IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kwon v. Park,*
2024 BCSC 1703

Date: 20240911
Docket: S244295
Registry: Vancouver

Between:

Jonathan Kwon

Petitioner

And

Jung Ja Park

Respondent

Before: The Honourable Justice E. McDonald

On judicial review from: An order of the Residential Tenancy Branch, dated June 11, 2024

Oral Reasons for Judgment

Counsel for the Petitioner:	M. Morinaga
Counsel for the Respondent:	A. MacKenzie B. Darwin, A/S
Place and Date of Hearing:	Vancouver, B.C. August 27, 2024
Place and Date of Judgment:	Vancouver, B.C. September 11, 2024

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[1] These reasons for judgment were delivered orally. They have since been edited for distribution and publication to include headings, citations and quoted passages.

Introduction

[2] The petitioner, Jonathan Kwon, is a tenant at a property located at XX Triumph Street, Burnaby, British Columbia (the "Suite"). The respondent, Jung Ja Park, owns the property and is the landlord.

[3] The Director of the Residential Tenancy Branch ("RTB") did not appear at the hearing of the petition. However, the Director did file a response and provide a complete record of the proceeding as defined in s. 1 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*] as part of the affidavit #1 of Lisa Clout, made July 18, 2024.

[4] Mr. Kwon seeks to set aside the order for possession issued by the arbitrator on June 11, 2024.

Background

[5] The parties entered into a fixed-term tenancy agreement respecting the Suite starting on July 1, 2020.

[6] Ms. Park is 83 years old and she presently resides in one of the rental units at the property. Mr. Kwon and his family reside in the Suite which is a three bedroom unit on the upper floor of the property.

[7] In 2021, there was a dispute about the tenancy agreement including when the fixed term ended. Specifically, the sole issue was whether the landlord could validly issue a notice under s. 49(2)(a)(iii) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*] if the date in the notice was earlier than the end date of the fixed tenancy. That dispute was decided by an RTB arbitrator on July 9, 2021 (the "2021 Decision"). In the 2021 Decision, the arbitrator concludes that the fixed term does not end until July 1, 2024, so the notice had to be cancelled as it was for a date prior

to the end date of the fixed tenancy. There was no consideration of good faith and there was no statement in the 2021 Decision that Mr. Kwon and Ms. Park did not get along.

[8] In 2022, there was another dispute between the parties that came before the RTB. In that case, Ms. Park issued a two-month notice to end tenancy that Mr. Kwon applied to cancel. Ms. Park stated that she intended to occupy the Suite. The RTB considered whether to cancel a notice to end tenancy for landlord's use of property under s. 49(3) of the *RTA* and on November 21, 2022, the arbitrator cancelled the two-month notice to end tenancy (the "2022 Decision").

[9] The 2022 Decision considered whether the two-month notice was issued in good faith. The arbitrator found that Ms. Park had not demonstrated there was no ulterior motive in issuing the notice. There is also a finding, based on the letter from Ms. Park's doctor, that the landlord-tenant relationship had soured.

[10] On April 1, 2024, Ms. Park issued Mr. Kwon a two-month notice to end tenancy for landlord's use. This is the two-month notice presently at issue.

[11] Mr. Kwon applied to cancel the notice and on June 11, 2024, the parties attended a hearing before the RTB arbitrator. Mr. Kwon attended the hearing for the tenant and Ms. Park attended the hearing for the landlord, and her daughter, Ms. Han, attended as the landlord's agent.

[12] On June 11, 2024, the arbitrator made a decision upholding the two-month notice to end tenancy and stating the tenancy will end on July 1, 2024 and granting Ms. Park an order for possession (the "Decision").

[13] On June 25, 2024, Mr. Kwon filed a petition in this court seeking judicial review of the Decision. Mr. Kwon was granted interim stays of the order for possession, the most recent of which is set to expire with the pronouncement of these oral reasons for judgment.

[14] The petition came on for hearing before me on August 27, 2024 with reasons reserved to September 11, 2024.

[15] After discussing the applicable standard of review, I will consider the various grounds for judicial review raised by Mr. Kwon in his petition.

Standard of Review

[16] There is no dispute regarding the applicable standard of review, which is patent unreasonableness provided by ss. 5.1 and 84.1 of the *RTA* and s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*].

