also observes that there is no provision in the *RTA* that explicitly authorizes or prohibits a term of a tenancy agreement which varies the amount of rent owed during the tenancy.

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[30] The Director adds that, in their view, ultimately the validity and enforceability of any contractual term in a tenancy agreement, whether governed by Part 3 or not, would be subject to ss. 5 and 6 of the *RTA*, to which I will return below, and which deal with unenforceable terms including those which are unconscionable.

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[31] Finally, the Director states in its factum that:

> [T]he issue of statutory interpretation alone will not determine the validity of similar provisions in other tenancy agreements. Questions about the sufficiency of a notice of rent increase or the unconscionability of a contractual term will necessarily depend on the specific facts and circumstances of each case. The Director asks the Court to emphasize for the benefit of other tenants and landlords that such a term may not always be effective or ineffective, regardless of the outcome in this specific case.

*(3) Analysis*

*(i) The Statutory Scheme*

[32] Residential tenancies in British Columbia must comply with the *RTA*. Section 5 of the *RTA* prohibits landlords and tenants from contracting out of the provisions of the *RTA* or the Regulation and provides that any attempt to do so is of no effect.

[33] Section 6(3) provides:

> **Enforcing rights and obligations of landlords and tenants**
>
> **6** (3) A term of a tenancy agreement is not enforceable if
>
> (a) the term is inconsistent with this *Act* or the regulations,
>
> (b) the term is unconscionable, or
>
> (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

[34] An unconscionable term is defined in s. 3 of the Regulation as one that is “oppressive or grossly unfair to one party”.

[35] Section 12 of the *RTA* and s. 13 of the Regulation establish standard terms that, pursuant to s. 14 of the *RTA*, cannot be modified even by agreement. Those terms include that:

> 1 (1) The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the

> *Residential Tenancy Act* or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.

[36] Section 13(2)(f) of the *RTA* sets out the agreed terms which must be included in a tenancy agreement, including:

> (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

[37] Tenancies can be either fixed term or periodic.

[38] Part 3 of the *RTA* governs rent increases. Section 41 provides that “[a] landlord must not increase rent except in accordance with this Part”. Section 43 limits the amount of a rent increase, which must be (a) compliant with statutory limitations, (b) agreed to by the tenant, or (c) ordered by the Director pursuant to an application.

[39] Section 42 sets out specific requirements with respect to the notice and timing of a rent increase:

> **Timing and notice of rent increases**
>
> **42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
>
> (a) if the tenant’s rent has not previously been increased, the date on which the tenant’s rent was first payable for the rental unit;
>
> (b) if the tenant’s rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
>
> (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
>
> (3) A notice of a rent increase must be in the approved form.
>
> (4) If a landlord’s notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

[40] The definition of an “approved form” is set out in s. 1 of the *RTA* and means the form approved by the Director under s. 10(1). Section 10(2) of the *RTA* provides that “[d]eviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used”.

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[41] The standard form Notice of Rent Increase includes information about rent increases under the *RTA* and includes space for information such as:

- the names and contact information of the tenants;
- the names and contact information of the landlords;
- the date of the previous rental increase or the initial rent was established;
- the current rent, amount of rent increase and new rent owed with the date the new rent takes effect; and
- the date and signature of the landlord.

[42] The RTB publishes policy guidelines on rent increases which are available to RTB arbitrators and the public. These policy guidelines are intended to provide assistance and are not binding on RTB arbitrators: *Li v. Virk*, 2023 BCSC 83 at para. 78.

[43] Policy Guideline 37B provides that an agreement to raise rent must:

> • be in writing,
>
> • clearly set out the rent increase (for example, the percentage increase and the amount in dollars),
>
> • clearly set out any conditions for agreeing to the rent increase,
>
> • be signed by the tenant, and
>
> • include the date the agreement was signed by the tenant.

[44] According to the Director, Policy Guideline 37 "suggests that the timing requirements in s. 42 would apply to rent increases by agreement" in that:

> … the landlord and tenant cannot mutually agree to a rent increase six months after the annual rent increase took effect.

[45] Policy Guideline 37B further provides that a Notice of Rent Increase must be issued to the tenant three full months before an agreed upon increase goes into effect, and that the notice should attach the written agreement previously signed by the tenant.

[46] In *Barosso v. Fraser Plaza Ltd*., 2011 BCSC 1448, Justice Wedge in commenting on the statutory interpretation of Part 3 of the *RTA* stated:

> [11] I accept the petitioners' submission that the purpose of the *Act* as a whole is to confer a benefit or protection on tenants. The *Act* provides protection such as the rent control provisions that would not exist at common law. The *Act* must be construed broadly and liberally to achieve that purpose. Any ambiguity in its language must be resolved in favour of the tenant: *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257.

[47] Justice Voith, as he then was, made a similar observation some years later in *Jiang v. You*, 2018 BCSC 791:

> [37] The arbitrator's finding, based on the record that was before him at the time, is consistent with one of the *RTA*'s purposes, "to protect tenants from being exploited by landlords": *Darbyshire v. Residential Tenancy Branch (Director)*, 2013 BCSC 1277 at para. 14. The *RTA* governs many aspects of residential landlord-tenant relationships and ensures that tenants are not unfairly exploited by their landlords. This is why it is necessary that rent increases comply with various statutory preconditions: three months' notice to the tenant (s. 42(2)), using a prescribed RTB form (s. 42(3)), and rental increases that comply with the Regulations to the *RTA* (s. 43(1)(a)).

*(ii) Patently Unreasonable*

[48] I next turn to the framework which applies to whether a decision is patently unreasonable.

