IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Qi v. Hill,*
2024 BCSC 1845

Date: 20241007
Docket: S249808
Registry: New Westminster

Between:

Fenglian Qi

Petitioner

And

Nicholas Hill

Respondent

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

Representative for the Petitioner, appearing in person, with leave of the Court:	J. Zheng
The Respondent, appearing in person:	N. Hill
Place and Date of Hearing:	New Westminster, B.C. September 19, 2024
Place and Date of Judgment:	New Westminster, B.C. October 7, 2024

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I. INTRODUCTION

[1] These reasons for judgment address a petition brought by Fenglian Qi (the "petitioner" or the "landlord") to set aside a decision dated April 15, 2023 (the "arbitrator's decision") made by an arbitrator with the Residential Tenancy Branch ("RTB"), acting on the authority delegated to the arbitrator by the Director of the RTB. The petitioner also applies to set aside a May 12, 2023 review consideration decision, dismissing the review (the "Review Decision") made by an adjudicator who was also acting on the delegated authority of the Director. The petitioner seeks a new hearing before the RTB.

[2] The arbitrator granted the respondent, Nicholas Hill (the "respondent" or the "tenant") a monetary order in the amount of $16,480, pursuant to Section 51(2) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*]. The compensation consisted of an amount equal to 12 months' rent (12 x $1,365), together with a filing fee of $100.

[3] The petitioner is elderly and does not speak English. She attended the hearing of the petition, in which she was represented by her daughter, Jane Zheng. Another daughter, Amy Zheng, attended, but did not participate in the hearing, other than by way of helping Jane Zheng.

[4] For the reasons that follow, the petition is dismissed.

II. BACKGROUND AND ISSUES

[5] The tenant's claim against the landlord was brought pursuant to Section 51(2) of the *RTA*.

[6] At the material time, s. 51(2) of the *RTA* and related provisions were as follows:

> Landlord's notice: landlord's use of property
> 49 (1) In this section:
> "close family member" means, in relation to an individual,
> (a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

…

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

…

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

> (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.
>
> (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from
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> (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
>
> (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.
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> [Emphasis added.]

[7] The “rental unit” in question is a one-bedroom self-contained suite above a garage, attached to the rear of an otherwise single-family residence in South Surrey. The unit or suite is described as a second story “coach house”.

[8] The tenant began renting the suite on August 15, 2015, from a previous owner, for a monthly rent of $1,300. The rent rose to $1,365 by the end of the tenancy, on May 31, 2021. The landlord purchased the property on March 15, 2021, with possession to take place June 5, 2021. On March 16, 2021 she notified the seller that the suite would be occupied by her close family members. The seller’s real estate agent issued a notice to the tenant dated March 19, 2021, requiring the tenant to vacate the rental unit by June 1, 2021.

[9] The reason given in the notice was that, “the purchaser has asked the landlord in writing, to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit”. The tenant vacated the premises on May 31, 2021.

[10] The landlord's position before the arbitrator, on the review application, and on the hearing of the petition, is that she planned to have her daughter and son-in-law move into the rental unit. However, extenuating circumstances prevented her daughter from residing in the suite. Therefore, she should be excused from paying compensation to the tenant.

[11] As noted, the petitioner is elderly. She and her daughter testified before the arbitrator that the petitioner's husband suffered a fall on June 13, 2021, and a further injury on July 31, 2021. As the petitioner could not look after her husband, her daughter moved into the main house, in order to look after the petitioner's husband.

[12] Whether the daughter ever resided in the suite is not quite clear on the decision of the arbitrator, or on the evidence of the petitioner in this Court.

[13] In the petitioner's affidavit filed in this proceeding, she states that her son-in-law moved into the "coach house" on June 8, 2021. She does not say that her daughter moved into the suite. A son-in-law is not a "close family member"as defined in the *RTA*. Therefore occupation by the son-in-law is not relevant.

[14] The arbitrator held that the landlord had not established extenuating circumstances preventing the landlord from using the rental unit for the stated purpose for at least six months, pursuant to s. 51(3)(b).

[15] The arbitrator stated:

> I find the evidence shows that the rental unit is an attached suite to the home, above the garage.
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> In this case, I find the evidence shows the respondent purchased the entire home with the intention of [her] multi-generation family living in the home. Further, the respondent submitted that [her] daughter and husband moved into the rental, unit, which was the original purpose in June 2021. Afterwards, the respondent's husband suffered a fall on June 13 and a second fall on July 31, 2021, and was injured, according to the respondent. According to the respondent, it was necessary for [her] daughter to move into the main part of the home to care for their father, as he could not live independently. According to the respondent, the daughter moved into the main part of the home on August 24, and the entire family moved in on August 20, 2021.
>
> For this reason, I find the rental unit was not used for the stated purpose for 6 months after the effective date of June 1, 2021.

