

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Olenga v. Metro Vancouver Housing Corporation*,  
2024 BCSC 1579

Date: 20240827  
Docket: S244319  
Registry: Vancouver

Between:

**Lombadisha Aime Olenga**

Petitioner

And

**Metro Vancouver Housing Corporation**

Respondent

Before: The Honourable Justice MacNaughton

On judicial review from: An order of the Residential Tenancy Branch, dated June 10, 2024.

## Reasons for Judgment

The Petitioner, appearing in person:

L. Olenga

Counsel for the Respondent:

L. Mackie  
M. Wong

Place and Date of Trial/Hearing:

Vancouver, B.C.  
August 19, 2024

Place and Date of Judgment:

Vancouver, B.C.  
August 27, 2024

**Overview**

[1] This is a judicial review of a June 10, 2024 Residential Tenancy Branch arbitrator’s decision in which the arbitrator: dismissed Mr. Olenga’s application to set aside a Notice to End Tenancy; granted an order for possession of the unit in which Mr. Olenga resided; and awarded the landlord a monetary amount of \$1,246. The amount of the original security deposit was credited against the monetary award.

[2] In these reasons, I will refer to the Residential Tenancy Branch as the “RTB”, to the decision-maker as the “Arbitrator”, and to the Arbitrator’s decision as the “RTB Decision”.

**The Relevant Provisions of the *Residential Tenancy Act, S.B.C. 2002, c. 78 [RTA]***

[3] The *RTA* governs the rights and obligations of tenants and landlords in BC and provides a means of resolving disputes between them. Disputes are decided by arbitrators who are delegates of the director appointed under the *RTA*: ss. 9 and 9.1.

[4] Part 4 of the *RTA* deals with ending a tenancy. Mr. Olenga was given notice by his landlord, Metro Vancouver Housing Corporation (“MVHC”), to end his tenancy under s. 46 of the *RTA*. 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 10 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, apply for dispute resolution: s. 46(4).

[5] On a dispute of a landlord’s notice to end tenancy pursuant to s. 55, an arbitrator may dismiss the application or uphold the notice and grant the landlord an order of possession and an order for the payment of rent.

[6] This was the basis for the Arbitrator’s Decision and order.

[7] The relevant parts of s. 55 provide:

**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.

[8] Part 5 of the *RTA* deals with the dispute resolution process. It provides:

**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.

[9] Sections 59–61 address some of the formalities of an application for dispute resolution; ss. 73–76 address aspects of the conduct of a dispute resolution hearing; and s. 62 deals with the director's authority to determine disputes. It provides:

**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.

### **Judicial Review**

[10] Mr. Olenga represented himself at this judicial review. At the hearing before the Arbitrator, he was represented by a legal advocate. At the outset, I explained to Mr. Olenga that a judicial review is not an opportunity to reargue the matters decided by the RTB nor is it an appeal of the RTB Decision.

[11] MVHC responded to the petition and participated in the hearing through its counsel.

[12] Both Mr. Olenga and MVHC prepared a record of the proceedings. Both records included a transcript of the recorded RTB proceedings.

### **The Parties and Background**

#### **The Parties to the Tenancy Dispute**

[13] MVHC is a public housing body pursuant to the *RTA* and is incorporated under the *British Columbia Business Corporations Act*, S.B.C. 2002, c. 57. MVHC's mandate is to provide affordable rental housing to individuals and families in the Greater Vancouver region.

[14] On or about February 14, 2019, Mr. Olenga, together with his now-deceased mother, Muzaliwa Watuttu Olenga ("Mrs. Olenga"), entered into a residential tenancy agreement for Unit 405, in an MVHC operated building, and located at 445 Ginger Dr. in New Westminster, B.C. (the "Tenancy Agreement" and "Unit 405").

**Terms of the Tenancy Agreement**

[15] Unit 405 is a subsidized two-bedroom suite. The relevant terms of the Tenancy Agreement provide:

**2. Definitions and Interpretation**

(a) In this Tenancy Agreement:

(iii) "Income Verification" means a statement that sets out all income and assets of the Tenant and any Occupant age 19 or older and such supporting documents as the Landlord may reasonably request, including but not limited to, income tax returns and notices of assessment, bank statements and benefit statements to verify the statement;

...

(vi) "Rental Assistance" means a rent supplement provided by or through the Landlord to a Tenant who meets eligibility criteria related to income, the number of occupants, or other criteria;

(vii) "Rent Geared to Income" means a Rental Assistance program whereby the rent is adjusted based on the Tenant's income and the terms of the Rental Assistance agreement;

...

