COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Partridge v. Aquaterra Management Ltd.,* 2023 BCCA 416

Date: 20231107
Docket: CA49148

Between:

Jonathan Partridge

Appellant
(Petitioner)

And

Aquaterra Management Ltd.

Respondent
(Respondent)

Before: The Honourable Justice MacKenzie
The Honourable Madam Justice Fenlon
The Honourable Mr. Justice Voith

On appeal from: An order of the Supreme Court of British Columbia, dated June 13, 2023 (*Partridge v. Aquaterra Management Ltd.*, 2023 BCSC 1016, Vancouver Docket S227452).

Oral Reasons for Judgment

Counsel for the Appellant:	B. Carpenter
Counsel for the Respondent:	O.P. Onyema
Place and Date of Hearing:	Vancouver, British Columbia November 7, 2023
Place and Date of Judgment:	Vancouver, British Columbia November 7, 2023

Summary:

The respondent landlord issued a One Month Notice to End Tenancy for Cause (the "Eviction Notice"), relying on s. 47(1)(d) of the Residential Tenancy Act [RTA], alleging that the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. The tenant had placed a box over the fire and heat detector and installed an unauthorized dishwasher. The Residential Tenancy Board arbitrator upheld the Eviction Notice and issued an Order of Possession. The chambers judge dismissed the tenant's application for judicial review. On appeal, the tenant argued first that the chambers judge failed to appreciate that the landlord had elected to proceed under s. 47(1)(h) of the RTA by granting him an opportunity to rectify the breaches set out in a warning letter; it was therefore not open to the landlord to later decide to terminate the lease and evict the tenant for the breaches. Second, the judge failed to identify that the reasons given for the arbitrator's decision were inadequate.

Held: Appeal dismissed. The tenant failed to establish that the arbitrator's decision was patently unreasonable. The judge was correct that the landlord had proceeded under s. 47(1)(d) as indicated in the Eviction Notice. There was no requirement in that section to provide an opportunity to remedy the breaches; the judge correctly noted that the tenant confused the requirements of ss. 47(1)(d) and (1)(h). Section 47 gives landlords several options to terminate a tenancy for cause. Nowhere does it state that any of the causes cannot be raised at the same time. Moreover, the tenant argued that he was justified in refusing the landlord entry into his unit when it sought to confirm the breaches were resolved, because landlords cannot enter more than once a month. This argument also failed. The tenant had failed to show he had rectified the breaches, as asked of him. The landlord's right to enter the unit must be considered in context and in light of the reasons for inspection. Here, it was the need to ensure that safety risks were resolved. It was not patently unreasonable for the arbitrator to find the eviction was justified based on the totality of the tenant's actions. Nor were the arbitrator's reasons inadequate; they clearly identified the actions of the tenant that made the eviction justified.

[1] **MACKENZIE J.A.**: This appeal involves a tenancy dispute between Mr. Partridge, the appellant tenant, and Aquaterra Management Ltd. ("AML"), the respondent landlord, that resulted in the landlord issuing a One Month Notice to End Tenancy for Cause (the "Eviction Notice"), relying on s. 47(1)(d) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*].

[2] Mr. Partridge disputed the Eviction Notice before the Residential Tenancy Branch ("RTB"). An arbitrator acting as a delegate of the RTB Director (the "Arbitrator") upheld the Eviction Notice and issued an Order of Possession pursuant to s. 55(1) of the *RTA*.

[3] Mr. Partridge applied for judicial review of the RTB decision (the "Arbitrator's Decision"), but the chambers judge dismissed his application in reasons for judgment indexed as 2023 BCSC 1016 (the "Chambers Decision").

[4] Mr. Partridge now appeals. For the reasons that follow, I would dismiss the appeal.

