IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Natland v. Miller,*
2024 BCSC 1406

Date: 20240802
Docket: S242704
Registry: Vancouver

Between:

Jeffrey Natland

Petitioner

And

David Randall Miller

Respondent

Before the Honourable Justice K. Loo

Reasons for Judgment

Counsel for the petitioner:	B. Meadow
Counsel for the respondent:	M. Drouillard
Place and Date of Hearing:	Vancouver, B.C. July 12, 2024
Place and Date of Judgment:	Vancouver, B.C. August 2, 2024

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Introduction

[1] The petitioner, Jeffrey Natland, is the tenant at a rental property on Woodgreen Drive in West Vancouver. The respondent, David Miller, is the owner and landlord of the rental property.

[2] Since January 2022, the landlord has issued four notices to end tenancy for landlord's use under s. 49 of the *Residential Tenancy Act* S.B.C. 2002, c. 78 *[RTA]*. The first three notices were dismissed by arbitrators of the Residential Tenancy Branch ("RTB").

[3] The fourth notice was upheld by the RTB on April 2, 2024, and then on review by way of a decision dated April 9, 2024.

[4] In this petition for judicial review, the tenant seeks to set aside the decisions of the RTB in April 2024 arising from the fourth notice, as well as an order of possession made by the RTB on April 2, 2024.

Background

[5] The rental property is the main portion of a house in West Vancouver. Mr. Natland, together with his wife and child, has lived there since April 2020.

[6] Mr. Miller purchased the house in 2008. At the time, he was living and working in Toronto, and decided to rent out both the rental property and the basement suite to tenants.

[7] He deposes that he has strong ties to West Vancouver and lived there for 20 years before moving to Toronto, in part because his then-spouse was from there. The landlord and his current spouse now wish to relocate to B.C. and to live in the house.

[8] In December 2021, Mr. Natland and his spouse had an altercation with Mr. Miller. The reasons for that altercation are unclear, but the altercation involved Mr. Miller parking his car in the driveway of the house and banging on the front door of

the rental property. Mr. Natland alleges that Mr. Miller said to Mr. Natland and his spouse that they would be evicted as a result of the altercation.

[9] On January 24, 2022, the landlord served the tenant with the first notice to end tenancy for landlord's use. The arbitrator who heard the RTB hearing arising from the January 24, 2022 notice determined that the landlord had acted in bad faith in issuing the notice, finding that the landlord had acted with an ulterior motive in relation to the driveway altercation.

[10] On April 27, 2022, the landlord served the tenant with the second notice to end tenancy for landlord's use. The arbitrator who heard the RTB hearing in respect of that notice dismissed that notice on the basis of *res judicata*, because there had been no change in circumstances between the time the first RTB decision and the time the second two-month notice was served on the tenant.

[11] On March 24, 2023, the landlord served the tenant with the third notice to end tenancy for landlord's use. An RTB arbitrator dismissed that notice on the basis that the landlord and his spouse had not submitted sufficient evidence to establish that he intended to occupy the rental unit. In particular, although the landlord submitted several moving quotes, there was no evidence that movers were ever booked or that deposits were ever paid. The arbitrator also held that there was insufficient evidence to prove that the Toronto home was being seriously marketed.

[12] The arbitrator also cited the fact that the landlord had evicted the tenants of the basement suite and had not moved into it, and that in October 2021, the landlord offered to rent the entire home to the tenant for an increased rent amount. For these reasons, the arbitrator held that the landlord had not satisfied the RTB that the notice was served in good faith.

[13] On December 20, 2023, the landlord served the tenant with the two-month notice to end tenancy, which is the subject of this judicial review.

[14] On December 21, 2023, Mr. Miller accepted an offer to purchase his Toronto property. His possessions have been moved to a storage facility in Delta.

The decisions under review

[15] The first RTB decision regarding the fourth dispute notice was heard by Arbitrator Harlow on March 25, 2024, and determined on April 2, 2024. As indicated above, on that same date, an order of possession was granted to the landlord.

[16] On April 8, 2024, the tenant brought a review application under s. 79 of the *RTA*. The review application was dismissed by Arbitrator Campbell on April 9, 2024.

[17] Subsequently, the tenant sought, and was granted, a stay of the order of possession pending this judicial review.

Standard of review

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

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

[19] It is well established that expert tribunals such as the RTB are entitled to significant deference. It is not this Court's task to reconsider the evidence or to substitute its own view of the evidence for that of the RTB.