(xi) "Unit Rent" means the monthly rent for the Rental Unit before any increase or decrease in rent determined in accordance with the Tenant's income and the terms of a Rental Assistance agreement, and before any Adjustments.

**5. Rent and Security Deposit**

(a) the Tenant agrees to pay rent calculated as follows:

i) Unit Rent in the amount of \$1135;

ii) less the decrease in rent determined in accordance with the Tenant's current income and the terms of a Rental Assistance agreement, being at the time of this Tenancy Agreement in the amount of \$-411; and

ii) plus Adjustments for a parking fee of \$0.

(b) The Tenant agrees to pay a security deposit equivalent to one half (1/2) of the Unit Rent, being; \$567.50.'

(c) The Tenant agrees that the security deposit and the first month's rent are due on the signing of this Tenancy Agreement. The security deposit must be paid by certified cheque or by money order. The rent is due on the first day of each month during the length of the tenancy.

...

(e) The Tenant agrees that if the Tenant provides the Landlord with a payment that the bank refuses to honour and/or returns as "not sufficient

funds”, then the Tenant will replace the returned payment with a money order or certified cheque immediately upon the Landlord giving notice to the Tenant and the Tenant will pay the Landlord an additional \$25.00 administration fee. The Landlord may change this administration fee from time to time after giving 3 months’ written notice to the Tenant.

**6. Payment of Rent**

(a) the Tenant must pay the rent on time, unless the Tenant is permitted under the *Act* to deduct from the rent. If the rent is unpaid, the Landlord may issue a notice to end tenancy to the Tenancy, which may take effect no earlier than 10 days after the date the Tenant receives the notice.

**7. Rent Increase**

...

(b) If at the time of a rent increase the Tenant receives Rental Assistance, then the Tenant hereby acknowledges and agrees that the rent of the Rental Unit is related to the Tenant’s income and the Rental Unit is exempt from the requirements of the “Rent Increase Provisions” of the *Act* (Section 41, 42 and 43).

**8. Income and Occupancy Verification**

(a) The Tenant must provide the Landlord with an Income Verification at least once a year on request from the Landlord, or as soon as practicable when there is a change in either:

- (i) the annual income of the Tenancy and any Occupants age 19 or older; or
- (ii) the composition of the household.

(b) the Tenant acknowledges that the Landlord is a public housing body as defined in the *Act*.

(c) The Tenant acknowledges that the Rental Unit is a subsidized rental unit as defined in the *Act* and the Tenant, or another proposed occupant, was required to demonstrate that he or she met eligibility criteria related to:

- (i) income;
- (ii) number of occupants;
- (iii) health; and/or
- (iv) other similar criteria,

before entering into this Tenancy Agreement for the Rental Unit.

(d) The Landlord may end the tenancy with two month’s notice if the Tenant or other Occupant ceases to qualify for the Rental Unit.

**12. Use of Rental Unit**

(a) The Tenant agrees:

- (i) that the Rental Unit is to be used only for residential purposes and the Tenant will allow only the following Occupants and no others to reside in the Rental Unit:

Full Name	Birthdate (m/d/y)	Tenant Status
Muzaliwa Watutu Olenga	10/3/1939	Resident
Lombadisha Olenga	3/17/1959	Co-Resident

(ii) to apply for and obtain written approval from the Landlord for any others to reside in the Rental Unit;

...

(v) to comply with the *National Occupancy Standards*, which means there are enough bedrooms for the number and composition of the Occupants, defined as follows:

(1) there must not be more than 2 people or fewer than 1 person per bedroom:

[16] According to the Tenancy Agreement, the rent payable for Unit 405 was \$1,135 a month (the “Market Rent”), less the decrease in rent based on Mr. and Mrs. Olenga’s current income and less the terms of the rental assistance agreement (the “Rental Assistance Agreement”).

#### **Change in Occupancy of Unit 405**

[17] Mrs. Olenga died on or about May 7, 2020. In November 2020, Mr. Olenga advised MVHC of her death by filing a tenant transfer request form.

[18] In his submissions before me, Mr. Olenga said that he went to Montreal to arrange for his mother’s funeral and to meet family. He returned to BC in October 2020.

[19] On December 17, 2020, after receiving the transfer request form, MVHC wrote to Mr. Olenga and advised him that, as he was then the sole occupant of a two-bedroom suite, he was over-housed. Unit 405, which was considered a family suite, was no longer suitable accommodation for him.

