IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Millar v. Loughlin's Mobile Home Park Ltd.,* 2024 BCSC 1834

Date: 20241001
Docket: 245121
Registry: Victoria

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Ludmyla Millar

Petitioner

And:

Laughlin's Mobile Home Park Ltd.

Respondent

Before: The Honourable Justice Wolfe

On judicial review from: An order of the Residential Tenancy Branch dated January 30, 2024 (File No. 910132896)

Oral Reasons for Judgment

Counsel for the Petitioner:	J. Beauchamp
Counsel for the Respondent:	W. Perkinson
Place and Date of Hearing:	Victoria, B.C. August 27, 2024
Place and Date of Judgment:	Victoria, B.C. October 1, 2024

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Overview

[1] The petitioner, Ludmyla Millar ("Ms. Millar"), applies for judicial review of a January 30, 2024 decision of arbitrator V. Hedrich (the "Arbitrator") under the *Manufactured Home Park Tenancy Act*, S.B.C. 2002, c. 77 [*MHPTA*]. Ms. Millar says it was patently unreasonable for the Arbitrator to find the respondent landlord, Laughlin's Mobile Home Park Ltd. (the "Landlord"), had cause to issue a notice to end tenancy under the *MHPTA* at the time the notice was issued. Ms. Millar says since the notice to end tenancy was clearly premature under s. 40(1)(k) of the *MHPTA*, this is a rare instance where there would be no utility in remitting the matter, and the Court should simply set aside the Arbitrator's decision and the related order of possession.

[2] The Landlord opposes the application for judicial review primarily because the interpretation of s. 40(1)(k) of the *MHPTA*, and in particular, the argument that the Landlord's notice to end tenancy was premature, were not raised expressly before the Arbitrator. The Landlord says Ms. Millar is raising a new issue for the first time on judicial review, and the Court should exercise its discretion to dismiss the petition in its entirety. In the alternative, the Landlord says the Arbitrator's interpretation is not patently unreasonable, or if it is, the matter should be remitted so the issues can be argued fully before, and decided by, the first instance decision-maker.

[3] For the reasons that follow, I allow the petition. In my view, Ms. Millar is not raising a new issue on judicial review. The Arbitrator expressly considered if the Landlord's notice to end tenancy was issued in accordance with the *MHPTA* and concluded it was. I am satisfied the Arbitrator's decision in that regard is patently unreasonable in light of the clear language of s. 40(1)(k) of the *MHPTA* and the relevant timelines in this case. Finally, as the result on remittal would be inevitable, I agree this is one of the rare situations where it is appropriate for me to set aside the decision and the order of possession without remitting the matter.

Background

[4] Ms. Millar is 73 years old and resides in a manufactured home park in Sooke, British Columbia, that is owned by the Landlord. She has lived there since 2005. Ms. Millar owns her mobile home, but rents the pad on which it is located. There is no dispute her tenancy arrangement is subject to the *MHPTA*.

[5] The record before the Court demonstrates tensions between Ms. Millar and the Landlord over the period of the tenancy. Relevant to this petition, on January 24, 2023, the Landlord sent Ms. Millar a formal letter identifying what the Landlord characterized as outstanding maintenance issues with her mobile home and lot, and purporting to set deadlines by which those issues needed to be fixed. On or about February 13, 2023, Ms. Millar applied to the Residential Tenancy Branch ("RTB") for dispute resolution, seeking to compel the Landlord to comply with the *MHPTA* and the tenancy agreement.

[6] By letter dated March 15, 2023, the Landlord wrote to clarify for Ms. Millar that the January 24, 2023 letter was not an eviction notice but a notification of maintenance. The Landlord proposed, among other things, that a formal home inspection be conducted to assess the necessary repairs and renovations, with the Landlord to pay for the inspection. Although the record is unclear, the February 2023 dispute resolution proceeding does not appear to have proceeded at that time.

[7] On August 23, 2023, the Landlord issued Ms. Millar a one-month notice to end tenancy for cause based on alleged inaction on the maintenance issues. Ms. Millar appears to have applied for dispute resolution by continuing the earlier dispute resolution application. On September 19, 2023, Ms. Millar and two agents for the Landlord attended a telephone dispute resolution hearing before A. Wood, an arbitrator with the RTB. At that hearing, the parties agreed to settle the matters on certain conditions. The settlement was captured in arbitrator A. Wood's decision dated September 19, 2023.

[8] The key conditions required Ms. Millar to arrange for a qualified home inspection of her mobile home (not her shed or greenhouse) "for the purpose of

determining the structural integrity of the home and to ensure there is no fire hazard". The Landlord agreed to pay for the cost of the inspection report and the parties agreed each was entitled to a copy of the report. As the parties had not discussed timing for the home inspection, arbitrator A. Wood decided "within 30 days" was a "reasonable amount of time". The September 19, 2023 decision is express that the 30-day timeframe "is simply to arrange the inspection date as the date it is scheduled is not necessarily within [Ms. Millar's] control". Ms. Millar says this means that by October 19, 2023, she was to have arranged to have a home inspection, but the inspection itself could take place after that date.