[17] The reviewing court's duty is to "determine whether the decision maker's reasons meaningfully account for the central issue and concerns raised by the parties": *Guevara v. Louie*, 2020 BCSC 380 at para. 48, citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[18] In *Gichuru v. Palmar Properties Ltd*., 2011 BCSC 827 [*Gichuru*], Justice Pearlman describes what is meant by patent unreasonableness:

> [34] A decision is patently unreasonable where it is not merely unsupported by reasons that are capable of withstanding a probing examination, but is openly, evidently and clearly irrational: *Ford v. Lavender Co-operative Housing Association*, 2011 BCCA 114. When reviewing a decision for patent unreasonableness, it is not open to the court to second guess conclusions drawn from the evidence considered by the decision-maker, or to substitute different findings of fact or inferences. A decision can only be said to be patently unreasonable where there is no evidence to support the findings, or the decision is openly, clearly, and evidently unreasonable: *Manz* , at para. 39 citing *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80.

[19] In *Gordon v. Guang Xin Developments Ltd.*, 2022 BCSC 1544 at para. 21, citing *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232, at para. 37, I pointed out that although reasons do not need to address every issue and item of evidence that was raised, they "must address the central issues and contain sufficient detail and clarity to allow the parties and the court to know why the decision was reached".

[20] Part 4 of the *RTA* addresses how to end a tenancy and s. 49(2)(a) and (3), which is located in that part, provides that a landlord may end a tenancy for, among other things, the purpose of the landlord or a close family member of the landlord intending "in good faith" to occupy the rental unit. These are the provisions governing the present two-month notice and it is undisputed that the landlord's daughter qualifies as a "close family member" within the meaning of these provisions.

[21] In the context of a review of a decision, the "good faith" requirement contained in s. 49 involves two elements, (1) the intention to occupy the rental unit; and, (2) to do so without some ulterior purpose: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165 at para. 37 [*Aarti*]. An arbitrator must not only recognize the issue of good faith, but also engage in the analysis that it mandates: *Aarti*, at para. 39.

Preliminary Issue

[22] Before I consider the grounds in the petition, I will address a preliminary matter.

[23] Counsel for Ms. Park takes the position that the petition ought to be dismissed because Mr. Kwon did not pursue a second-level review of the impugned decision at the RTB.

[24] Counsel for Mr. Kwon submits that he is not required to seek a second-level review because s. 79 of the *RTA* does not provide for review of one of the grounds for his application – namely, the issue of whether the arbitrator erred in interpreting or applying a statutory provision. Specifically, Mr. Kwon alleges the arbitrator was in error by relying on s. 64(2) of the *RTA* in rendering the decision under review.

[25] Based on a plain reading of s. 79(2), which sets out the only grounds available for reviewing a decision or an order, does not include the ground that the director erroneously applied a statutory provision in the original dispute resolution proceeding. Therefore, I agree with counsel for Mr. Kwon that he is not precluded from bringing the petition because did not seek a review under s. 79 of the *RTA*.

Did the arbitrator fail to consider an admission of ulterior motive?

[26] Mr. Kwon alleges that the arbitrator failed to consider the landlord's unequivocal written "admission" of an ulterior motive made in written submissions filed for the hearing before the arbitrator.

[27] In those written submissions "re: tenant's allegation of ulterior motive to end tenancy by the landlord", the landlord responds to the tenant's allegations. Ms. Park's counsel submits that these are responses to, among other things, Mr. Kwon's submission that his conduct was exemplary. In response, Ms. Park referred to their historical contentious relationship over issues such as Mr. Kwon unilaterally reducing his rent.

[28] Mr. Kwon also submits that Ms. Han confirmed the "admission" of an ulterior motive in her submissions. For example, at p. 24 of 45 of the transcript, Ms. Han states that they cannot live with Mr. Kwon because he is terrorizing and threatening Ms. Park. Ms. Han also states that the trust between Mr. Kwon and her family is broken and "to make us live together like this is unfair for my mom who's 83 years old and who needs medical assistance as well….".