[20] MVHC encouraged Mr. Olenga to search for appropriate housing and advised him that he would be offered the option of two different one-bedroom units from

MVHC's portfolio. If Mr. Olenga declined both offers, his rental assistance would expire, and Market Rent for Unit 405 would apply.

**MVHC Attempts to Find Appropriate Housing for Mr. Olenga**

[21] On about January 19, 2021, Mr. Olenga viewed a one-bedroom unit offered by MVHC but declined to occupy it due to his medical requirements. MVHC requested that he complete a supplemental form regarding his medical issues.

[22] On April 26, 2021, MVHC wrote to Mr. Olenga advising him that MVHC would offer him two additional opportunities to occupy one of its one-bedroom units and reminded him that if he declined both, his rental assistance would expire and Market Rent for Unit 405 would apply.

[23] In January 2022, Mr. Olenga viewed a one-bedroom unit in a complex called the Inlet Centre (the "Inlet Unit") operated by MVHC. The Inlet Unit was wheelchair accessible and equipped with a walk-in shower, both of which aligned with Mr. Olenga's reported needs. He did not agree to be relocated to the Inlet Unit. He was concerned that it was not large enough to accommodate his walker and his scooter. He asked MVHC for assurance that it would indemnify him if his scooter was stolen from the common areas of the building. MVHC would not provide an assurance.

[24] On September 20, 2022, Mr. Olenga signed an updated Rental Assistance Agreement which included the following terms:

**3. ELIGIBILITY FOR RENT ASSISTANCE**

Rent assistance is an additional monetary subsidy paid by MVH towards the unit rent required under a tenancy agreement. The Tenant's eligibility for rent assistance provided under this Agreement was initially subject to the Tenant meeting MVH's eligibility criteria, income and asset policies at the time the Tenant's Rent Assistance Application was submitted, and further subject to MVH's available funding. MVH's eligibility criteria, income and asset policies are in the sole and absolute discretion of MVH and subject to change within the sole and absolute discretion of MVH. It is a material term of this Agreement that the Tenant demonstrate their continued eligibility for rent assistance as part of MVH's annual and periodic eligibility reviews.

...



**5. RENT ASSISTANCE AMOUNT**

The rent assistance amount provided in this Agreement is in the sole and absolute discretion of MVH and subject to change in accordance with this Agreement. In accordance with the terms of this Agreement, MVH has agreed to provide the Tenant with the following rent assistance commencing on 01 (day) / 11 (month) / 2022 (year).

Rental Unit Address: McBride Place, #405-445 Ginger Drive, New Westminster, BC, V3L 5L1.

Current Low End of Market rent for Rental Unit is: \$1,181

MVH Rental Assistance Amount: \$-941

Tenant Rent Contribution: \$240

**6. RENT ASSISTANCE TERM**

The term of this Agreement and the amount of rent assistance provided in Clause 5 of this Agreement will be on a month-to-month basis until changed or cancelled in accordance with this Agreement.

**7. ANNUAL AND PERIODIC REVIEWS**

It is a material term of this Agreement that the Tenant demonstrate their continued eligibility for the rent assistance provided in Clause 5 of this Agreement as part of MVH's annual or periodic eligibility reviews. The Tenant agrees to provide MVH with further information and documentation, as may be required by MVH, for the purpose of reviewing the Tenant's continued eligibility for the rent assistance provided in Clause 5 of this Agreement. The Tenant consents to MVH collecting, using and disclosing their personal information for the purpose of communicating with the Tenant, assessing the Tenant's ongoing eligibility for rent assistance, verifying the information submitted as part of MVH's annual and periodic eligibility reviews, and otherwise managing this Agreement. The Tenant acknowledges and agrees that they are not entitled to nor guaranteed ongoing rent assistance from MVH, even if all eligibility requirements are met. The Tenant's eligibility for ongoing rent assistance is subject to the Tenant meeting MVH's eligibility criteria, income and asset policies at the time of MVH's annual or periodic review, and further subject to MVH's available funding. The Tenant acknowledges and agrees that the rent assistance amount provided in Clause 5 of this Agreement is subject to change following MVH's annual or periodic review of the Tenant's ongoing eligibility criteria, income and asset policies, or any change to the Tenant's household income, assets, or occupancy.

**8. CHANGE IN HOUSEHOLD INCOME, ASSETS, OR OCCUPANCY**

The Tenant acknowledges and agrees that the rent assistance amount provided in Clause 5 of this Agreement is subject to change following any change to the Tenant's household income, assets, or occupancy. The Tenant must immediately notify the Landlord of any changes to the Tenant's household income, assets, or occupancy during this Agreement. ...