Background

[5] The tenancy began in August 2018 in a building which is about 50 years old, and has 216 units. After receiving a noise complaint about Mr. Partridge, AML gave him a "Notice to Enter Premises" on April 30, 2022, for the stated reason of a "routine building inspection" to occur on May 3, 2022. During that inspection on May 3, 2022, the inspectors noticed in Mr. Partridge's unit the unauthorized installation of a dishwasher, and the enclosure of the smoke detector with a cardboard box (Chambers Decision at paras. 7–9).

[6] On May 11, 2022, AML sent two letters to Mr. Partridge. One dealt with the noise complaint. The other dealt with the dishwasher and box covering the smoke detector. That letter concluded with a statement that if Mr. Partridge did not move the dishwasher before May 19, 2022, and box covering the smoke detector immediately, AML would terminate his tenancy. It also stated the building manager would inspect his unit shortly to ensure that the issues were resolved. On the day the letters were sent, May 11, 2022, AML gave Mr. Partridge another Notice to Enter Premises, for the stated reasons of a "routine building inspection" and a "follow-up from recent inspection", to occur on May 12, 2022. When AML representatives tried to conduct this inspection on May 12, 2022, Mr. Partridge refused to let them enter, believing they did not have the right to enter his unit so frequently (Chambers Decision at paras. 10–11).

[7] The following day, May 13, 2022, AML gave Mr. Partridge an Eviction Notice. The Eviction Notice required AML to tick certain boxes in order to indicate which of the enumerated grounds in s. 47(1) of the *RTA* it relied on to justify terminating the

lease. AML ticked the boxes mirroring s. 47(1)(d), indicating that the tenant (or a person permitted on the property by the tenant) had:

a) significantly interfered with or unreasonably disturbed another occupant or the landlord;

b) seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and

c) put the landlord's property at significant risk.

The Eviction Notice outlined the relevant circumstances, including Mr. Partridge's use of the dishwasher, the box covering the smoke detector, and Mr. Partridge's refusal to let AML representatives inspect the unit on May 12, 2022 (Chambers Decision at paras. 12–13).

The RTB Hearing and Decision

[8] Mr. Partridge disputed the Eviction Notice. The RTB held a hearing on September 6, 2022 by conference call. The chambers judge succinctly described Mr. Partridge's written submission to the RTB (which included the video-recording he made of the June 20, 2022 inspection and an operating manual for the dishwasher):

> [17] His written submission advanced the following arguments, among others:
>
> a) AML did not really believe the complaints to be serious enough to warrant his eviction because it had waited eight days after the May 3, 2022 inspection to deliver the warning letter (in his view, AML was using those things as a pretense to get rid of him – the real reason for his eviction was that AML disliked him because he chose to exercise his rights);
>
> b) he had, in any event, complied with AML's demand that he remove the shoebox covering the smoke detector, but, in his view, he had acted reasonably in placing it there in the first place because:
>
> i. the fire alarm was too loud and had been sounding too frequently;
>
> ii. no one had fixed it, despite his complaints; and
>
> iii. he had cut a hole in the shoebox to allow for air circulation so that the smoke detector could still function properly;

> c) the dishwasher could operate without having to be connected to any plumbing, so it posed no risk to anyone and the term in the lease prohibiting him from having one was unconscionable;
>
> d) AML had not given him a reasonable opportunity to remove the offending items – he received the Eviction Notice only two days after the warning letter;
>
> e) it was unreasonable for AML to give notice of its intention to inspect the Premises on three occasions in one month;
>
> f) AML's notice of its intention to inspect the premises on May 12, 2022 was inadequate in any event for failure to specify the purpose of the inspection, and he was therefore lawfully entitled to deny AML entry on that occasion; and
>
> g) his rent should be reduced from $1815 to $400 to compensate him for the mistreatment he has experienced.
>
> [18] Mr. Partridge says that during the hearing, he told the Arbitrator that he would be willing to remove the dishwasher to avoid being evicted. The AML representative who attended the hearing on its behalf has since deposed that that statement was made during a "without prejudice" discussion prior to the evidentiary portion of the hearing, an assertion that Mr. Partridge has not refuted.