[20] A comprehensive summary of the jurisprudence and legal principles relating to the patent unreasonableness standard can be found in *Hollyburn Properties Ltd v. Staehli*, 2022 BCSC 28 ("*Hollyburn*") at para 25:

> [25] As the *ATA* does not define patent unreasonableness as it applies to a tribunal's factual or legal findings, however, guidance regarding its meaning must be sought from the case law. In *Kong* at paras. 58-65, Madam Justice MacDonald set out a number of jurisprudential holdings which provide content to the notion of patent unreasonableness, including:

> [a] as expert tribunals are entitled to significant deference, the standard is an onerous one and their decisions can only be quashed if there is no rational or tenable line of analysis supporting them (*Victoria Times Colonist v. Communications, Energy and Paperworkers,* 2008 BCSC 109 at para. 65; aff'd 2009 BCCA 229);
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> [b] a decision is patently unreasonable if it is openly, evidently, and clearly irrational, or unreasonable on its face, unsupported by evidence, or vitiated by failure to consider the proper factors or apply the appropriate procedures (*Gichuru v. Palmar Properties Inc.,* 2001 BCSC 827 at para. 34, citing *Lavender Co-Operative Housing Association v. Ford,* 2011 BCCA 114);
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> [c] a patently unreasonable decision is one that almost borders on the absurd (*Voice Construction Ltd. v. Construction & General Workers' Union, Local 92,* 2004 SCC 23 at para. 18 and *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal),* 2018 SCC 22 at para. 28);
>
> [d] it is a possible that a great deal of reading and thinking will be required before the problem in a patently unreasonable decision is apparent, but once its defect is identified, it can be explained simply and easily, leaving no real possibility of doubting that the decision is defective (*Yee v. Montie,* 2016 BCCA 256 at para. 22);
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> [e] the standard of patent unreasonableness also applies to the consideration of adequacy of reasons, which involves an assessment of the justification, transparency and intelligibility of the decision-making process (*Vavilov*); and
>
> [f] under the *RTA* regime, the overriding test for adequacy of reasons is whether a reviewing court is able to understand how and why the decision was made (*Ganitano v. Yeung,* 2016 BCSC 2227 at para. 24).

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

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

Issue

[22] The only issue to be determined by this Court is whether either of the decisions ought to be set aside because one or both are patently unreasonable. The

tenant submits that the decisions are patently unreasonable because the arbitrators did not properly analyze a key part of the tenant's case.

[23] There is a question, as there often is in judicial reviews of RTB decisions, as to which decision ought to be reviewed. When an RTB review decision does not address the merits of the underlying decision, the original decision should be the subject of the judicial review. When a review decision does address the merits, it should be the subject of judicial review but "the original decision should form part of the record and 'inform' the enquiry on judicial review": *Narjaripour v. Brightside Community Homes* 2023 BCSC 2032 at paras 49-53.

[24] In this case, the review decision partly addresses the merits of the underlying decision, but in any event, the parties are agreed that the review decision and the original decision ought to be judicially reviewed together. I agree that this approach is appropriate in this proceeding.

Discussion

The tenant's argument

[25] The tenant's argument is that there are two elements to consider when determining the meaning of good faith in respect of a two-month notice. The first is whether the landlord intends to occupy the unit, and the second is whether the landlord had a dishonest motive or purpose for ending the tenancy: *Sandhu v. Gill*, 2024 BCSC 412 at para 12, citing *Gichuru v. Palmar Properties Ltd*., 2011 BCSC 827.

[26] In *Sandhu* at paras 15-16, the Court held that the arbitrator in that case reversed the applicable onus of proof by requiring the tenant to establish bad faith on the part of the landlord. Further, at para 16, the Court held:

> The question the Arbitrator needed to address was whether the landlord met the onus on him to prove he had a good faith intention to occupy the unit, and that his intention was not motivated in whole, or in part, by a dishonest purpose.

[27] Then, at paras 31 and 32, the Court held:

> [31] While the Arbitrator found the respondent did intend to move into the suite, the Arbitrator did not address whether there was still an ulterior motive in doing so by fully analyzing the evidence raised by the petitioner.
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> [32] The Arbitrator is not obliged to recite every piece of evidence before him. However, he is required to demonstrate that he has addressed the fundamental issues in dispute as raised by the evidence. As in *Doell*, the decision of the Arbitrator fails to weigh and consider the evidence introduced by petitioner, as outlined above, and analyze whether the respondent met the onus on him to rebut the suggestion of ulterior motive raised by such evidence. This failure results in the decision being patently unreasonable.

[28] Therefore, in *Sandhu,* the Court held that although the arbitrator held that the respondent did intend to move into the suite, they failed to weigh and consider the evidence introduced by the petitioner, and to analyze whether the respondent met the onus on him to rebut the suggestion of ulterior motive raised by the tenant's evidence. The tenant in this case argues that this matter is directly analogous to *Sandhu* and that the evidence advanced by him in relation to the ulterior motive issue was not sufficiently weighed, considered, and analysed by Arbitrator Harlow.