[9] On October 17, 2023, Ms. Millar emailed the Landlord to advise that while she had found a qualified home inspection company, she needed to postpone the date for "contracting them" as she had had to submit an urgent home insurance claim the previous day. The record indicates Ms. Millar's gardener found a sewage leak which required immediate repair. Ms. Millar's email advised she would let the Landlord know via email when she would be able to proceed with the home inspection.

[10] On October 22, 2023, at 4:11 p.m., the Landlord responded to Ms. Millar by email. The Landlord's email stated in relevant part:

> It's important to note that the 30-day window for the inspection, as stipulated by the arbitrator, concluded on October 19, 2023. Regrettably, we didn't receive confirmation of a scheduled inspection date during this period. In your recent communication, you mentioned that you found a qualified home inspection company, but this information was received near the end of the allowed timeframe. To ensure completion within the designated period, it would have been necessary to schedule the inspection earlier.
>
> We understand that your urgent insurance claim has caused delays and presented challenges. However, our primary concern is the health and safety of all residents within our community. Thus, the inspection needed to occur within the specified timeframe to address any necessary actions promptly.
>
> [Emphasis added].

[11] The October 22, 2023 email concluded by asking Ms. Millar to provide certain details regarding the "selected inspector" and her insurance claim by the end of the day October 23, 2023, so the Landlord could "engage the inspector on Tuesday, October 24th to complete the inspection as soon as possible." The email indicated

that if the requested information was not provided "within the specified time", the Landlord would "reactivate the eviction order". Ms. Millar responded on October 23, 2023, but did not provide the requested information.

[12] On October 24, 2023, the Landlord issued Ms. Millar a further one-month notice to end tenancy for cause (the "Notice"). The Notice is a standard form document created by the RTB. The top box on page 2 of the Notice required the Landlord to select from among pre-printed grounds for having issued the Notice. The grounds listed on the Notice reflect (albeit not identically) the language of the statutory reasons in ss. 40(1) and 41(1) of the *MHPTA* which permit a landlord to end a tenancy for cause.

[13] On page 2 of the Notice, the Landlord selected four grounds, the last of which reads "non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order". This ground corresponds to s. 40(1)(k) of the *MHPTA* which states:

> **Landlord's notice: cause**
>
> **40** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> […]
>
> (k) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
>
> (i) the date the tenant receives the order;
>
> (ii) the date specified in the order for the tenant to comply with the order.

[14] A second box at the bottom of page 2 of the Notice asks the Landlord to provide details of the "cause(s)". The Landlord typed "Tenant has not complied with the Residential Tenancy Branch Dispute Resolution Decision (Reference: File Number 910101040) dated September 19, 2023." No further details were provided.

[15] On or about November 2, 2023, Ms. Millar applied anew for dispute resolution to cancel the Notice. In her application, Ms. Millar described the dispute as "Landlord has assumed all conditions of Arbitrator Woods [*sic*] Decision were to have been met by October 19th 2023". By letter dated January 2, 2024, the Landlord provided

its position to the RTB. That letter sets out a chronology of events. In relation to Ms. Millar's October 17, 2023 email, the Landlord's letter states it "was received just two days before the deadline determined in the RTB Decision of September 19, 2023, which would have likely been too late to arrange and complete an inspection." The Landlord's letter identifies October 19, 2023 as the "Deadline for the Tenant to arrange for a home inspection", and seeks enforcement of the Notice based on Ms. Millar's "consistent noncompliance, negligence and failure to adhere to the [September 19, 2023 decision]".

[16] On January 23, 2024, the Arbitrator conducted a telephone dispute resolution hearing, and heard evidence and submissions from both Ms. Millar and an agent for the Landlord.

[17] On January 30, 2024, the Arbitrator issued the decision Ms. Millar seeks to challenge in this petition. While I will discuss the reasons in more detail below, the Arbitrator framed the issue to be decided as whether the Landlord had established that the Notice was issued in accordance with the *MHPTA.* The Arbitrator decided there was no basis for issuing the Notice under the first three reasons identified by the Landlord, but held the Notice was validly issued under the final ground. As noted, the language of that ground tracks s. 40(1)(k) of the *MHPTA*.

[18] The Arbitrator reasoned that despite the urgent insurance claim, Ms. Millar could still have complied with the September 19, 2023 decision by having arranged by October 19, 2023 to have an inspection conducted (even if at a later date). As that did not occur, the Arbitrator was satisfied the Landlord had cause to issue the Notice on October 24, 2023. Having dismissed Ms. Millar's application to cancel the Notice, the Arbitrator was required to and did issue an order of possession in favour of the Landlord, requiring Ms. Millar to vacate within two days of service of the order.