**9. REMOVAL OF RENTAL ASSISTANCE**

In the event the Tenant no longer qualifies for any rent assistance at any time during the Agreement, the Tenant acknowledges and agrees that this Agreement will terminate as of the date that the Tenant ceased qualifying for any rent assistance and the adjusted monthly rent as identified in Clause 5 of this Agreement will become immediately due and owing to the Landlord without any deductions or adjustments for rental assistance. The Tenant further agrees that MVH is entitled to recover any rent assistance paid to the Tenant for the period that the Tenant ceased to be qualified for rent assistance.

[Emphasis added.]

[25] In January 2023, MVHC offered Mr. Olenga a one-bedroom, wheelchair accessible, unit with a walk-in shower, in a complex called Kelly Court (the “Kelly Unit”). On about January 13, 2023, Mr. Olenga rejected relocation to the Kelly Unit.

[26] Because MVHC’s mandate is to provide affordable family housing, its policies generally prohibit roommates. Two-bedroom family housing is restricted for family members or caregivers.

[27] Nonetheless, on about January 19, 2023, MVHC offered to make an exception for Mr. Olenga to permit him to get a roommate for Unit 405, so long as the potential roommate underwent MVHC’s usual tenant eligibility assessment.

[28] On about February 6, 2023, Mr. Olenga advised that he was continuing to look for a roommate and said that he would prefer that option. On about March 9, 2023, Mr. Olenga advised MVHC that he had found a live-in caregiver, “Francis Luma”, to occupy the second bedroom in Unit 405. MVHC asked that the caregiver complete and submit a housing and subsidy application by March 22, 2023.

[29] On March 21, 2023, Mr. Olenga and an individual, Francis Nunoo, whom MVHC understood to be Mr. Olenga’s caregiver, completed MVHC’s tenancy application. In the application, Mr. Olenga and Mr. Nunoo reported a combined monthly income of \$2,650.24.

**Amendment to Tenancy Agreement and Increased Rent**

[30] On June 22, 2023, Mr. Olenga and Mr. Nunoo executed an amendment to the Tenancy Agreement, adding Mr. Nunoo as a tenant in the Rental Unit (the “Tenancy Agreement Amendment”).

[31] MVHC sought additional employment and income information from Mr. Nunoo to confirm the tenant rent calculation. On about August 2, 2023, Mr. Olenga advised that Mr. Nunoo did not reside with him and had not moved into Unit 405.

[32] By letter of September 13, 2023, MVHC advised Mr. Olenga that the rent for Unit 405 would increase to \$1,246 a month, effective January 1, 2024. Attached to the letter was a Notice of Rent Increase of the same date.

[33] In about November 2023, Mr. Nunoo moved into Unit 405. MVHC advised Mr. Olenga that Mr. Nunoo was required to provide his financial and employment information forthwith.

[34] MVHC continued to accept Mr. Olenga’s subsidized rent until Mr. Nunoo’s financial information could be obtained and Mr. Olenga’s ongoing eligibility for rental subsidies could be determined.

[35] On February 12, 2024, MVHC advised Mr. Olenga and Mr. Nunoo that, due to their combined income, they were no longer eligible for MVHC’s rental assistance program as 30% of their gross household earnings exceeded the low-end-of-market rent. The rent payable for the Rental Unit was scheduled to increase to \$1,246, effective March 1, 2024 (the “Rent”).

**10-Day Notice to End Tenancy**

[36] On March 1, and April 1, MVHC received \$623 in rent from Mr. Olenga. Mr. Nunoo did not pay his share of the rent for those months.

[37] On April 10, 2024, MVHC issued Mr. Olenga and Mr. Nunoo a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”). The arrears then were \$1,246 (“Arrears”).

[38] The Notice contains the following information:

**4. INFORMATION FOR TENANTS**

You may dispute the Notice for specific reasons such as:

- You have proof the rent was paid; or,
- You have an order from an arbitrator giving you permission to keep all or part of the rent; or,
- You held part or all of the rent with prior notice to the landlord for the cost of emergency repairs.

[39] Mr. Olenga filed an Application for Dispute Resolution with the RTB on April 15, 2024, seeking to cancel the notice.

**Subsequent Payments**

[40] Mr. Olenga made two cash payments of \$623 to MVHC on April 29 and May 1, 2024. He received receipts specifying that they were “for use and occupancy only”.

**The RTB Hearing**

[41] The parties appeared at an RTB hearing on May 23, 2023. Mr. Olenga was represented by a legal advocate, and MVHC was represented by a property assistant and subsidy supervisor. A transcript of the proceedings formed part of the record before me.