[29] Ms. Park's counsel submits that Ms. Han was not a witness at the hearing, but only an agent for the landlord, so her statements at the hearing are not evidence. In my view, that submission ignores that Ms. Han was affirmed to tell the truth during the hearing. While Ms. Han spoke at length during the hearing, Ms. Park said very little. I find that Ms. Han provided evidence during the hearing.

[30] Ms. Han's statements at the hearing indicates the potential existence of an ulterior motive. However, I do not agree that either the written submission or the statements by Ms. Han at the hearing amount to a formal admission by the landlord of an ulterior motive in issuing the two-month notice.

[31] That is because the present circumstances are not akin to, for example, a statement of fact in a pleading being considered as an admission of fact by the pleading party because there is also unambiguous evidence that the statement was

made for the purpose of a deliberate and clear concession to the other party: *Adams v. Fairmont Hotels & Resorts Inc.*, 2008 BCCA 444 at para. 11.

[32] In any event, the real questions in light of Ms. Han's statements, the written submissions made on behalf of the landlord, and all of the other evidence presented at the hearing, are whether the arbitrator failed to weigh and consider the evidence introduced or analyse whether the landlord met the onus to rebut the suggestion of ulterior motive raised by such evidence.

[33] I will address those questions as part of my analysis of the other grounds raised on this application.

Did the arbitrator fail to address whether the landlord had an ulterior motive?

[34] Mr. Kwon submits that while the arbitrator may have found the landlord intended to move into the Suite, the arbitrator did not address whether there was still an ulterior motive and the arbitrator did not fully analyse the tenant's evidence on this issue.

[35] The onus is on a landlord to prove an absence of bad faith in a proceeding concerning a Two Month Notice to End Tenancy for Landlord's Use of Property: *Gichuru,* at paras. 49, 56-57.

[36] In the present case, there is no argument that the arbitrator misstated who bears the onus or erroneously reversed the onus in respect of the ulterior motive issue. There is also no suggestion that the arbitrator incorrectly set out the relevant legal framework.

[37] In *Sandhu v. Gill*, 2024 BCSC 412 [*Sandhu*], Justice Baker set aside an arbitrator's decision in respect of a Two Month Notice to End Tenancy for Landlord's Use of Property because the arbitrator failed to fully analyse the evidence to address whether there was still an "ulterior motive" in the landlord's intention to move into the suite.

[38] In that case, after describing all of the evidence and issues that the arbitrator failed to analyse, Baker J. concluded as follows:

> [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.

[39] In *Doell v. Doe*, 2022 BCSC 655 [*Doell*], Justice Tindale considered a judicial review application arising from an arbitrator's decision in respect of a two month notice to end tenancy for landlord's use of property. The petitioner alleged the arbitrator erred by: (1) failing to consider the purpose for which the landlord intended to move into the rental unit and whether he had an ulterior motive; (2) failing to analyse the tenant's evidence and (3) incorrectly reversing the onus and requiring the tenant to establish bad faith.

[40] Based on a statement in that decision making it clear that the arbitrator had erroneously shifted the burden onto the tenant, Tindale J. concluded the decision was patently unreasonable: *Doell,* para. 57. Justice Tindale also stated that he would have found, if necessary, that the arbitrator failed to properly consider and weigh evidence that was directly related to the issue of ulterior motive because there was no analysis of that evidence in the decision.

[41] Mr. Kwon submits that even though the arbitrator found that Ms. Park had provided a "detailed and believable account of the circumstances and their decision to serve" the notice, the Decision does not address the issue of ulterior motives, which is contrary to *Sandhu*.

[42] As to whether the arbitrator failed to consider the issue of ulterior motive and analyse the evidence tendered in respect of it, I note that *Sandhu* focussed on two shortcomings: (1) failing to "weigh and consider the evidence introduced by petitioner", and (2) failing to "analyze whether the respondent met the onus on him to rebut the suggestion of ulterior motive raised by such evidence".