[19] On or about February 1, 2024, Ms. Millar applied for a review of the January 30, 2024 decision. Section 72(2) of the *MHPTA* specifies eight grounds on which a party may request reconsideration. Ms. Millar applied only on the basis that the Arbitrator's decision was obtained by fraud, alleging the Landlord submitted false

information regarding what she characterized as ongoing improvements to and upkeep of her mobile home and lot. On February 2, 2024, arbitrator S. Campbell dismissed Ms. Millar's application finding she had not provided sufficient evidence to establish fraud. Arbitrator S. Campbell concluded that, in any event, the deciding factor in the January 30, 2024 decision was Ms. Millar's non-compliance with the September 19, 2023 decision, and Ms. Millar had not provided any evidence to refute the finding of non-compliance.

[20] The Landlord's agent deposed the order of possession was sent to Ms. Millar by registered mail on February 5, 2024. The record before the Court does not appear to address deemed service dates for orders of possession but does indicate that other materials served by registered mail in relation to RTB processes are deemed to have been received five days after the date of mailing.

[21] The Court file and the affidavits provided by Ms. Millar and the Landlord's agent confirm that on February 15, 2024, Ms. Millar filed her original petition for judicial review, and sought a without notice interim stay until the petition could be heard. She was unsuccessful as she had not yet served the petition. The Landlord was served February 19, 2024. On February 20, 2024, Justice Shergill granted an interim stay on a without notice basis, but permitted the Landlord to apply to set it aside. The Landlord filed a response to petition on March 11, 2024 but has not taken any steps to set aside the stay or proceed with the eviction. As a result, as of the date of the hearing, Ms. Millar remained in her mobile home. The director of the RTB (the "Director") filed a response to petition on March 26, 2024 taking no position, but addressing the applicable law on judicial review and residential tenancy matters. The Director also filed the record affidavit. The Director did not appear at the hearing.

[22] In her second affidavit, filed July 22, 2024, Ms. Millar deposes she arranged for a home inspection which was completed March 8, 2024. This is inadmissible extra-record evidence, as it occurred after the decision under review. Ms. Millar also confirms she subsequently retained counsel at the Together Against Poverty Society in June 2024, who assisted her to file an amended petition on August 6, 2024.

[23] Both the original and the amended petition named Leigh Large as the respondent. The materials filed before the Court indicate Leigh Large is a director of the Landlord. Leigh Large was also the named respondent in the RTB proceedings. After the January 30, 2024 decision, the Landlord sought and was granted a correction to the order of possession to reflect the Landlord as the legal entity to which vacant possession was to be delivered. The style of cause before the RTB was not changed.

[24] At the hearing before me, Ms. Millar's counsel sought an order, by consent, to amend the style of cause to name the Landlord as the respondent. I granted the requested order by consent at the hearing, thereby amending the style of cause to substitute "Laughlin's Mobile Home Park Ltd." as the named respondent, in place of Leigh Large.

Issues

[25] There are three issues before the Court:

a) Does the petition raise a new issue for the first time on judicial review?

b) Is the Arbitrator's interpretation of the *MHPTA* patently unreasonable?

c) If the Arbitrator's decision is patently unreasonable, what is the appropriate remedy?

[26] Ms. Millar also seeks her costs.

Analysis

[27] The petition is brought pursuant to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241. Before turning to the substantive issues, I will briefly address three points about the applicable legal framework: the role of the Court on judicial review, the standard of review and which decision is subject to review.

The role of the Court on judicial review

[28] There is no dispute that the Court's role on judicial review is supervisory in nature. The Court's function is to ensure that decision-makers act within the scope of the authority granted to them under statute and provide a fair process to those affected by their decisions: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 28.

[29] A reviewing court is generally not to hear new evidence or arguments, nor to decide or re-decide the case. Doing so risks usurping the function entrusted by the legislature to the decision-maker at first instance: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 [*Alberta Teachers'*] at paras. 22-24. It is also inconsistent with the general presumption that decision-makers are entitled to deference in the discharge of their responsibilities and with the idea that the focus of judicial review is on the decision actually made by the decision-maker (both the reasoning process and its outcomes): *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] at paras. 30 and 83.

[30] A judicial review is just that – a review on the record to ensure the decision-maker fulfilled its delegated function and did not lose jurisdiction either through an unfair process or by rendering a decision that fails to withstand the applicable level of scrutiny.

Standard of review

[31] In their written materials, the parties agree the applicable standard of review for the merits of the petition is patent unreasonableness. By virtue of both s. 5.1 of the *MHPTA*, and the privative clause in s. 77.1 of the *MHPTA*, the statutory standards of review in s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*] apply to decisions of the Director (or the Director's delegates) in dispute resolution proceedings under the *MHPTA*. This legislative direction displaces the common law presumption of reasonableness review. Further, as the merits concern the Arbitrator's interpretation of a provision of the *MHPTA*, the parties agree that patent unreasonableness under s. 58(2)(a) of the *ATA* applies.

[32] In oral submissions at the hearing, the Landlord suggested the merits might raise a jurisdictional question, in that, if the Notice was in fact premature, the Arbitrator may not have had jurisdiction to decide the application for dispute resolution at all. However, the Landlord did not pursue this line of argument further, nor suggest a different standard of review under s. 58(2) of the *ATA* would apply.