The landlord's response

[29] In response, the landlord submits that it is clear that from the transcript of the hearing before the arbitrator that the tenant did advance arguments and evidence regarding his ulterior motive claim at the hearing.

[30] In this regard, I agree with the landlord. In my view, it cannot fairly be said that the first arbitrator did not consider the tenant's arguments in relation to the previously issued notices and the tenant's allegations of ulterior motive. It is evident from the transcript that the arbitrator did so. The transcript shows that the arbitrator asked Mr. Natland to present his position, and that Mr. Natland made arguments in support of his position regarding the ulterior motive issue. He stated, in part:

> So the basis of a 60-day notice is that the landlord is acting in good faith without ulterior motives. There are two very clear ulterior motives. And these ulterior motives do not evaporate, you know, just because they have been decided by an arbitrator over and over again to be present. And financial motive to try to increase my rent improperly and the motive of kicking me out after promising not to do so has not disappeared.

> The onus is on the landlord to establish good faith. I will – I have presented evidence of both of these things, which I will refer to…

[31] Following submissions from Mr. Natland which occupy about 20 pages of the transcript, there was a discussion between the arbitrator and Mr. Natland, and then the following exchange:

> J. NATLAND: -- what you're saying is that the fact that bad faith has been demonstrated, both on his treat to evict me based on a dispute and his threat to evict me based on the financial motives that were previously ruled on, those will be taken into account?
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> THE ARBITRATOR: I will take it into consideration, yes – the previous decisions of the arbitrators and their rationale for it. And I'll also take into consideration your testimony today and the evidence you provide as well as the landlord's evidence and anything new in the argumentation presented on his behalf. I will take into consideration all of that.

[32] It is acknowledged by the tenant that the transcript of a hearing may inform a Court's assessment and review of reasons for judgment.

The applicable caselaw

[33] Although the tenant resisted in argument the proposition that this case is about sufficiency of reasons, in my view that is the substance of his argument. For the reasons addressed above, the tenant cannot reasonably argue that the arbitrator did not consider his arguments regarding ulterior motive at all. It appears clear from the transcript that the tenant's arguments and evidence regarding ulterior motive *were* considered. Therefore, the issue, properly stated, is whether the arbitrator expressed their conclusions on this issue adequately in their reasons, and, if not, whether the decision is rendered patently unreasonable.

[34] The issue of sufficiency of reasons is addressed in cases such as *Christiansen v. Harwood*, 2015 BCSC 1440. In that case, the Court held:

> 20 It has been held that reasons will be adequate when they set out the legal test to be met by the party advancing its claim, the findings of fact and the principal evidence on which those findings were made, and an application of those findings to the legal test: *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232. It has also been held that in residential tenancy disputes, it is important to assess the sufficiency of reasons in the

> proper context. In many of these kinds of cases, the legal test will be fairly straightforward and expressed in plain language terms, and the issue to be decided may involve only an assessment of whether a party has given sufficient evidence to support a finding of fact in his or her favour. The primary goal is for the parties and a reviewing court to be able to understand how and why the decision was made: see *Khan v. Shore*, 2015 BCSC 830.
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> [emphasis added]

[35] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 91, the Court held:

> [91] A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside …

[36] Further, in *Vavilov* at para 97, the Court referred with approval to a decision of the Federal Court in *Komolafe v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, for the proposition that the Court is not permitted to "provide reasons that were not given" nor to "guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue." However, reviewing courts are permitted to "connect the dots on the page where the lines, and the direction they are headed, may be readily drawn."

Analysis

[37] *Hollyburn* and *Christiansen* ask whether the arbitrator's reasons set out the legal test to be met by the party advancing its claim, the findings of fact and the principal evidence on which those findings were made, and an application of those findings to the legal test. Further, this Court must consider whether the arbitrator's reasons contain a rational or tenable line of analysis and whether the Court is able to understand how and why the decision was made.

[38] Arising from the foregoing, the specific question in this case is whether the reasons are silent on a critical issue, or whether the court is in a position to readily connect the dots on the page.

[39] In assessing the Arbitrator Harlow's reasons, there are certain paragraphs which, in my view, merit particular attention.

[40] First, near the outset of their reasons, the arbitrator found that substantial time had passed between the issuance of the fourth two-month notice and the previous ones, and that the circumstances had changed: in particular, the landlord's home in Toronto had been sold and the landlord's possessions had been shipped to B.C. to be stored. Therefore, the arbitrator said, the fourth notice was to be adjudicated on its own merits.