[43] The portions of the Decision that are relevant to this application are as follows:

> **Background and Evidence**
>
> I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.
>
> …
>
> **Analysis**
>
> …
>
> The Tenants dispute that the Notice is being issued in good faith. "Good faith" is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to default, act dishonestly or avoid obligations under the legislation or the tenancy agreement.
>
> …
>
> Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has established a claim that they have sufficient reasons to issue the Two Month Notice to the Tenant and obtain an end to this tenancy.
>
> I assign significant weight to the Landlord's documentary evidence, the letter from their architect, and the letter from their contractor. I find that these two documents corroborate the Landlord's version of events that the house the Landlord's daughter and Agent S.H. currently occupy will no longer be habitable and that S.H. will need to move to the rental unit property.
>
> When combined with their testimony, I find that the Landlord has provided a detailed and believable account of the circumstances and their decision to serve the Two Month Notice.
>
> I accept the Landlord's response that a landlord is not obligated to provide documentation of the Landlord's plans when serving a two month notice to end tenancy for landlord's use.
>
> I assigned weight to the Tenant's own admission that they do not doubt the Landlord is rebuilding their home at the other property.
>
> While the Tenant has repeatedly emphasized the ulterior motives of the Landlord and the connections between the two Past Hearings and this current Two Month Notice, I find that the reasons that were brought up at the two Previous Hearings for serving the notice to end tenancy are not related to the Landlord's current reasons for serving this Two Month Notice.
>
> Section 64(2) of the Act states that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.
>
> Consequently, I find that a sizeable portion of the Tenant's submissions did not directly address the matter at hand and was not applicable to the dispute.

> Based on the above, the totality of the circumstances, and on a balance of probabilities, I am satisfied that the Landlord has demonstrated their good faith when serving the Two Month Notice, and the Landlord's Daughter S.H. will be occupying the rental unit.

[44] In considering whether the Decision demonstrates that the arbitrator failed to weigh and consider the petitioner's evidence and analyze whether the landlord satisfied the onus to rebut the suggestion of ulterior motive raised by such evidence, I must first identify the evidence that was introduced by Mr. Kwon and the rebuttable suggestion of ulterior motive that it raised.

[45] In the present case, Mr. Kwon submitted to the arbitrator that there was little he could offer to refute the evidence about the reasons why the landlord's daughter was proposing to move into the Suite. Specifically, he stated:

> At the end of the day, they are bringing up the case that they want to move in because they – they're going to do a construction project. Cumulatively, if you look at all the evidence they've submitted, there's not a lot that I can submit to refute that.
>
> Transcript, p. 34, lines 36-40.

[46] It is clear from the submissions Mr. Kwon provided that his evidence concerning ulterior motives was mainly found in his submissions about the 2021 Decision and 2022 Decision. Mr. Kwon was essentially submitting that the ulterior motive of the landlord was a continuing course of conduct that started with events in 2021, and resurfaced in 2022, and that is now manifested in the convenient construction project scheduled for Ms. Han's home.

[47] As counsel for Mr. Kwon points out, Residential Tenancy Policy Guideline 2A, confirms that a landlord's past conduct of bad faith may demonstrate that the landlord is not acting in good faith in the present case. In other words, evidence of past bad-faith conduct is a relevant consideration.

[48] However, despite that policy, Mr. Kwon is concerned that the arbitrator cut him off as he tried to make submissions regarding the landlord's past conduct and the outcome of the earlier decisions. This was not raised as an allegation of breach of procedural fairness. Rather, it is related to Mr. Kwon's concern that the arbitrator

failed to consider his evidence, specifically the 2021 Decision and the 2022 Decision. I will begin by considering the parts of the transcript where Mr. Kwon gave his evidence and submissions.

[49] The transcript indicates that the arbitrator began by explaining the process, including that it was a one-hour hearing during which the parties and their witnesses could give testimony. The arbitrator established who was in attendance and each of Mr. Kwon, Ms. Park and Ms. Han affirmed to tell the truth.

[50] After discussing a number of preliminary matters, including reaching a consensus on the current monthly rent, at lines 15-16 on page 16 of 45 of the transcript, the arbitrator tells the parties to preserve time to talk about the "main issues". On page 19, the arbitrator asks the landlord to explain why the notice was issued.