[33] Recognizing the common law context in which it was decided, in *Vavilov*, the Supreme Court of Canada confirmed that matters of statutory interpretation are questions of law that attract deference (at paras. 115-120). Under s. 55(2) of the *MHPTA*, arbitrators (as delegates of the Director) have the authority to determine issues of fact or law that are necessary or incidental to dispute resolution proceedings. Accordingly, I am satisfied the applicable standard of review on the merits is patent unreasonableness.

Which decision is subject to review

[34] In the Director's response to petition, the Director suggested the Court must decide if the petition concerns the January 30, 2024 decision, the February 2, 2024 reconsideration decision, or both. Ms. Millar and the Landlord did not address this question. In their submissions, they both focused primarily on the merits of the January 30, 2024 decision.

[35] Where there is both an original decision and a reconsideration decision, the reviewing court must consider the grounds for judicial review advanced by the petitioner. If the grounds for judicial review could not have been raised in the internal review process, then the original decision is properly the subject of judicial review. If the grounds could be reviewed internally, the internal review process must first be exhausted and judicial review lies from the reconsideration decision (with the original decision informing the context): *Alfier v. Sunnyside Villas Society*, 2021 BCSC 212 at para. 25 (and cases cited therein).

[36] In this case, the petitioner seeks judicial review on the basis of an error of law – specifically, an error in the Arbitrator's interpretation of the statutory provision on which the Landlord relied in issuing the Notice. Even if characterized as an error of

mixed fact and law, the kind of error alleged by Ms. Millar is not among the grounds for reconsideration set out in s. 72(2) of the *MHPTA*. As a result, the January 30, 2024 decision is the one properly subject to judicial review. If it is found to be patently unreasonable, it follows that both decisions must necessarily be set aside.

Issue 1: Does the petition raise a new issue on judicial review?

[37] There is no dispute a Court may decline to hear a new issue on judicial review. It is a discretionary bar, rather than a mandatory one; the Court retains the authority to entertain new issues on judicial review in appropriate circumstances: *Alberta Teachers'* at para. 22. The rationales are simple: hearing a new issue for the first time on judicial review may deprive the reviewing court of the benefit of the decision-maker's views on the issue (which fails to respect the legislature's choice to delegate certain decisions to that administrative body), may unfairly prejudice the opposing party and may mean the reviewing court lacks an adequate evidentiary record on which to decide the issue: *Alberta Teachers'* at paras. 23-26.

[38] The Landlord argues the petition raises a new issue on judicial review, as the question of whether the Notice was premature under s. 40(1)(k) of the *MHPTA* was not directly raised before the Arbitrator. The Landlord says there were multiple points when the issue of the prematurity of the Notice could and ought to have been raised, including the application for dispute resolution, and the application for review consideration. The Landlord accepts Ms. Millar references s. 40(1)(k) in her original petition, as well as the amended petition. However, the Landlord maintains the new issue warrants the Court exercising its discretion not to hear the petition at all.

[39] Ms. Millar concedes she did not directly argue prematurity using those exact words nor does she suggest she referenced s. 40(1)(k) specifically before the Arbitrator. However, she says she did challenge the Notice as not having been properly issued, including because of the Landlord's apparent misapprehension about what the September 19, 2023 decision required her to have done by when. As noted, in her application for dispute resolution, Ms. Millar's description of the dispute

was that the "Landlord has assumed all conditions of Arbitrator Woods [*sic*] Decision were to have been met by October 19th 2023". Ms. Millar says it is clear from the January 30, 2024 decision that the Arbitrator engaged directly with the question of whether the Notice had been properly issued, explicitly referencing the ground in the Notice that corresponds to s. 40(1)(k) of the *MHPTA*. In analyzing that question, Ms. Millar says the Arbitrator considered the timeframes flowing from the September 19, 2023 decision, but erred in interpreting how soon the Notice could be issued after the alleged non-compliance with an order.

[40] With respect to her framing of the issues before the Arbitrator, Ms. Millar says that, as a self-represented litigant who was not on equal footing with the Landlord's agents, she should be afforded greater leniency such that she was not required to explicitly cite s. 40(1)(k) of the *MHPTA*. She relies on the decision of Justice Baker in *Moon v. Vizi*, 2024 BCSC 1068 at paras. 26-28, which held that the legislative scheme required the Arbitrator to determine the actual dispute between the parties, regardless of the language used in the application for dispute resolution. While *Moon* concerned the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*], the *MHPTA* contains a parallel requirement for the Director (or their delegates) to "make each decision or order on the merits of the case as disclosed by the evidence admitted": *MHPTA*, s. 57(2).

[41] It is not disputed that in her original petition and first affidavit, Ms. Millar repeatedly referenced the Arbitrator having misunderstood the dates, noting that the 30-day timeframe was only to arrange the inspection, not to have it completed. Under the legal basis in the original petition, Ms. Millar wrote "Manufactured Home Park Tenancy Act sec. 40(1)(k). Eviction notice to be served 30 days <u>after</u> the ordered time for scheduling inspection (not 5 days)" (emphasis in original). But the original petition does not assist in determining whether this is a new issue on judicial review. Instead, I must examine what the Arbitrator was asked to and did consider.