[42] At the hearing, Mr. Olenga and his advocate accepted that the Rent payable for the Unit 405 was \$1,246 a month and that he had only paid one half of that for March and April 2024. Mr. Olenga testified that: he could not afford the Rent; Mr. Nunoo had left Unit 405 sometime in February 2024; and that his efforts since then to locate or contact Mr. Nunoo had been unsuccessful although Mr. Nunoo’s possessions remained in Unit 405. Mr. Olenga offered to pay the arrears on condition that his tenancy be permitted to continue with a new roommate.

[43] MVHC’s representative testified about MVHC’s mandate to provide public housing for families in need and that Mr. Olenga was over-housed living alone in a two-bedroom unit. She described how MVHC had tried to work with Mr. Olenga to

ensure that his housing needs were met including by offering him accommodation in three different units and proposing an exception to its policies in permitting Mr. Olenga to have co-tenant.

[44] MVHC's representative also testified that Mr. Olenga had not advised it that Mr. Nunoo had moved out until after the 10-Day Notice was issued. MVHC was unwilling to offer another policy exemption due to the complications caused by doing so the first time with Mr. Nunoo.

[45] MVHC advised the Arbitrator that Mr. Olenga's social worker offered payment of the arrears but it was on condition that Mr. Olenga be able to continue his tenancy and introduce a new co-tenant. MVHC insisted that the Arrears be paid before Mr. Olenga's tenancy could be discussed further.

### **RTB Decision**

[46] As set out above, the Arbitrator upheld the 20-Day Notice, provided MVHC with an Order of Possession for Unit 405, effective 1:00 p.m. on June 30, 2024; and issued a monetary order in favour of MVHC in the amount of \$678.50 reflecting the arrears less the security deposit paid when Mr. Olenga and his mother moved in.

[47] In the RTB Decision, the Arbitrator determined that Mr. Olenga had failed to pay the rent, for which he was jointly and severally responsible and, further, that he was not subject to any statutory exemptions allowing a tenant to make deductions from the rent.

### **Application for Review Consideration**

[48] On June 12, 2024, Mr. Olenga applied for a review consideration of the Arbitrator's decision under s. 79 of the *RTA*. The *RTA* sets out eight grounds on which a party may request that a decision be reviewed. In this case Mr. Olenga requested a review on three grounds: that there had been a technical irregularity or error; an issue was not determined; the RTB did not have jurisdiction to determine the issue.

***Technical Irregularity or Error***

[49] In reasons dated June 13, 2024, an RTB adjudicator considering the review concluded that Mr. Olenga had not pointed to any technological error that affected the decision. Hence, the first ground was dismissed.

***Issue not Determined***

[50] With respect to the second ground, the RTB adjudicator explained that this ground for review addresses whether a claim was accidentally missed, a legal issue that was required to decide the outcome was missed, or the arbitrator decided they did not have authority to resolve the issue. To succeed, the issue must have been part of the application for dispute resolution filed with the RTB.

[51] Mr. Olenga submitted, in his application for review consideration, that the issues of him being required to pay market value for the rental unit, and being evicted due to MVHC's contributory negligence, had not been determined.

[52] The Adjudicator explained that the original hearing dealt with Mr. Olenga's application for cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent dated April 10, 2024 under s. 46 of the *RTA*, and an order requiring the Landlord to comply with the *RTA*, regulations, or tenancy agreement under section 62(3) of the *RTA*.

[53] The adjudicator on review wrote:

... [T]he Arbitrator found that [Mr. Olenga] signed the rental assistance agreement with terms about how the rent subsidy would be provided. They were satisfied that due to [Mr. Olenga] ceasing to qualify for the subsidy, monthly rent had reverted to the market rate of \$1,246.00 since March 1, 2024. They found the [MVHC] had provided notices of rent increase to support that figure.

[54] The adjudicator wrote that the Arbitrator found that Mr. Olenga did not pay the amount stated to be owing on the 10-day notice within five days of receiving it and because there was insufficient evidence that MVHC was presented with full payment of the arrears on or before April 19, 2024, without strings attached, there were no grounds to set aside the 10-day notice. The Arbitrator also found the MVHC was not

obliged to consider or accept a new non-family member roommate in conjunction with the payment of arrears.

[55] The adjudicator determined that Mr. Olenga was attempting to reargue matters decided by the Arbitrator and had not demonstrated that the Arbitrator had not decided a key issue at the hearing. As a result, the review on this ground was dismissed.