[9] The Arbitrator said he found the AML representative to be more credible than Mr. Partridge, finding that while the AML representative provided consistent and logical testimony, Mr. Partridge "was argumentative, focused on irrelevant matters and conducted himself in an illogical manner." For this reason, the Arbitrator stated that where the parties' evidence clashed, it found AML's version of events to be more credible (Arbitrator's Decision at pp. 3–4).

[10] The Arbitrator emphasized that Mr. Partridge admitted to placing a box over the smoke detector and installing the dishwasher. Further, he did not take responsibility for his actions. The Arbitrator stated that overall, "the tenants' actions of tampering with the smoke and heat detector along with installing and continuing to use an unauthorized dishwasher has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and put the landlord's property at significant risk", therefore the tenancy is over (Arbitrator's Decision at p. 4).

[11] On September 16, 2022, Mr. Partridge commenced the judicial review proceeding, seeking an order under s. 5 of the *Judicial Review Procedure Act,* R.S.B.C. 1996, c. 241 [*JRPA*], setting aside the Arbitrator's Decision and remitting the dispute to the RTB Director for further consideration. On September 22, 2022, the court below granted Mr. Partridge a stay of the Arbitrator's Decision pending the outcome of the judicial review. On June 28, 2023, this Court stayed the Arbitrator's Decision until the date of the appeal hearing.

The Reasons on Judicial Review

[12] The chambers judge began his reasons by noting that through the combined operation of s. 5.1 and s. 84.1 of the *RTA* and s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, the standard of review of the Arbitrator's Decision was "patent unreasonableness" (Chambers Decision at paras. 20–23).

[13] The judge then turned to the parties' arguments. He summarized Mr. Partridge's argument that the Arbitrator's Decision was fatally flawed because the Arbitrator misstated or failed to consider his evidence and arguments, and then relied on non-existent evidence in arriving at his conclusions, which were largely unexplained: at para. 24. The judge gave two examples of where he said the Arbitrator misdescribed Mr. Partridge's position.

[14] The judge also noted Mr. Partridge's argument that the Arbitrator failed to address his argument that he had been justified in refusing AML entry on May 12, 2022, because the associated notice was unlawful. Mr. Partridge also argued that the Arbitrator's Decision did not address AML's failure to comply with s. 47(1)(h)(ii) of the *RTA* by not allowing him a reasonable opportunity to rectify the situation, since AML gave the notice to inspect only two days after delivering the warning letter. Last, the judge noted the argument that there was no evidence to support the Arbitrator's conclusion that the cardboard box and the dishwasher posed a risk of the kind that could justify evicting him.

[15] As to AML's position, the judge noted its argument that the Arbitrator's Decision was not patently unreasonable and Mr. Partridge was improperly asking

the court to reweigh the evidence before the Arbitrator and raising irrelevant matters, some for the first time on review. AML emphasized the Arbitrator was not required to address Mr. Partridge's allegation that AML had not afforded him a reasonable opportunity to rectify the situation because that requirement only arose where the landlord relied on s. 47(1)(h). However, the notice in this case relied exclusively on s. 47(1)(d), which contains no such requirement (Chambers Decision at paras. 30–31).

[16] In his "Discussion" section, the judge agreed with Mr. Partridge that the Arbitrator's credibility discussion was problematic because the Arbitrator appeared to have misstated some of Mr. Partridge's submissions and did not explain what evidence he accepted, or refused to accept, on that basis. But ultimately, the judge reasoned that the Arbitrator's conclusions on credibility did not appear to have played a significant role in the Arbitrator's overall rationale. Rather, that rationale flowed from the undisputed fact that the inspectors found the dishwasher and box over the smoke detector during the May 3, 2022, inspection (Chambers Decision at paras. 32–33).