[42] In my view, the question of whether Ms. Millar is seeking to raise a new issue depends on how broadly or narrowly the issue is framed. The Landlord argues the

questions about prematurity and the interpretation of s. 40(1)(k) had to be put before the Arbitrator explicitly. Ms. Millar argues it is sufficient that she challenged the Notice as not having been validly issued under the *MHPTA*. Since the Arbitrator engaged with the various reasons the Landlord cited for issuing the Notice, which are based on the statutory grounds, Ms. Millar says she was not required to expressly argue prematurity under s. 40(1)(k).

[43] While it is common ground the Arbitrator did not cite or quote s. 40(1)(k) of the *MHPTA* explicitly, the Arbitrator did consider and reference the ground from the Notice that corresponds to s. 40(1)(k). It is clear from the Arbitrator's articulation of the "issue(s) to be decided" that the Arbitrator analyzed whether the Notice was issued in accordance with the *MHPTA.* For those reasons, this is a very different case from that in *Sager v. Boudreau*, 2017 BCSC 837, on which the Landlord relied. In *Sager*, Justice Hyslop refused to permit the petitioners to raise a completely new issue on judicial review related to alleged contravention of an electrical safety directive as it was wholly outside any of the issues addressed before the RTB.

[44] Here, the primary question before the Arbitrator was whether there were grounds under the *MHPTA* that could support the Landlord's issuance of the Notice. In fact, the Arbitrator begins their analysis by stating:

> Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Manufactured Home Park Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains the information required by the Act. The reasons for issuing it are in dispute.
>
> [Emphasis added].

[45] The Arbitrator proceeds in turn to analyze each of the four reasons the Landlord identified as supporting its issuance of the Notice. The Arbitrator finds the Landlord has not established the first three reasons for issuing the Notice, leaving only the ground that tracks the language of s. 40(1)(k). The Arbitrator ultimately concludes the Landlord established cause to end the tenancy on that final basis at the time the Notice was issued. As a result, I find the Arbitrator was required to and did turn their mind to the grounds that justify a notice to end tenancy under s.

40(1)(k) of the *MHPTA.* Failure to expressly cite the statutory provision does not change the fact that that was the only remaining basis on which the Arbitrator could have found the Landlord had cause to issue the Notice.

[46] In my view, while framed with more precision on the judicial review, the question of whether the Notice was properly issued in reliance on s. 40(1)(k) of the *MHPTA* is not a new issue that gives rise to a discretionary bar to judicial review.

[47] In the event I am wrong in that conclusion, I would still exercise my discretion to hear the petition. While the parties did not draw the Court's attention to any previous RTB decisions addressing s. 40(1)(k) of the *MHPTA* or the parallel provision in the *RTA*, such decisions do exist. As in *Alberta Teachers',* the Director as the first instance decision-maker has previously opined on when a notice to end tenancy can be issued under s. 40(1)(k) (or the *RTA* equivalent) and those decisions are available to inform the Court's review of the decision at issue here. Further, the Landlord did not identify any prejudice it would suffer if the issue were to be considered and there are no gaps in the evidentiary record relevant to this issue that would impair the Court's review. In short, the reasons that often motivate the exercise of discretion not to hear a new issue for the first time on judicial review are not present in this case.

[48] For all of the above reasons, I find the petition does not raise a new issue, but even it if did, it is appropriate to consider the merits of the judicial review.

Issue 2: Is the Arbitrator's interpretation patently unreasonable?

[49] The parties agree on what constitutes a patently unreasonable decision. As the *ATA* only defines "patent unreasonableness" for purposes of discretionary decisions (see *ATA*, s. 58(3)), the meaning must be drawn from the common law. At common law, a patently unreasonable decision is one that is "openly, clearly [or] evidently unreasonable" or where the results "border on the absurd": *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 32, citing *Vandale v. Workers' Compensation Appeal Tribunal*, 2013

BCCA 391 at para. 42 and *Voice Construction Ltd. v. Construction &General Workers' Union, Local 92*, 2004 SCC 23 at para. 18.

[50] In *Shuster v. British Columbia (Residential Tenancy Branch)*, 2024 BCCA 282, the Court of Appeal considered the meaning of patently unreasonable in the context of a residential tenancy dispute involving statutory interpretation issues. Justice Abrioux provided this concise summary:

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

[51] As the parties disagree on whether the Arbitrator's decision offends this highly deferential standard, it is useful to briefly set out the relevant portions of the Arbitrator's January 30, 2024 decision.

[52] Having rejected the Landlord's three other reasons for issuing the Notice, at page 5 of the decision, the Arbitrator turns to the last reason. After quoting the non-compliance ground selected on the Notice, the Arbitrator writes that "the order was to arrange for an inspector within 30 days of September 19, 2023" and cites the earlier decision's clarification that the 30-day deadline was "simply to arrange the inspection date as the date it is scheduled is not necessarily within the tenant's control." The Arbitrator then concludes as follows:

> It is not for me to decide whether or not the tenant should be granted more time to accomplish the order of September 19, 2023, but is up to me to determine whether or not the landlord has established cause to end the tenancy at the time the One Month Notice to End Tenancy for Cause was issued.
>
> I see no reason for the tenant to not contact the landlord or arrange the inspection. I accept that the tenant had a restoration company arrive due to leaks located by the tenant's gardener and then the plumber, however I find that the tenant could have arranged the inspection in any event in order to comply with the order of September 19, 2023.