***No Jurisdiction***

[56] The adjudicator explained that this ground applied when the Arbitrator incorrectly makes a decision on an issue they should not have.

[57] In his review consideration application, Mr. Olenga submitted that human rights discrimination issues were brought to the RTB hearing and were not within the RTB's jurisdiction.

[58] The Adjudicator summarized the issues decided and concluded that the information Mr. Olenga submitted was an attempt to reargue the issues decided by the Arbitrator and did not demonstrate that the Arbitrator decided an issue they should not have. As a result, the review on this ground was also dismissed.

**Petition and Interim Stay of RTB Decision**

[59] Mr. Olenga filed his petition for judicial review on June 26, 2024. At para. 4 of Part 1 of the petition, Mr. Olenga wrote:

Petitioner says that the Arbitrator of the Review Board reviewed the RTB decision of June 10, 2024 violating his duty of procedural fairness and the petitioner participatory rights accorded consistent with the duty of procedural fairness to the petitioner was ignored due to insufficient time allocated to review the process; that raise a question of reasonable apprehension of bias.

[60] Read broadly, the petition suggests the following grounds for judicial review of the RTB Decision:

- (a) unparticularized allegations of bias and a lack of procedural fairness,

- (b) allegations that his evidence, including with respecting to human rights violations, had not been considered; and
- (c) misinterpretation and misapprehension of Mr. Olenga’s evidence and misapplication of the law.

[61] As I understood his submissions on this judicial review, Mr. Olenga was more focused on the RTB Decision as opposed to the Review Consideration Decision although in the factual basis for his petition, he directs criticism towards the review. Before me, Mr. Olenga was most concerned about the fact that, through a senior’s organization, he had arranged for funds to pay the arrears of Rent but that MVHC would not accept the arrears as they were only available on condition that MVHC agreed to rescind the notice to end tenancy.

[62] On July 2, 2024, Mr. Olenga appeared before Justice Baker and obtained a stay of the Order of Possession for 21 days (the “Stay”). As a condition of the Stay, Mr. Olenga was required to bring the hearing of the petition within 21 days, or, if unable to do so, apply for an extension of the Stay on two days’ notice to MVHC within the 21-day period.

[63] On July 19, 2024, Mr. Olenga served MVHC with the petition, the order for the Stay, the requisition he filed for short leave and his notice of application filed July 19, 2023, and his affidavit made on July 12, 2024.

[64] On July 25, 2024, Mr. Olenga and counsel for MVHC appeared before Justice Laurie. The Stay was extended until the earlier of the outcome of the petition or August 21, 2024.

**The Parties’ Positions on this Petition**

**Legal Basis**

***The Nature of Judicial Review***

[65] The role of the court on judicial review is not hear an appeal, to hear new evidence or argument, or to decide or redecide the case. It is to ensure that the



statutory decision maker: (a) acted within their jurisdiction by deciding what they were directed to decide by legislation; and (b) did not lose jurisdiction by failing to provide a fair hearing or rendering a decision outside the degree of deference owed by a reviewing court: *Alfier v. Sunnyside Villas Society*, 2021 BCSC 212 at paras. 25–28.

***Applicable Standard of Review***

[66] There is no right to appeal an RTB arbitrator’s decision. There is, however, a limited right to apply to the BC Supreme Court for judicial review. Pursuant to s. 5.1 of the *RTA*, the applicable standard of review is governed by the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [ATA].

[67] Pursuant to ss. 5.1 and 84.1 of the *RTA*, and s. 58 of the *ATA*, the grounds on which the court may interfere with an arbitrator’s decision are very narrow. The grounds were summarized in *Li v. British Columbia (Residential Tenancy Director)*, 2024 BCCA 202 at paras. 29–34.

[68] Briefly, a finding of fact or law or an exercise of discretion may not be interfered with unless it is patently unreasonable. 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.

[69] Section 58(3) of the *ATA* defines patent unreasonableness with respect to discretionary decisions. It provides that a discretionary decision is patently unreasonable if: the discretion is exercised arbitrarily or in bad faith; is exercised for an improper purpose; is based entirely or predominantly on irrelevant factors; or fails to take statutory requirements into account.