[41] Further, the arbitrator held:

> According to the Tenant, the landlord is not acting in good faith but rather has issued the notice for a fourth time based on their past conflict and because he wants to increase the rent as rental rates have increased in the market since he began renting. The Tenant argued that the home sale is not complete therefore nothing has changed since the last notice was issued and cancelled. He testified that the Landlord's motives for issuing the notice are the same as in the past, and that the Landlord is harassing him now that he is in the area. He stated that he does not believe the Landlord is currently living in the basement suite and that he has not seen the Landlord on the property since September or October 2023 and has surveillance video to prove he is not living there.
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> [Emphasis added]

[42] Subsequently, the arbitrator held:

> In *Gichuru v. Palmar Properties Ltd*. (2011 BCSC 827), the Supreme Court of British Columbia held that a claim of good faith requires honesty of intention with no ulterior motive ….
>
> I find, based on the evidence submitted, the testimony provided and on a balance of probabilities, that the Landlord issued the notice to end tenancy in good faith and for the purpose as stated on the form. I find that the Landlord, by entering into a contract to sell his Toronto property as well as a lease to rent the property out pending its sale and by moving himself, his spouse and his belongings to the Greater Vancouver area demonstrate and lend credence to his stated intention to reside in the property for which the notice was issued and therefore the notice is valid.

[43] It is clear in my view that the reasons of Arbitrator Harlow do permit the dots in this case to be readily connected. Indeed, in my view, Arbitrator Campbell connected those dots in the review decision, stating as follows:

> The main argument of the Tenant in my summation is that because the Landlord was found to be acting in bad faith and/or with an ulterior motive with respect to prior issuances of Two Month Notices, that this must be taken into account in this matter.
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> In their decision, the [first] Arbitrator found that there had been a material change in circumstances, and that there was adequate time between the issuance of the final Two Month Notice and so they viewed the evidence on its merits. The fact that prior decisions have been made in favour of the Tenant does not preclude the Arbitrator from reviewing the evidence and adjudicating a resolution on them [sic] merits of the current matter.
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> ….
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> The Arbitrator did not place the onus on the Tenant to provide that the Landlord was acting in bad faith, they did however indicate that the Tenant could provide evidence that the Landlord acted in bad faith to support their application. The Arbitrator found that based on the submissions of the Landlord, that the Landlord acted in good faith and the Two Month Notice was issued in accordance with the Act.

[44] As submitted by the landlord, it was not patently unreasonable for the arbitrators to conclude that the circumstances had sufficiently changed, such that prior evidence of bad faith did not demonstrate a "secondary, dishonest motive" at the time that the fourth two-month notice was issued.

[45] In relation to the landlord's argument that the passage of time and changes in circumstances may diminish the impact or relevance of a past finding of ulterior motive, the decision of this Court in *Spurr v. Moriah Enterprises Ltd*, 2019 BCSC 2211 is of some assistance.

[46] In that case, the landlord first issued a two-month notice for landlord's use on the basis that his daughter was to move into the subject unit and work as a caretaker for the building. The tenants disputed the notice, and the arbitrator found that the landlord had an ulterior motive which was to evict tenants so that it could renovate the entire building. The landlord had not provided any explanation as to why any of the other units in the building could not be utilized by his daughter.

[47] Subsequently, the landlord issued another two-month notice for landlord's use, this time on the basis that his son would occupy the rental unit. The Court dismissed the petition for judicial review in relation to this second notice, on the

basis that the arbitrator "expressly addressed the [earlier] 2018 Decision where an ulterior motive was found; noted the passage of time since that decision, including the different factual situation before the Arbitrator in 2019 relating to the son; and accepted the evidence of the Landlord on the issue of ulterior motive": see para 49.

[48] In my view, the decision in *Spurr* is analogous to the case at bar.

[49] Applying the tests regarding the adequacy of reasons set out in *Hollyburn* and *Christiansen*, the arbitrator's reasons set out the legal test to be met by the party advancing the claim, the findings of fact and the principal evidence on which those findings were made, and an application of those findings to the legal test. Further, as discussed, the arbitrator's reasons contain a rational or tenable line of analysis and permit the Court to understand how and why the decision was made.

[50] For these reasons, I am unable to find either the first arbitrator's decision or the review decision to be patently unreasonable.

Conclusion and costs

[51] The petition for judicial review is dismissed.

[52] Counsel for the landlord advised that if the petition were dismissed, his client was prepared to allow the tenant to remain in the rental property until the end of the month in which my decision is issued. Therefore, the order of possession is stayed until midnight on August 31, 2024, at which time it will become effective.

[53] Costs of this judicial review shall be payable by Mr. Natland to Mr. Miller at scale B.

"The Honourable Justice K. Loo"