> In the circumstances, and considering the evidence and testimony of the parties, I find that the landlord had cause to issue the Notice to end the tenancy, and I dismiss the tenant's application for an order cancelling it.
>
> [Emphasis added].

[53] Ms. Millar says the Arbitrator made a simple but clearly evident and fatal error by concluding the Landlord had properly issued the Notice under the ground of non-compliance with an order of the Director. Ms. Millar says the Arbitrator's error was in interpreting the ground that corresponds to s. 40(1)(k) of the *MHPTA* as permitting the Landlord to issue the Notice within five days after her alleged non-compliance. Ms. Millar does not dispute that she failed to comply with the September 19, 2023 decision. However, she says, in these circumstances, where the September 19, 2023 decision set October 19, 2023 as the future date for compliance, the statutory trigger for issuing the Notice is not the date of non-compliance itself, as the Landlord appeared to believe, but rather 30 days later. She says the Arbitrator's interpretation is "openly, clearly and evidently unreasonable" because the plain language of s. 40(1)(k) required the Landlord to wait until 30 days after the October 19, 2023 deadline for compliance (i.e. until November 19, 2023) before issuing the Notice in reliance on that ground.

[54] Ms. Millar says, on the facts of this case and in light of the clear wording of s. 40(1)(k), the Landlord could not establish cause to end the tenancy on October 24, 2023, when the Notice was issued. Whether the Arbitrator counted the 30 days in s. 40(1)(k) from the September 19, 2023 decision, or simply misunderstood the statutory requirement to wait 30 days after the October 19, 2023 deadline set for compliance, the decision is patently unreasonable.

[55] The Landlord's main opposition to the petition was its argument that Ms. Millar sought to raise a new issue on judicial review. The Landlord's arguments on the merits were less well-defined and not strenuously advanced. In essence, the Landlord says the Arbitrator's decision that the Landlord had cause to issue the Notice is entitled to significant deference because it involved the interpretation of the Arbitrator's home statute. Further, the Landlord submits that while Ms. Millar may be dissatisfied with the Arbitrator's conclusion about how soon after the

September 19, 2023 decision the Notice could be issued (i.e. 30-days or 60-days), that is not sufficient to meet the high burden of proving the decision is patently unreasonable.

[56] In *Shuster*, the Court of Appeal confirmed that when reviewing a decision-maker's statutory interpretation against the highly deferential standard of patent unreasonableness, it may assist to remember that "[i]f a decision maker's interpretation is not unreasonable, it is also not patently unreasonable" (*Shuster* at para. 50, citing *Team Transport Services Ltd. v. Unifor, Local No. VCTA*, 2021 BCCA 211 at paras. 28-29). Justice Abrioux confirmed the approach is as follows:

> [51] In assessing the reasonableness of a tribunal's statutory interpretation, the reviewing court must first undertake its own statutory interpretation. If the statutory provision at issue is capable of more than one reasonable interpretation, the interpretation of the tribunal, if reasonable, will prevail. However, if the reviewing court determines that there is only one reasonable interpretation, the interpretation of the tribunal will be unreasonable if it failed to adopt it: *Simon Fraser University v. British Columbia (Assessor of Area #10 – Burnaby)*, 2019 BCCA 93 at para. 55.

[57] It is trite law that a Court interpreting a statutory provision applies the "modern principle" of statutory interpretation, which requires a review of the text, context and purpose of the words used, beginning with their plain or ordinary meaning: see, for example, *Vavilov* at paras. 117-118; see also *Shuster* at para. 20, citing *Sayyari v. Provincial Health Authority*, 2023 BCCA 413 at paras. 27-28.

[58] The text of s. 40(1)(k) of the *MHPTA* is clear on its face. It is worth repeating:

> **Landlord's notice: cause**
>
> **40** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> […]
>
> (k) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
>
> (i) the date the tenant receives the order;
>
> (ii) the date specified in the order for the tenant to comply with the order.

[59] On a plain reading, s. 40(1)(k) authorizes a landlord to issue a notice to end tenancy for cause based on non-compliance with an order of the Director 30 days

after the later of two possible dates: i) the date the tenant receives the order; or ii) the date the order sets for the tenant's compliance. Relevant to the case at bar, where the order sets a date by which the tenant must comply, the landlord must wait until 30 days after the date for compliance before issuing a notice to end tenancy. As the words of the provision are unequivocal, the ordinary meaning may carry greater weight: *Vavilov* at para. 120.