[17] The judge emphasized that he "was not persuaded that it was patently unreasonable for the Arbitrator to conclude that his conduct posed a sufficiently serious or significant risk to the safety of the landlord or the other tenants or their property" (Chambers Decision at para. 34). He stressed this is not a case where the Arbitrator did not explain his path of reasoning toward his conclusion. Rather, "the Arbitrator expressly found that the Eviction Notice was justified on both grounds (smoke detector and dishwasher)" and also observed that either would have sufficed on its own (Chambers Decision at para. 35).

[18] Further, the judge found it was not patently unreasonable for the Arbitrator to read the *RTA* as entitling AML to end the lease regardless of Mr. Partridge's subsequent willingness or actions to rectify the situation. He found that Mr. Partridge's argument on this point confused the requirements of s. 47(1)(d) and

(h); the latter gives an opportunity to correct a situation within a reasonable time, while the former does not (Chambers Decision at para. 38).

[19] Finally, the judge disagreed with Mr. Partridge's argument that the Arbitrator had to rule on whether AML's demand to inspect the unit on May 12, 2022, was lawfully given before finding AML was within its right to terminate the lease. The May 11, 2022, warning letter told Mr. Partridge to remove the box over the smoke detector forthwith, and rather than demonstrate that he had complied, Mr. Partridge refused entry. The Arbitrator reasonably concluded that rather than wanting to resolve the situation, Mr. Partridge did not take responsibility for his actions (Chambers Decision at para. 39).

[20] The judge decided that overall, the Arbitrator's Decision was not patently unreasonable.

[21] In conclusion, the judge observed that although Mr. Partridge pleaded lack of procedural fairness in the petition, that argument was not pressed and was not supported by the evidence in any event.

Issues On Appeal

[22] In his factum, Mr. Partridge alleges the chambers judge incorrectly applied the patently unreasonable standard to the Arbitrator's Decision and orally:

a) The judge failed to appreciate that AML elected to proceed under s. 47(1)(h) of the *RTA* in granting Mr. Partridge an opportunity to rectify the breaches set out in the warning letter, and it was not open to AML to later decide to terminate the lease and evict Mr. Partridge for the breaches;

b) He failed to identify that the reasons given for the Arbitrator's Decision were inadequate.

Standard of Review

[23] On an appeal from a judicial review decision, the role of the appellate court is to determine whether the chambers judge selected the correct standard of review and applied it properly. Effectively, this means the appellate court "steps into the shoes" of the chambers judge and reviews the administrative decision on the proper standard of review (*Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at para. 36). Thus, the appellate court focuses on the administrative decision in issue.

[24] As to the standard of review applicable to the Arbitrator's Decision, this Court stated recently in *Jadavji v. Yin*, 2023 BCCA 355, that "it is … well established that the standard of review applicable to findings of fact and discretionary decisions of an RTB arbitrator is patent unreasonableness" (at para. 26). This standard is highly deferential, and only met when a decision "'is so flawed that no amount of curial deference can justify letting it stand'"; put differently, a decision is only patently unreasonable "'if there is no evidence to support the findings, or the decision is 'openly, clearly, evidently unreasonable'" (*Maung v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCCA 371, at para. 42).

Discussion

[25] For the reasons below, I would not accede to Mr. Partridge's grounds of appeal. Neither ground establishes the Arbitrator's Decision was patently unreasonable, or that the chambers judge improperly applied the patent unreasonableness standard to that decision.

The Relevant *RTA* Sections

[26] The relevant sections of the *RTA* are s. 47(1)(h) and (d), which read as follows:

> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> …

> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
>
> (iii) put the landlord's property at significant risk;
>
> …
>
> (h) the tenant
>
> (i) has failed to comply with a material term, and
>
> (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Did the chambers judge fail to appreciate that AML elected to proceed under s. 47(1)(h) of the *RTA* in granting Mr. Partridge an opportunity to rectify the breaches?