[16] The tenant's position was that within just 11 days of the purchaser's possession date, an advertisement appeared on Craigslist offering the suite for rent, with immediate availability, at an increased rent, of $1,800 per month.

[17] At the hearing, he submitted a number of Craigslist advertisements. The arbitrator noted:

> Additional evidence filed by the tenant included Craigslist advertisements, text message and emails between the respondent's agent listing the property and the tenant's friends inquiring about the availability of the rental unit, with a confirmation on July 13, 2021, that the rental unit was taken, and a letter from the tenant's former landlord/seller confirming that they saw the Craigslist listing.

[18] The arbitrator stated:

> In these circumstances, I find the respondent submitted insufficient evidence to show extenuating circumstances.
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> I find this based on the respondent's inconsistent evidence. The tenant's compelling photographic evidence shows that the rental unit was advertised for rent by June 2021, for an increased rent of $1,800. The Craigslist listing shows the rental unit was posted for rent on June 14, 2021, for immediate availability. I find this contradicts the respondent's evidence that the alleged second fall of the respondent's husband on July 31, 2021, was the ultimate cause of the respondent's daughter moving out of the rental unit into the main home. I also took into account that there was no evidence of an alleged fall on June 13, 2021, only medical records from July 13, 2021.
>
> Apart from that, the rental unit is part of the residential property and is accessible quite easily to/from the main home. I find it reasonable that the respondent's daughter could still look after her father while living in the same home, without need to move into another part of the home and rent the rental unit for a higher rent.
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> The respondent's evidence shows that they undertook "extensive renovation and repairs after purchasing'', and [she] moved in afterwards, on August 24, 2021, according to the respondent, which was along the same time the respondent's daughter said [she] moved into the main home.
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> As the respondent provided no evidence of a written tenancy agreement for the next tenants as to when they began living in the rental unit, I find the respondent submitted insufficient evidence that the next tenancy began in September 2021. I find it just as likely as not that the next tenants began living in the rental unit sometime in June 2021 or shortly thereafter, based on the tenant's photographic and documentary evidence showing the rental unit was already taken by early July 2021, and in the absence of a written tenancy agreement from the respondent showing when the next tenancy began.
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> The tenant's evidence from the realtor also indicated the rental unit was already off the market in June 2021.
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> For all these reasons, I find the respondent submitted insufficient evidence that there were extenuating circumstances preventing [her] daughter from occupying the rental unit for 6 months after the effective date of the 2 Month Notice as contemplated by the Act and Tenancy Policy Guideline, as the

> rental unit was put on the market almost immediately after the tenant vacated, for a higher rent.

[19] The petitioner applied for a review consideration of the arbitrator's decision.

[20] As noted in the review decision, the grounds for review under the statute are limited. At the material time, Section 79(2) of the *RTA* provided:

> 79 (2) A decision or an order of the director may be reviewed only on one or more of the following grounds:
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> (a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
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> (b) a party has new and relevant evidence that was not available at the time of the original hearing;
>
> (c) a party has evidence that the director's decision or order was obtained by fraud.

[21] In this case, the petitioner applied under Section 79(2) (b) and (c). She argued that she had “new and relevant evidence that was not available at the time of the original hearing” and that the decision was “obtained by fraud”.

[22] She submitted further documents, including, among other things:

1. a residential tenancy agreement signed on July 7, 2021, for a tenancy beginning September 1, 2021;

2. a management agreement for the rental property dated June 23, 2021; and

3. photographs of the interior and exterior of the rental unit.

[23] The adjudicator dismissed the application for review. The adjudicator held that the evidence did not meet the test for admission of new and relevant evidence. The adjudicator stated that much if not all of the information submitted could have been made available at the time of the original hearing.

[24] The adjudicator noted, furthermore, that the evidence submitted showed that the rental property was not used for the stated purpose for six months after the effective date.

[25] The adjudicator also rejected the argument that the original decision was obtained by fraud. The adjudicator concluded that the landlord was simply arguing that the tenant did not tell the truth, and that much more is needed to find fraud.