[60] With respect to context, s. 40(1)(k) is part of a larger list of provisions that specify the conduct of a tenant, or other circumstances, that will presumptively justify a landlord issuing a notice to end tenancy for cause. Together with s. 41(1), the provisions of s. 40(1) specify the circumstances when a landlord must provide a tenant at least one-month's notice that their tenancy will be ending. The language of both sections is relatively detailed although some of subsections in s. 40(1) leave more room for argument than the precise language used in s. 40(1)(k). For example, s. 40(1)(a) permits a landlord to issue a notice to end tenancy where a tenant is "repeatedly late" paying rent. The term "repeatedly late" is not defined in the legislative scheme, and presumably because it may bear multiple meanings, it is the subject of policy guidelines issued by the RTB: see the discussion in *Wall v. The Kettle Friendship Society*, 2024 BCSC 1417.

[61] Section 40(1) is located in Part 5, Division 1, of the *MHPTA*, which address the mechanics of how tenancies may be ended, including outlining requirements for the form and content of notices issued by either landlords or tenants. This Part is designed to inform landlords and tenants about their rights, obligations and responsibilities in relation to the ending of a tenancy.

[62] Turning to purpose, broadly speaking, the objectives of both the *RTA* and the *MHPTA* are to benefit and protect tenants: *Shuster* at paras. 46-47 and 59. Consistent with that focus, the 30-day precondition in s. 40(1)(k) defines the timeframe after the Director makes an order before a notice to end tenancy can be issued, giving the tenant the benefit of whichever date is later. If an order sets a date for future compliance, the tenant is given 30-days beyond the date of compliance

before a notice can be issued. In practical effect, where an order sets a future compliance date, s. 40(1)(k)(ii) grants a tenant a 30-day grace period for compliance with an order of the Director. If a tenant misses the compliance date in the order, but complies within 20 or even 25 days of the compliance date, the landlord cannot issue a notice to end tenancy under this section. This is in keeping with the protective focus of the legislative regime.

[63] The parties were unable to provide the Court with any reported judicial decisions considering either s. 40(1)(k) of the *MHPTA* or the parallel provision in s. 47(1)(l) of the *RTA*, nor was the Court provided with any previous RTB decisions in relation to these provisions. However, the Court was able to locate several relevant RTB decisions on its own. While administrative decision-makers are not bound by *stare decisis*, a contextual interpretation of the statutory provision can be informed by previous decisions of the decision-maker under the same or similar provisions.

[64] Of the eight such decisions that could be located, in all but one of them, the Director's delegate interpreted the 30-day timeframe as requiring the landlord to wait at least 30 days after the tenant received the Director's previous order, or the date for compliance specified in the order (whichever came later) before issuing the notice to end tenancy: see, for example, decision 6006 of the RTB dated January 25, 2018 (landlord's notice invalid under s. 40(1)(k) of *MHPTA* as it was issued less than 30 days after tenant received order); decision 6493 of the RTB dated November 14, 2019 (landlord's notice upheld under s. 40(1)(k) of *MHPTA* as order did not set compliance date and notice issued more than 30 days after tenant received order); decision 11243 of the RTB dated November 11, 2022 (landlord's notice held invalid under s. 47(1)(l) of *RTA* as it was issued less than 30 days after the date for compliance with one term of the order); decision 6060 of the RTB dated November 5, 2019 (landlord's notice held invalid under s. 47(1)(l) as it was prematurely issued within 4 days after the date of compliance, and the tenant complied with the order within the 30-day grace period).

[65] The one exception is decision 6210 of the RTB dated February 11, 2015, in which the Director's delegate appears to have concluded it was open to the landlord to issue the notice to end tenancy after the landlord had proved the tenant's non-compliance with the previous order. As in the present case, the delegate recognized the 30-day deadline for compliance but did not consider the further 30-day timeframe specified under s. 47(1)(l) of the *RTA*. If there was a judicial review of the delegate's decision, it did not result in a reported case from this Court.

[66] In my view, the text, context and purpose of s. 40(1)(k) of the *MHPTA*, and specifically s. 40(1)(k)(ii) which applies here, do not permit more than one reasonable interpretation of how long a landlord must wait after a specified date for compliance before issuing a notice to end tenancy. The only interpretation of that provision that is harmonious with the words used, the surrounding context and the objectives of the *MHPTA* is that a landlord must wait 30 days after the date of compliance specified in the order before issuing a notice to end tenancy.

[67] Here, the Arbitrator acknowledged in the decision that Ms. Millar had until October 19, 2023 to arrange a date for a home inspection. The Arbitrator correctly concluded that Ms. Millar did not comply with that 30-day deadline, but interpreted the ground of non-compliance in the Notice, and therefore s. 40(1)(k) of the *MHPTA*, as permitting the Landlord to issue the Notice immediately after the failure to comply. In concluding that the Landlord had established cause to issue the Notice, the Arbitrator either missed or ignored the clear statutory precondition that a landlord must wait for an additional 30 days <u>after</u> the date of compliance before issuing a notice to end tenancy under that ground.