[49] I referred above to s. 58(2) of the *ATA.*

[50] Patent unreasonableness is the standard that is most deferential to the decision maker. If a decision maker's interpretation is not unreasonable, it is also not patently unreasonable: *Team Transport Services Ltd. v. Unifor, Local No. VCTA*, 2021 BCCA 211 at paras. 28–29.

[51] In assessing the reasonableness of a tribunal's statutory interpretation, the reviewing court must first undertake its own statutory interpretation. If the statutory provision at issue is capable of more than one reasonable interpretation, the interpretation of the tribunal, if reasonable, will prevail. However, if the reviewing court determines that there is only one reasonable interpretation, the interpretation

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of the tribunal will be unreasonable if it failed to adopt it: *Simon Fraser University v. British Columbia (Assessor of Area #10 – Burnaby)*, 2019 BCCA 93 at para. 55.

[52] It is not for the court on review or appeal to re-weigh evidence or second guess conclusions drawn from the evidence and substitute different findings. A decision will be patently unreasonable only where there is no evidence to support the findings or the decision is "openly, clearly, evidently unreasonable": *Maung* at para. 42.

*(iii) Discussion*

[53] This appeal comes down to whether the arbitrator's conclusion that s. 42 of the *RTA* was not engaged in the particular circumstances of this case was patently unreasonable.

[54] The arbitrator concluded that: 1) the tenancy agreement reflected the parties' understanding with respect to the amount of rent due during the fixed term; 2) that the lower rate in effect from January 1 to December 31, 2021 signified a concession for the first year of the tenancy; and 3) that the First Increase was not an attempt to avoid the rent increase provisions of the *RTA*.

[55] The arbitrator further concluded that because the parties agreed to the First Increase in writing "the timing and notice requirements of section 42 of the Act are not engaged".

[56] The appellants focus on the arbitrator's finding that the Tenancy Agreement contained a rent increase. They say that this finding can only lead to the conclusion that the notice provisions in s. 42 of the *RTA* are engaged. They point to s. 40 of the *RTA* which provides:

> **Meaning of "rent increase"**
>
> **40** In this Part, **"rent increase"** <u>does not</u> include an increase in rent that is
>
> (a) for one or more additional occupants, and

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> (b) is authorized under the tenancy agreement by a term referred to in section 13 (2)(f)(iv) *[requirements for tenancy agreements: additional occupants]*.
>
> [Emphasis added.]

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[57] The difficulty with this submission is that the *RTA* does not provide a definition for what does constitute a “rent increase” and s. 40 is directed to a specific change in the number of occupants during the term of the tenancy. Section 40 must be considered contextually within the indicators of the *RTA* as a whole. In my view, it would be an unreasonable interpretation of s. 40 to give it the breadth the appellants suggest.

[58] I agree with the Director that whether the Decision was patently unreasonable must be considered within the particular circumstances of this case, giving due regard to the contextual interpretation of the statute as a whole.

[59] The appellants correctly point to the objectives of the *RTA* being to benefit and protect tenants which includes preventing their exploitation by landlords.

[60] Section 6 of the *RTA* provides that a tenancy agreement can be found to be unenforceable when it is unconscionable, which, as noted above, s. 3 of the Regulation defines as “oppressive or grossly unfair to one party”.

[61] The circumstances of this case included:

- a Tenancy Agreement negotiated and signed by the parties which contained a two-year term with a rent increase coming into effect for the second year;

- a finding by the arbitrator that the rent in the first year was “a lower rate … [which] reflected a concession for the first year of the tenancy” and “was not an attempt to avoid the rent increase provisions of the Act”; and

- although the appellants raised the issue of the rent increase shortly after it took effect, they took no action at that time and continued to pay

> the increased rent for several months; although this finding was made in the context of the arbitrator's estoppel analysis it is relevant, in my view, to the issue as to whether the Tenancy Agreement was unconscionable.

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[62] Effectively what the arbitrator decided is that while there was a rent increase in the second year of the two-year term initially agreed to by the parties, this was not the type of rent increase contemplated by s. 42 of the *RTA*, since that section contemplated different circumstances than existed here.

[63] I would conclude that the appellants have not met the high onus of establishing that the Decision was patently unreasonable. To the contrary, for the arbitrator to interpret the *RTA* such that s. 42 did not apply in the circumstances of this case, in that the Tenancy Agreement specified the increase in rent when the second year of the term came into effect, was eminently reasonable. There was, furthermore, nothing unconscionable about the Tenancy Agreement itself.

[64] On September 22, 2022, Prompton delivered notice pursuant to s. 42 of the *RTA* in relation to an increase in rent which was to come into effect, as of January 1, 2023. This is what it was required to do since the two-year term contained in the Tenancy Agreement was coming to an end, and the proposed rent increase was not one contemplated by the Tenancy Agreement.

[65] To summarize, the arbitrator's conclusion that s. 42 of the *RTA* did not apply here was an interpretation which was harmonious to the surrounding provisions and in keeping with the objectives of the *RTA*.

[66] I also agree with the Director that a reasonable interpretation and application of the *RTA* may well depend on the particular circumstances of a case. This conclusion necessarily flows from ss. 5 and 6 of the *RTA*.

[67] It follows that the judge's finding that the Decision was not patently unreasonable was correct.

[68] It is not necessary to address the remaining issues raised by the parties. My conclusion that the Decision was not patently unreasonable is determinative of the appeal.

## Disposition

[69] I would dismiss the appeal.

"The Honourable Mr. Justice Abrioux"

I AGREE:

"The Honourable Mr. Justice Willcock"

I AGREE:

"The Honourable Madam Justice DeWitt-Van Oosten"

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