[27] Mr. Partridge argues the chambers judge failed to properly apply the patent unreasonableness standard to the Arbitrator's Decision by failing to appreciate that AML elected to proceed under s. 47(1)(h) by granting Mr. Partridge the opportunity to rectify the breaches as set out in the warning letter. He claims AML could therefore not later decide to evict him for the breaches. When the breaches occurred, AML chose not to immediately give notice to end the tenancy. Instead, it gave Mr. Partridge the opportunity to remedy the breaches. It thereby chose to proceed under s. 47(1)(h). Mr. Partridge contends AML had thus already elected to keep the lease agreement alive in response to the breaches; it was not open to AML to later change its position and eliminate the opportunity given to Mr. Partridge to cure the breaches.

[28] Further, Mr. Partridge emphasizes that he cured the breaches within a reasonable time. He says he removed the box covering the smoke detector the day he received the warning letter. The Arbitrator failed to consider the removal of the box in his analysis.

[29] In my view, this argument does not establish that the Arbitrator's Decision was patently unreasonable. The chambers judge was correct that the respondent

had proceeded under s. 47(1)(d), as indicated in the Eviction Notice. Unlike under s. 47(1)(h), there is no requirement in s. 47(1)(d) to provide an opportunity to remedy the breaches; the judge correctly noted that Mr. Partridge confused the requirements of the two sections (at para. 38). Moreover, as the respondent highlights, Mr. Partridge's argument on appeal is based on the incorrect assumption that the options open to the respondent to terminate the tenancy are inconsistent. Rather, s. 47 gives landlords several options to terminate a tenancy for cause; it uses the language "if one or more of the following applies…". Nowhere does it state that any of the causes cannot be raised at the same time. Further, the respondent points out that even if AML were bound to proceed under s. 47(1)(h), at the time of the hearing, Mr. Partridge was still using the dishwasher. He cannot seek to confine the respondent's rights solely to the provision of s. 47(1)(h), while at the same time failing to satisfy its requirements.

[30] Mr. Partridge argues further that since, as he claims, he should have been given the opportunity to cure the breaches, the question is whether AML had the right to re-enter his unit; and they did not. Section 29(2) of the *RTA* provides that "[a] landlord may inspect a rental unit monthly…". AML had already inspected Mr. Partridge's unit on May 3, 2022, so it could not enter on May 12, 2022. Mr. Partridge's refusal was thus justified, he claims. Mr. Partridge contends the Arbitrator's Decision was patently unreasonable for failing to consider these facts in that the Eviction Notice was given to Mr. Partridge in response to his refusal to let the landlord enter his unit.

[31] This argument does not establish patent unreasonableness. By failing to allow re-entry into his unit after receiving the warning letter, Mr. Partridge failed to show he had rectified the breaches, as asked of him. The respondent's right to enter the unit must be considered in context and in light of the reason for inspection. Here, it was the need to ensure that safety risks in the unit were resolved. As the chambers judge noted, the Arbitrator reasonably concluded on the basis of Mr. Partridge's refusal to allow entry that rather than wanting to resolve the situation, Mr. Partridge did not take responsibility for his actions. In the circumstances, it was

not patently unreasonable for the Arbitrator to find the eviction was justified based on the totality of Mr. Partridge's actions.

[32] Thus, the appellant's arguments on this ground of appeal do not establish that the judge failed to properly apply the patent unreasonableness standard to the Arbitrator's Decision. I would not accede to this ground of appeal.

Did the chambers judge fail to identify that the reasons given for the Arbitrator's Decision were inadequate?

[33] Mr. Partridge also argues the judge erred by failing to identify that the reasons for the Arbitrator's Decision were inadequate. He claims the judge incorrectly stated that the Arbitrator found the eviction was justified by both the box covering the smoke detector and dishwasher, but that either issue alone would have sufficed. The appellant contends that in fact, the Arbitrator said the box covering the smoke detector, "along with" the dishwasher, seriously jeopardized the health or safety or lawful right or interest of the landlord or another occupant and put the landlord's property at risk (Arbitrator's Decision at p. 4). Mr. Partridge says that contrary to the judge's statement, the Arbitrator did not find the eviction was independently justified by each issue, but that the two actions taken together justified it. Mr. Partridge argues the Arbitrator never identified which actions met the statutory standard required for eviction; this was the error in *Marshall v. Pohl*, 2019 BCSC 406. Thus, Mr. Partridge contends the Arbitrator's Decision was patently unreasonable because it failed to identify which actions warranted the eviction.