[51] At page 28, the arbitrator states that they will move on to the tenant's submissions and Mr. Kwon begins his submissions as follows:

> JONATHAN KWON: Yeah. So essentially, you know, I did not submit anything to refute that their home needs repairs because that's their home. You know, I actually have been to that property to do free work that I donated by changing some toilets for them in the past, but – when we had a good relationship in the – at the very beginning, but, no, I don't dispute that. Like, I'm sure that their home needs repairs. Really, that has nothing to do with – with this entire situation. They're trying to – they've made multiple attempts to occupy the property and to push us out. They've been – they've received judgments and been denied. And now the second attempt – first attempt they did themselves, got denied, second one, they got a lawyer, got all official, got denied even harder, and now they're – they're kind of trying to find new methods to do this. … But it's their goal to – to ultimately use any method possible to push us out.
>
> Transcript of hearing, p. 28, lines 17-29.

[52] After Mr. Kwon discusses the 2021 Decision and 2022 Decision, the arbitrator asks, at lines 37-38 on page 30, if they can go through Mr. Kwon's exhibits and if Mr. Kwon can "tell me where is the landlord not showing good faith".

[53] After further submissions by Mr. Kwon and at a time when there was likely less than ten minutes remaining in the hearing, the following exchange took place beginning at page 32:

> THE ARBITRATOR: I'm going to -- I'm going to interrupt you very briefly, Jonathan. This is all—
>
> JONATHAN KWON: Sure.
>
> THE ARBITRATOR: -- all for behaviour in the past. I'm really more concerned with the Landlord's current claim. I understand there are these –
>
> JONATHAN KWON: Right.
>
> THE ARBITRATOR: -- past applications where the landlord maybe failed and they didn't demonstrate good faith, but I'm more concerned about –
>
> JONATHAN KWON: Yeah.
>
> THE ARBITRATOR: -- this one right now. So if you have relevant evidence that's showing me that this current notice is not issued in good faith. I want to hear about that. I'm not too concerned about the past ones. I – I know they're
>
> JONATHAN KWON: Exactly.
>
> THE ARBITRATOR: – there, and I have glanced at them, but tell me about this construction. Tell me about why you don't believe this is happening.
>
> JONATHAN KWON: Good point. Yeah. There's no need to even bother replying all these because they all speak for themselves with all the exhibits that I've put in. They're just ridiculous statements that just out of due diligence we replied and dismantled. So getting back to the main points. So they served the notice to end tenancy to us on April 1st, and then only once that dispute was – once that notice was disputed, they then prepared all these documents and conveniently submitted their case about – about all these – about them moving out and needing to move out of their house for construction on May 7th. …
>
> [Transcript, p. 32, line 19 to p. 33, line 12]

[54] After stating that the hearing length would be extended beyond one-hour, the arbitrator asks Mr. Kwon to continue his submissions. Starting at page 34, Mr. Kwon resumes by referring to the finding in the 2022 Decision that the landlord had an ulterior motive. At that point, the following exchange took place:

> THE ARBITRATOR: But, Jonathan, earlier I asked you – I understand there were – there was past behaviour on the past notices, but what about this one right now? The renovations, you know, do you have anything to show me that the landlord isn't – isn't renovating their place or anything similar to that effect? I want to talk about this notice. This one here.
>
> JONATHAN KWON: Sure. Sure. Yeah. So, again, this is a strategy that, you know – that you guys will have to decide as the tenancy board. At the end of

> the day, they are bringing up the case that they want to move in because they – they're going to do a construction project. Cumulatively, if you look at all the evidence they've submitted, there's not a lot that I can submit to refute that. That is something that they are choosing to do. That's up to them. So ultimately for the most part that judgment will lie in your hands. And I'm okay with that. But at the end of the day, we see a history of ulterior motive. We see a history of this, and now they're just going to the next level to find a new method. … So they're bringing up a – a theory that – that I should have to move out on July 1st of 2024 from something that was said back in 2021, and that so conveniently aligns with their construction timing. So, again, shows ulterior motive, and they're just trying to convolute everything all together.
>
> [Transcript, p. 35, line 29 to p. 36, line 13]

[55] Now that I have reviewed the evidence introduced by Mr. Kwon, I will turn to how it was considered and weighed by the arbitrator.