[70] The *ATA* does not define patent unreasonableness as it applies to a tribunal's factual or legal findings. However, the patent unreasonableness standard has been articulated in a number of decisions of this Court and appellate courts. In particular:

- a) the standard is an onerous one and a decision can only be quashed if there is no rational or tenable line of analysis supporting it (*Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 at para. 65, aff'd *Victoria Times Colonist, a Division of Canwest Mediaworks Publications Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 25-G*, 2009 BCCA 229);
- 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.*, 2011 BCSC 827 at para. 34, citing *Lavender Co-Operative Housing Association v. Ford*, 2011 BCCA 114; and *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80);
- c) a patently unreasonable decision is one that almost borders on the absurd (*West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28); or
- d) a patently unreasonable decision is one that is so flawed that no amount of curial deference can justify letting the decision stand (*Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52).

[71] In determining whether a decision of the RTB is patently unreasonable, the Court on judicial review does not “second guess” the conclusions drawn from the evidence considered by the arbitrator, or “substitute different findings of fact or inferences drawn from those facts.” A judicial review is not a re-weighting of evidence, or a re-trial of matters decided by the Branch adjudicator: *Hawk v. Nazareth*, 2012 BCSC 211.

[72] If a decision is challenged on the basis of procedural unfairness, 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.

### **Analysis**

#### **Which decision is under review?**

[73] As a preliminary issue, I must determine whether it is the RTB Decision or the Review Consideration Decision that is subject of this judicial review.

[74] There has been some controversy about whether, when a statutory scheme provides for an internal review procedure, it is the original or the review decision that is the proper subject of the judicial review.

[75] In *Sereda v. Ni*, 2014 BCCA 248, the Court followed *United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, Local 2009 v. Auyeung*, 2011 BCCA 527, and determined that the review decision was the subject of the judicial review but that the original decision should form part of the record and “inform” the inquiry on judicial review: at para. 26.

[76] In *Martin v. Barnett*, 2015 BCSC 426, Justice Burke concluded that in two subsequent decisions, being *Yellow Cab Company Limited v. Passenger Transportation Board*, 2014 BCCA 329 [*Yellow Cab*]; and *Fraser Health Authority v. Workers’ Compensation Appeal Tribunal*, 2014 BCCA 499, the Court of Appeal clarified the law and concluded that when an internal review decision does not address the merits of the underlying decision, the original decision should be the subject of the judicial review: *Yellow Cab* at para. 44. Justice Sewell followed Burke J.’s reasoning in *Ndachena v. Nguyen*, 2018 BCSC 1468 at paras. 34–37.

[77] In this case, the Review Consideration Decision did not review the merits of the RTB Decision. The scope of the Review Consideration Decision was limited to three possible grounds none of which considered the merits of the RTB Decision. As a result, it is the RTB Decision that is the subject of this judicial review.

**Is the RTB Decision patently unreasonable?**

[78] When read as a whole, as I am required to do, Mr. Olenga has failed to identify any basis on which the Arbitrator acted unfairly or made a patently unreasonable error in law or fact or in the exercise of discretion.

[79] The Arbitrator sets out clear evidence to support their findings that Mr. Olenga had not paid the entire amount of the rent owing from March and April, 2024. In fact, there was no dispute about the amount owing. The evidence established that: Mr. Olenga owed the Rent; remitted only part of it; and could not rely on any statutory exemptions for not making complete and timely rent payments to MVHC.

[80] The Arbitrator's interpretation and application of the RTA is both reasonable and rational. It does not border on the absurd.

[81] Mr. Olenga implies that he was coerced into signing the Tenancy Agreement Amendment, or, read broadly that he executed it under duress. However, on the transcript, he called no evidence to support coercion or duress.

[82] The Arbitrator considered the parties' arguments and found that:

I find the Tenant did not pay the amount stated to be owing on the 10 Day Notice to the Landlord within 5 days of receiving it, to cancel the 10 Day Notice under section 46(4) of the Act. I find there is insufficient evidence that the Landlord was presented with full payment for the arrears on or before April 19, 2024, with no strings attached, which was then deliberately refused by the Landlord. I do not find the Landlord was under any obligation to consider or accept a new non-family member roommate in conjunction with payment of the arrears.

[83] These are appropriate findings on the evidence and not patently unreasonable.

[84] The Arbitrator also found:

In this case, I find the Tenant signed the rental assistance agreement with terms about how the rent subsidy would be provided. I am satisfied that due to the Tenant ceasing to qualify for the subsidy, monthly rent has reverted to the market rate of \$1,246.00 since March 1, 2024. I find the Landlord has provided notices of rent increase supporting this figure.

I find the Tenant did not pay the \$1,246.00 rent in full when due for March and April 2024. I find the Tenant only paid half of the rent for each month.