[34] I agree with Mr. Partridge that when the Arbitrator said the box covering the smoke detector along with the dishwasher justified the eviction, he meant those two things together caused the risk. Although the chambers judge read the Arbitrator's decision as having found either issue would have sufficed on its own, I disagree. The plain and ordinary meaning of the words 'along with' suggests the Arbitrator was referring to the two issues combined as justifying the eviction. Although in my view, the judge incorrectly interpreted the Arbitrator's reasons on this point, this error is not

determinative in light of the standard of review. Rather, this Court's focus is on the Arbitrator's reasons.

[35] It was open to the Arbitrator to reason that the two breaches together posed the risk and justified the eviction. This case is not like *Marshall*, as Mr. Partridge contends. In *Marshall*, there was a long list of incidents at issue and the arbitrator generically found that "multiple incidents" met the statutory standard under s. 47, not explaining which incidents she was referring to (*Marshall* at para. 37). The arbitrator in that case did not "illuminate the path" to her conclusion (at para. 40). In the present case, by contrast, the Arbitrator clearly referred to the two concrete items of the dishwasher and box covering the smoke detector, finding these two things cumulatively met the statutory standard. His path of reasoning is apparent. In any event, the smoke detector alone would have sufficed.

[36] The respondent points out that a review on the patent unreasonableness standard cannot be a line-by-line treasure hunt for error (*PHS Community Services Society v. Swait*, 2018 BCSC 824, at para. 45). What matters is whether there is a rational basis for the decision. When a Court of Appeal considers the sufficiency of reasons, it must consider whether there is "a logical connection between the 'what'—the verdict—and the 'why'—the basis for the verdict" (*R. v. R.E.M.*, 2008 SCC 51, at para. 17). Here, the Arbitrator clearly identified that connection: the dishwasher and the box covering the smoke detector posed the risk, which justified the eviction.

[37] Moreover, Mr. Partridge submits that although the chambers judge found the Arbitrator's conclusions on credibility did not have a significant role in the Arbitrator's Decision, he explicitly stated the parties' credibility was the basis on which he found Mr. Partridge seriously jeopardized the health or safety or lawful right or interest of the landlord or another occupant, and put the landlord's property at risk.
Mr. Partridge claims the judge failed to recognize the reasons for the Arbitrator's Decision were inadequate in this sense.

[38] I agree with the chambers judge that "the Arbitrator's conclusions on credibility do not appear to have played a significant part in the overall rationale for

the [Arbitrator's] Decision, which flowed more narrowly from the undisputed fact" that inspectors found a dishwasher and box covering the smoke detector in Mr. Partridge's unit (Chambers Decision at para. 33). Moreover, this Court in *Campbell v. The Bloom Group*, 2023 BCCA 84, considered whether an arbitrator's decision was patently unreasonable because of a statement the arbitrator made regarding credibility. This Court said that focusing on a single line regarding credibility in the arbitrator's decision "obscures the important context around it" (at para. 75). Thus, although Mr. Partridge is correct that the Arbitrator may have misunderstood and misrepresented some of his evidence, this was not the true basis for the Arbitrator's Decision.

[39] Therefore, I would not give effect to this ground of appeal. The appellant has not established that the chambers judge failed to properly apply the patent unreasonableness standard to the Arbitrator's Decision.

Disposition

[40] In conclusion, I would dismiss the appeal.

[41] **FENLON J.A.**: I agree.

[42] **VOITH J.A.**: I agree.

[43] **MACKENZIE J.A.**: The appeal is dismissed.

"The Honourable Justice MacKenzie"