III. LEGAL PRINCIPLES

[26] As the Review Decision was limited in scope, and addressed only whether new evidence could be admitted, or whether the decision was affected by fraud, the subject of this judicial review is the arbitrator's decision: *Najaripour v. Brightside Community Homes*, 2023 BCSC 2032, at para. 53.

[27] Under Section 84.1 of the *RTA*, the director has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding or in review. The Director’s decision is “final and conclusive and is not open to question or review in any court". Nevertheless, judicial review lies. The standard of review applicable is set out in the *Administrative Tribunals Act*, S.B.C. 2004, c. 45:

> Standard of review with privative clause
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> 58 (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
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> (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
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> (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
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> (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and

> (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
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> (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
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> (a) is exercised arbitrarily or in bad faith,
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> (b) is exercised for an improper purpose,
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> (c) is based entirely or predominantly on irrelevant factors, or
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> (d) fails to take statutory requirements into account.

[28] In *Metro Vancouver (Regional District) v. Belcarra South Preservation Society*, 2021 BCCA 121, the Court described the standard of review as follows:

> [30] The standard of review of the Arbitrator's decision is determined by the *Administrative Tribunals Act*, S.B.C. 2004, c. 45. Arbitrators of the RTB have delegated authority to make decisions pursuant to various provisions of the *RTA* that pertain to applications for dispute resolution. Matters within an arbitrator's exclusive jurisdiction are subject to the patent unreasonableness standard of review that is set out in s. 58 of the *Administrative Tribunals Act*: *Ahmad v. Merriman*, 2019 BCCA 82 at para. 37.

[29] In *Holojuch v. Residential Tenancy Branch,* 2021 BCCA 133, the court explained as follows:

> [17] The meaning to be given to patent unreasonableness under this legislative scheme depends on the nature of the decision under review. If it is a discretionary decision, s. 58(3) of the *Administrative Tribunals Act* explains how this standard is to be applied:
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> For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
>
> (a) is exercised arbitrarily or in bad faith,
>
> (b) is exercised for an improper purpose,
>
> (c) is based entirely or predominantly on irrelevant factors, or
>
> (d) fails to take statutory requirements into account.
>
> [18] If the decision contains a finding of fact that is disputed, the standard of review is still patent unreasonableness, but the content of that standard is defined by the common law rather than a statutory provision. This Court explained that standard in *Ahmad v. Merriman*, 2019 BCCA 82, in these terms:
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> [37] Section 58(2)(a) of the *ATA* requires that a decision of an expert tribunal, such as the RTB, may not be interfered with unless it is patently unreasonable. The standard of patent unreasonableness requires the decision under review be

> accorded "curial deference, absent a finding of fact or law that is patently unreasonable": *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, 2016 SCC 25 at para. 29. Stated otherwise, it must be "clearly irrational" or "evidently not in accordance with reason": *Canada (Attorney General) v. Public Service Alliance of Canada*, [1993] 1 S.C.R. 941 at 963–64. A patently unreasonable decision is one that is "so flawed that no amount of curial def[er]ence can justify letting it stand": *Ryan v. Law Society (New Brunswick)*, 2003 SCC 20 at paras. 52–53.

[30] See also, to similar effect, the recent decision of the Court of Appeal in *Momeni v. Percy*, 2024 BCCA 77, in which the court stated:

> [34] The patent unreasonableness standard of review is a highly deferential one. In *Campbell v. The Bloom Group*, 2023 BCCA 84, a judgment arising from the dismissal of a challenge to a Notice to End Tenancy by an RTB arbitrator, Voith J.A. described the standard in this way:
>
> > [13] A patently unreasonable decision has been described as "clearly irrational", "evidently not in accordance with reason", or "so flawed that no amount of curial deference can justify letting it stand": *Beach Place Ventures Ltd. v. Employment Standards Tribunal*, 2022 BCCA 147 at para.17, quoting from *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52.
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> [35] Even more recently, in another challenge to a decision of an RTB arbitrator, Fenlon J.A. stated that such a decision can be interfered with only if it "almost borders on the absurd", citing *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28: see *McNeil v. Elizabeth Fry Society of Greater Vancouver*, 2024 BCCA 2 at para. 5.

[31] Pursuant to s. 58(2)(b) of the *Administrative Tribunals Act*, questions involving the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all the circumstances, the Tribunal acted fairly.