The legal reasons under the Act for a tenant to deduct from rent include:

- The tenant paid too much for a security or pet damage deposit (section 19(2))
- The tenant paid for emergency repairs (section 33(7))
- The tenant paid an illegal rent increase (section 43(5))
- The tenant applied compensation to the last month's rent where the landlord has issued a notice to end tenancy for landlord's use (section 51(1.1))
- The tenant was awarded monetary compensation or a rent reduction by the Residential Tenancy Branch (section 72(2)(a)).

I do not find the Tenant to have deducted from rent for any of the reasons described above.

I find that even if FN was added as a co-tenant, the Tenant continues to be liable for the entire amount of rent that is due under the tenancy agreement. As stated in Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Co-Tenants, co-tenants are jointly and severally responsible for payment of rent when it is due. If one tenant is unable to pay their portion of the rent, the other tenant must pay the full amount, or a 10 day notice to end tenancy for unpaid rent could be served.

[85] There was a rational basis in the evidence for all of those findings and they are not patently unreasonable.

[86] Read as a whole, the RTB Decision is not clearly irrational, does not border on the absurd, and is supported by the evidence. There is a rational line of reasoning to support the Arbitrator's decision.

[87] On judicial review, this Court will presume that the adjudicator considered all of the evidence and arguments before them even if not all the evidence and arguments are set out in a decision. In *Ganitano v. Yeung*, 2016 BCSC 2227, Justice Griffin provides a helpful summary of the principles that inform an assessment of the adequacy of reasons, including how they apply in the context of residential tenancy disputes:

[21] The requirement to give written reasons is a facet of the duty of fairness. Analytically, an investigation into the adequacy of reasons may bleed into substantive review. Where reasons are inadequate, it may be difficult for a reviewing court to ascertain a delegate's justification for an

outcome; however, where reasons are adequate an arbitral outcome may nevertheless be unreasonable or patently unreasonable.

[22] Reasons allow individuals to know why, how, and on what evidence a decision-maker reaches his or her decision; see D.J.M. Brown & J.M. Evans, *Judicial Review of Administrative Action in Canada*, loose-leaf (Toronto: Canvasback, updated 2014) at c. 12 at 70.

[23] In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, a union sought judicial review on the basis that the arbitrator provided inadequate reasons for the arbitral award. The Court at para. 16 held that “a decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion”. Reasons are adequate, the Court held, if a reviewing court can ascertain the rationale of the decision.

[24] In assessing the adequacy of reasons, context is relevant. In *Christiansen v. Harwood*, 2015 BCSC 1440, Fisher J., at para. 20, held that in the context of residential tenancy disputes the standard of adequacy is lowered because the governing legal regime is relatively straightforward. The Court reiterated that the overriding test for adequacy is whether a reviewing court is able to understand how and why the decision was made.

[88] Read as a whole, the Arbitrator summarized the parties' positions and the evidence the parties relied on. The arbitrator met the required elements as they relate to a decision, as set out in *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232. Based on the reasons provided by the Arbitrator, I am able to clearly understand how and why the decision was made, satisfying the test set out in *Ganitano* at para. 24.

[89] The Arbitrator set out the issues they had to decide and reached clear conclusions based on the evidence. There is a rational basis for their decision. I do not find it to be patently unreasonable.

### **Was the hearing procedurally fair?**

[90] I am satisfied that, in all of the circumstances, the RTB acted fairly.

[91] In this case, the Arbitrator allowed both parties to call their evidence and Mr. Olenga to do so supported by a legal advocate. The Arbitrator asked probing questions and considered the answers.

[92] There is no evidence of procedural unfairness in the transcript of the proceedings.

**Conclusion**

[93] The Arbitrator’s decision showed a clear path of reasoning from their assessment of the evidence to their conclusion. A judicial review is not an appeal and is not a rehearing. The RTB Decision was not patently unreasonable or unfair. As a result, Mr. Olenga’s petition is dismissed and the Arbitrator’s orders affirmed.

[94] In its response to the petition MVHC did not seek costs of this petition and I make no order as to costs.

[95] Mr. Olenga asked, that if his petition was unsuccessful, he be given three months to find alternative accommodation before he vacates. I am sympathetic to his request but must balance it against the pressing need for subsidized family housing as submitted by counsel for MVHC.

[96] In the circumstances, I allow Mr. Olenga two months from the date of release of this decision in which to find alternative accommodation. He is to pay rent at the rate of \$643 a month for those two months. On the evidence Mr. Olenga’s financial situation is such that he cannot pay rent at market level and he will need income to pay a security deposit on new accommodation.

“MacNaughton J.”