[56] The transcript makes clear that the arbitrator was aware of the 2021 Decision and the 2022 Decision. However, the arbitrator also asked if Mr. Kwon could take him to his documents or evidence to show where the landlord was not showing good faith. Mr. Kwon acknowledges that being asked to do this is a "good point". I do not find that by asking if Mr. Kwon had any evidence related to the landlord's conduct in issuing the current notice, it showed the arbitrator disregarding Mr. Kwon's evidence respecting the conduct considered and the findings made in the earlier decisions.

[57] It is clear that the arbitrator was aware of the 2021 Decision and 2022 Decision and what those earlier decisions found. The arbitrator specifically turned their mind to the application of the prior decisions, finding that "the reasons that were brought up at the two Previous Hearings for serving the notice to end tenancy are not related to the Landlord's current reasons". In my view, this shows the arbitrator weighing, considering and analysing the evidence introduced by the petitioner.

[58] The arbitrator did note that a "sizeable" portion of Mr. Kwon's submissions "did not directly address the matter at hand". However, I do not read that as the arbitrator saying none of Mr. Kwon's submissions were relevant or applicable to the issue at hand.

[59] The next step is to consider whether the arbitrator failed to analyse if the landlord had rebutted the ulterior motive raised by Mr. Kwon. The arbitrator states in the Decision that on a balance of probabilities, based on the "totality of the circumstances", the landlord had demonstrated their good faith in issuing the two month notice. In my view, this makes clear the arbitrator did turn their mind to whether Mr. Kwon's evidence respecting ulterior motive had been rebutted.

[60] My conclusion on this is confirmed by the arbitrator specifying the weight accorded to the landlord's documentary evidence, including letters from their architect and contractor. The arbitrator found that evidence corroborated the landlord's version of events that the daughter would need to move into the Suite due to her house no longer being habitable. The arbitrator also found that the landlord provided a "detailed and believable account of their circumstances and their decision to serve the Two Month Notice". This also demonstrates the arbitrator analysed whether the landlord met the onus to rebut the suggestion of an ulterior motive that had been raised.

[61] When the Decision is read as a whole, I find it clear that the arbitrator considered and weighed all of the evidence, including the 2021 Decision and the 2022 Decision. It is also clear that the arbitrator knew there was a dispute about satisfying the good faith requirement for the notice. The arbitrator found that on balance, the landlord had complied with the *RTA* requirements for issuing the notice.

[62] In summary, I find nothing in the analysis that is inconsistent with the RTB policy or the statutory requirements, as guided by the principles set out in the authorities, for requiring the landlord to establish good faith in issuing the two-month notice. Further, I can find no basis for concluding that there is no evidence to support the findings, or that the decision is openly, clearly, and evidently unreasonable.

Did the arbitrator err in applying s. 64(2) of the *RTA*?

[63] Mr. Kwon submits that in the Decision, the arbitrator refers to s. 64(2) of the *RTA* as grounds for refusing to set aside the two-month notice to end tenancy for

landlord's use. Mr. Kwon's counsel submits that this section has no application and by misapplying and misinterpreting that section, the arbitrator completely disregarded evidence of the landlord's ulterior motives.

[64] Applying the standard of patent unreasonableness, I must consider whether the arbitrator's reference to s. 64(2) in the reasons is openly, evidently, and clearly unreasonable or irrational.

[65] Section 64(2) is cited as support for the proposition that the director is not bound by previous decisions and each decision must be made on the merits of the case as disclosed in the evidence admitted. There is no suggestion the arbitrator incorrectly described this section. Further, prior to mentioning the section, the arbitrator had already found that the landlord's reasons brought up previously were unrelated to the current reasons for serving the two month notice.

[66] In my view, when the Decision is read as a whole, the arbitrator was clearly not referring to s. 64(2) as the sole, or even primary, basis for determining that the landlord had established the necessary good faith basis for issuing the notice. The Decision noted that Mr. Kwon repeatedly emphasized "the ulterior motives of the landlord and the connections between the two past hearings and this current two month notice". I am unable to agree that by referring to s. 64(2), the Decision is clearly unreasonable or irrational in all of the circumstances.

Disposition

[67] For the reasons that I have explained, I conclude that Mr. Kwon has failed to demonstrate that the Decision of the arbitrator was patently unreasonable with respect to any of the grounds raised.

[68] The petition is dismissed with costs.

"E. McDonald J."