[32] In relation to procedural fairness, in *Athwal v. Johnson*, 2023 BCCA 460, the court stated:

> [23] It is trite law that an administrative decision resulting from an unfair process cannot stand. A determination of what constitutes an unfair process requires a "contextual approach" that looks to the decision being made and its statutory, institutional and social context: *Baker v. Canada (Minister of*

> *Citizenship & Immigration)*, [1999] 2 S.C.R. 817 [*Baker*] at para. 22; *Cariboo Gur Sikh Temple Society (1979) v. British Columbia (Employment Standards Tribunal),* 2019 BCCA 131 at para. 13.

[33] In *Athwal*, the court held that the parties were entitled to a high level of procedural fairness, in that case. The court adopted the reasons of Justice Sewell in *Ndachena v. Nguyen,* 2018 BCSC 1468, as follows:

> [56] The duty of procedural fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker.
>
> [57] Several factors are relevant to determining the content of the duty of fairness: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; (5) the choices of procedure made by the agency itself. This list is not exhaustive.
>
> [58] I am satisfied that the petitioners were entitled to a high level of procedural fairness in the Dispute Resolution Applications. The issues before the Arbitrator were adversarial with serious financial consequences to the petitioners. The statutory scheme under the *RTA* vests the RTB with the same powers in residential tenancy disputes to grant monetary judgments as the provincial court has in other matters.
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> [59] The RTB Rules govern Dispute Resolution proceedings. They contemplate a high level of procedural fairness. Any person dealing with the RTB would have a reasonable expectation that the RTB Rules would be complied with.
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> [60] Rule 1.1 states that the objective of the RTB Rules is to ensure a fair, efficient and consistent process for the resolution of disputes between landlords and tenants.

IV. ANALYSIS

[34] As the adjudicator on the review noted, even on the landlord's evidence, it is clear that the suite was not used for the stated purpose for six months beginning within a reasonable period after the effective date of the notice.

[35] The evidence indicates that the main house was extensively renovated after the petitioner took possession. Her daughter moved into the main home on or about August 24, 2021.

[36] Thus, the only issue for the arbitrator was whether the landlord had established, to the satisfaction of the arbitrator, “extenuating circumstances” which prevented the petitioner, as purchaser, from using the suite for the stated purpose for at least six months, beginning within a reasonable period after the effective date of the notice.

[37] The arbitrator held that the petitioner had not established extenuating circumstances.

[38] This was a finding of fact or of mixed fact and law. The arbitrator's decision is cogent, clear, and entirely rational. The decision is far removed from anything which could be characterized as “patently unreasonable", and therefore, cannot be interfered with.

[39] The arbitrator accepted that the rental unit was posted for rent on June 14, 2021, for immediate availability. The arbitrator was not satisfied, on the evidence presented, that the alleged fall of the petitioner's husband occurred June 13, 2021, since the medical records were dated July 31, 2021. The arbitrator also noted that the landlord had not submitted sufficient evidence that the new tenancy began in September 2021. The arbitrator concluded that the tenancy with a new tenant began in June 2021 or shortly thereafter.

[40] On review, and in this Court, the petitioner produced a tenancy agreement, that she did not adduce before the arbitrator. The tenancy agreement states that it was signed by the new tenant on July 7, 2021, for occupancy September 1, 2021, at a rent of $1,800 per month. Whether the new tenant occupied the suite in June, or July, or only September, makes no difference. The evidence clearly establishes that the petitioner's daughter did not use the suite for the stated purpose for the period of time required by statute.

[41] The petitioner does not challenge the conclusion of the arbitrator that the rental unit was already off the market in June 2021. Documentary evidence submitted in support of the petition shows that the petitioner entered into an agreement with a real estate agent to rent the suite on June 24, 2021. But the documentary evidence before the arbitrator supports the evidence of the tenant that the suite was advertised for rent with immediate availability before that date.

[42] For purposes of the review, the petitioner submitted evidence that her husband was in fact injured June 13, 2021. This included a letter from her husband to that effect.

[43] It was open to the petitioner to submit persuasive evidence of her husband's injury on June 13 at the initial hearing before the arbitrator. On the evidence presented at the hearing, it was open to the arbitrator to find that the injury on June 13 was not proven. This was a finding of fact.

[44] It was also open to the arbitrator to conclude that the respondent's evidence was inconsistent, as the only persuasive evidence relating to the husband’s injury was of medical treatment he received on July 31, 2021. However, other evidence indicated that the petitioner already offered the suite for rent in mid-June 2021.

[45] A secondary aspect of the arbitrator's reasoning was that the “rental unit is part of the residential property and is accessible quite easily to/from the main home”. The arbitrator rejected the contention that the daughter could not look after her father while living in the rental unit.