[68] I agree with Ms. Millar that this is a clear and evident error that renders the Arbitrator's decision patently unreasonable. The Arbitrator's legal finding that the Landlord had established cause, under s. 40(1)(k) of the *MHPTA*, to issue the Notice on October 24, 2023 is inconsistent with the mandatory statutory language that means cause cannot be established until 30 days after the deadline for compliance.

Accordingly, I find the Arbitrator failed to consider the language of s. 40(1)(k) and interpreted the *MHPTA* in a patently unreasonable manner.

Issue 3: What is the appropriate remedy?

[69] Ms. Millar asks the Court to set aside the January 30, 2024 decision as well as the order of possession granted the same date, without remittal to the RTB. She says, given the statutory requirement for the Landlord not to issue the Notice until after November 19, 2023, the RTB would inevitably find on any reconsideration that the Notice was not validly issued. Accordingly, she says this is a rare instance where the Court should substitute its own decision.

[70] The Landlord says if the petition is allowed and the January 30, 2024 decision set aside, the appropriate relief is to remit the matter to the RTB for reconsideration, in accordance with the Court's directions. The Landlord says this is consistent with the high level of legislatively mandated deference owed to the RTB. The Landlord submits remittal is also warranted because, in the absence of other judicial interpretations of s. 40(1)(k) of the *MHPTA*, the RTB should be the one to decide what appeared to be a case of first impression.

[71] As discussed with the parties during the hearing, I accept that the usual remedy on judicial review is to quash the decision (or part of it) found to be in error and remit the matter to the first instance decision-maker. The compelling reasons for this were addressed concisely by the Supreme Court of Canada at paras. 139-141 of *Vavilov*. However *Vavilov* also recognized there are situations where remittal is not appropriate. At para. 142 of *Vavilov*, the Supreme Court of Canada held, for example, that where it is evident that a particular outcome is inevitable, remittal would serve no useful purpose. Similarly, where the Court has determined there is only one reasonable interpretation, there is no utility in remitting that interpretive question: *Vavilov* at para. 124. The Court also recognized that concerns for delay, fairness and cost to the parties and the efficient use of public resources may influence the exercise of discretion not to remit: *Vavilov* at para. 142.

[72] Ms. Millar referred to *Panaich v. Martin*, 2023 BCSC 2149 and *Flynn v. Pemberton Homes Ltd.*, 2021 BCSC 1143, as two examples of cases where the Court determined remittal would serve no useful purpose in the circumstances. In both cases, the Court was satisfied that the outcome on remittal would be inevitable. In *Flynn*, the Court also found concerns for efficient use of public resources and the cost to the parties weighed against remittal in the context of a fixed-term rental agreement: *Flynn* at para. 43.

[73] In my view, the ultimate question for decision is the interpretation of s. 40(1)(k)(ii) of the *MHPTA*. Put more simply, how long must the Landlord have waited after the date of compliance before issuing the Notice? I concluded above that there is only one reasonable interpretation of that provision, namely, that the Landlord was required to wait 30 days after October 19, 2023 before issuing the Notice. There is no dispute the Landlord did not wait 30 days, but rather issued the Notice five days after the date for compliance. It follows that if remitted, the inevitable outcome would be a finding that the Notice was not validly issued. While I am mindful that the Court will rarely substitute its decision for that of the administrative decision-maker, I am satisfied this is one of the rare cases where remittal would neither serve a useful purpose nor be an efficient use of public resources.

[74] In the circumstances, the appropriate remedy is to set aside the January 30, 2024 decision and the related order of possession, and to substitute my own decision by setting aside the Notice itself.

Conclusion and summary of orders

[75] In conclusion, I make the following orders:

a) By consent, the style of cause in this proceeding is amended to substitute "Laughlin's Mobile Home Park Ltd." as the named respondent, in place of "Leigh Large";

b) The petition is allowed;

c) The January 30, 2024 decision of Arbitrator V. Hedrich upholding the Landlord's October 24, 2023 notice to end tenancy is set aside and a decision setting aside the October 24, 2023 notice to end tenancy is substituted;

d) The January 30, 2024 order of possession issued by Arbitrator V. Hedrich in favour of the Landlord is set aside; and

e) The February 2, 2024 reconsideration decision of Arbitrator S. Campbell is set aside.

[76] For clarity, the matter is not remitted to the RTB for redetermination. The alternative relief sought in Part 1, para. 3 of the amended petition is dismissed as it is unnecessary.

[77] On costs, the Landlord submitted each party should bear their own costs. I understood the Landlord's submission to be that since the petition challenges the Arbitrator's decision, rather than an action of the Landlord, the parties are not truly adversarial. Further, had the Court chosen to remit the matter, Ms. Millar would not have been fully successful.

[78] I do not agree that the Landlord and Ms. Millar are not adversarial on this petition. The Landlord sought to uphold the Arbitrator's decision in the face of Ms. Millar's challenge, and was unsuccessful in doing so. Further, the test on costs is not whether a party is "fully" successful but rather whether a party is "substantially" successful. In my view, Ms. Millar has been substantially successful and is entitled to her costs of this petition, payable by the Landlord at Scale B.

"K. Wolfe J."