[46] The petitioner challenges this part of the reasoning. She says that the tenant’s evidence about the wall was incorrect. The arbitrator noted:

> The tenant submitted that the rental unit is a part of the main home and is just separated by a temporary wall, further stating the original intent was that the rental space was to be a game room.

[47] The petitioner adduces a photograph showing that the “wall” between the rental unit and the main house is not “temporary”. On the hearing of the petition, (as

she did on the review) the petitioner argues that in order to access the main house from the rental unit, the daughter would need to exit the rental unit via an exterior staircase, and enter the house through a rear entrance, and that this would be inconvenient.

[48] Whether the wall is in fact “temporary” is not significant. The arbitrator made no specific finding on that point. Whether interior access to the main residence could be readily accomplished with minor changes or not, the arbitrator was not persuaded that the daughter needed to reside in the main home, rather than the rental unit, in order to look after her father. I do not accept that evidence to the effect that the daughter would have to exit the suite to access the main house would have made any difference to the arbitrator’s decision. Moreover, this was only a secondary part of the arbitrator’s reasoning.

[49] In summary, the petitioner has failed to establish any ground for interfering with the arbitrator’s decision.

[50] There is an obvious typographical error in the Review Decision. The adjudicator stated:

> As was noted above, an application for review on the basis of fraud requires considerably more than a claim that the other party made false statements at the hearing. Neither the information now submitted, nor the description of the issues demonstrates fraud as outlined above.
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> I find that the appellant has submitted sufficient evidence to demonstrate that the original decision was obtained by fraud. I dismiss the application for review consideration. The decision and order issued on April 15, 2023, are confirmed.
>
> I dismiss the application for review consideration.
>
> [Emphasis added.]

[51] The reasons as a whole establish beyond doubt that the word “not” should have preceded “submitted”, or that the word “insufficient” was intended. The adjudicator rejected the petitioner’s allegation of fraud. I reject the petitioner’s argument that the adjudicator’s decision is internally inconsistent.

[52] The petitioner argues that the hearing before the arbitrator was unfair. She attended the hearing (which took place by telephone, in two sessions) with a Chinese language interpreter. She contends that her interpreter was not permitted to translate a block of testimony of the tenant regarding the question of the temporary wall separating the rental unit from the main house. She argues that her right to an interpreter under Section 14 of the *Charter* was infringed.

[53] The petitioner has not established a material breach of fairness in this respect.

[54] In her affidavit, she asserts that in respect of the second teleconference hearing, “there was a whole part of the tenant's testimony that was not translated for me”. There is no further evidence about this.

[55] In submissions on the hearing of the petition, she contends that there was a portion of the evidence of the tenant that was not translated, relating to the “temporary” dividing wall point. She suggested that the hearing of the petition should be adjourned so as to allow for sufficient time for the recordings of the hearings to be played in open court, in order to prove her contention. I declined to adjourn the hearing for this purpose.

[56] My reasons for refusing the adjournment are as follows:

1. The petitioner ought to have been ready to proceed with the hearing of the petition. On June 27, 2023, the petitioner obtained an order staying the arbitrator's decision pending the determination of the judicial review. The petitioner obtained at least three adjournments of applications to hear or dismiss the petition, in order to allow her to obtain recordings and transcripts of the hearings before the arbitrator. The petitioner obtained the recordings of the RTB hearing long ago, on October 26, 2023. By now, she could have provided appropriate affidavit evidence establishing that material portions of the evidence were not translated for her;

2. The part of the evidence that is alleged not to have been translated, regarding the potential for interior access, is only marginally relevant, if at all. The conclusion of the arbitrator that the landlord had not established extenuating circumstances would not have been affected by the petitioner's evidence on the point about the wall. Therefore listening to the recordings would not make any difference to my decision;

3. A further adjournment would be unjust to the respondent. The respondent has been required to attend court unnecessarily on many occasions. In addition to numerous interlocutory applications brought by the petitioner, the tenant has been required to respond to inappropriate proceedings brought by the landlord in Provincial Court, an unsuccessful appeal to this court of the Provincial Court's costs award in his favour, and an action against the tenant in this Court brought September 7, 2023, alleging civil fraud and claiming damages in the amount of $48,000. The action was later discontinued.

[57] The petition is dismissed, with costs of the proceedings to the respondent.

[58] The order of this court made June 27, 2023 staying the arbitrator's decision is cancelled.

"Verhoeven J."