IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0808799 B.C. v. British Columbia (Residential Tenancy Branch),* 2024 BCSC 1915

Date: 20241018
Docket: S240587
Registry: Vancouver

Between:

0808799 B.C. dba Coldwell Banker Prestige Realty

Petitioner

And

Director, Residential Tenancy Branch, Penelope White and William White

Respondents

Before: The Honourable Justice Giltrow

On judicial review from: An order of the Residential Tenancy Branch, dated November 30, 2023 (RTB File No. 310091627).

Reasons for Judgment

Counsel for the Petitioner:	R.K. Fischer E. Thorpe
The Respondent, appearing in person:	P. White
The Respondent, appearing in person:	W. White
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. September 17, 2024
Place and Date of Judgment:	Vancouver, B.C. October 18, 2024

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Overview

[1] The petitioner, 0808799 B.C. dba Coldwell Banker Prestige Realty ("Coldwell Banker", also referred to as "CBPR" in the record), seeks judicial review of a decision by an arbitrator (the "Arbitrator") of the Residential Tenancy Branch (the "RTB").

[2] Coldwell Banker acted as agent for the owner, Jingyi Zeng, (the "Owner", also referred to as "JZ" in the record) of a house in West Vancouver (the "Rental House"). Under that authority Coldwell Banker entered directly into a Tenancy Agreement with the respondents (the "Tenants") for the Rental House, was the sole landlord contact for the Tenants throughout the tenancy, and as landlord, served the Tenants with a Notice to End Tenancy for Landlord's Use of the Property.

[3] The Arbitrator found that after the Rental House was vacated by the Tenants, neither the Owner nor a member of his family moved in within a reasonable time, or at all, and awarded a compensation award against Coldwell Banker to the Tenants of an amount equivalent to 12 times the monthly rent pursuant to s. 51(2) of the *Residential Tenancy Act,* S.B.C. 2002, c. 78 [*RTA*].

[4] The primary substantive question under review is whether the Arbitrator's decision to order compensation against Coldwell Banker, as agent, was patently unreasonable.

[5] The petitioner also challenges:

a) the Arbitrator's award of compensation to the Tenants for emergency repairs under s. 33(3) of the *RTA* on the basis that the Tenants texted and did not telephone the landlord with respect to the need for emergency repairs; and

b) that in finding no evidence of a written agreement that would satisfy s. 38 and allow the landlord to keep the security deposit, the Arbitrator failed to account for the Condition Inspection Report and the Tenancy Agreement.

Preliminary Issue: Style of Cause

[6] The Director of the Residential Tenancy Branch 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 February 15, 2024.

[7] The Director takes no position on the relief sought in this petition except that relief seeking costs against the RTB, which is opposed.

[8] The Director did request by way of response that the style of cause be amended to replace the "Residential Tenancy Branch" with "Director, Residential Tenancy Branch" as the former is not a legal entity or decision-maker, whereas the Director is, pursuant to the *RTA*. Under s. 9.1 of the *RTA* the Director delegates authority to arbitrators to resolve disputes.

[9] I order the amendment to the style of cause as sought.

Factual background

Tenancy Agreement

[10] The Tenants entered into a residential Tenancy Agreement with Coldwell Banker Reality for the Rental House on September 14, 2019. The written agreement is captured on a document entitled "Residential Tenancy Agreement" which bears the logo of Coldwell Banker Prestige Reality, and is between "Coldwell Banker Prestige Reality" with a listed address on Broughton Street, Vancouver, and the Tenants, Penelope White and William White (the "Tenancy Agreement"). The template indicates that all adult tenants who will occupy the house must be listed as tenants in the agreement. The agreement states the tenancy is to commence October 1, 2019. The Tenancy Agreement is signed by the Whites and the "Landlord's Agent". No name is typed next to the Landlord's Agent's signature, but it is undisputed on the record that it was Leo Zheng (also referred to as "LZ" in the

record), an employee of Coldwell Banker and the person who had offered the tenancy to the Whites, who signed it.

[11] The monthly rent at the beginning of the tenancy was $13,000. The Tenants paid a security deposit of $6,500 as contemplated under the Tenancy Agreement. The rent was reduced to $10,000 a month beginning in April 2020. The Tenants paid their monthly rent at all times during the tenancy.

[12] The Tenants lived in the House with their three children.

Notice to End Tenancy

[13] On January 30, 2022 Coldwell Banker served a Two Month Notice to End Tenancy for Landlord's Use of the Property (RTB template form #RTB-32) (the "Notice") on the Tenants. The Notice included the following:

> **HOW TO DISPUTE THIS NOTICE**
>
> You have the right to dispute this notice within 15 days of receiving it by filing an Application for Dispute Resolution with the Residential Tenancy Branch online…
>
> **From the Landlord:** (use Schedule of Parties form #RTB-26 to list additional landlords)
>
> Coldwell Banker Prestige Realty % Leo Zheng
>
> **Landlord's address**:
>
> 310 - 638 Broughton St., Vancouver, BC V6G 3K3
>
> **YOU MAY BE ENTITLED TO ADDITIONAL COMPENSATION**
>
> After you move out, if your landlord does not take steps toward the purpose for which this Notice was given within a reasonable time period after the effective date of this Notice, your landlord must compensate you an amount equal to 12 months' rent payable under your current tenancy agreement.

[14] The Notice lists Coldwell Banker Prestige Realty c/o Leo Zheng as the Landlord. The form contemplates additional landlords being listed by attaching an RTB Schedule #RTB-26, however there is no evidence the Schedule was completed or additional landlords listed in this case. The RTB form requires the "name of landlord/agent" to be listed, where again, Leo Zheng's name was listed.

Section 49 Challenge

[15] The Tenants challenged the Notice by applying for Dispute Resolution under s. 49(8) of the *RTA*. While this challenge is not at issue in this judicial review, it is relevant to the factual context surrounding the s. 51 order that is at issue, accordingly I will briefly review some of relevant facts.

[16] By affidavit Mr. White attested that Leo Zheng had called the Tenants on January 27, 2022 and told them that the Owner had a tax issue and needed to sell the Rental House, and asked what it would take for the Tenants to leave the property. The Tenants responded that due to Ms. White's pregnancy at the time, they did not want to leave, and said that they would do so if the proper procedure was followed if the property was sold.

[17] A few days later, on January 30, 2022, Mr. Zeng sent the Notice to End Tenancy for Landlord's Use of the Property described above.

[18] Mr. White attests by affidavit:

> We thought that the Notice was sent in bad faith, since LZ had already made it clear the owner wanted to sell the Property, and the owner didn't even live in Canada, so was unlikely to move into the Property.

[19] The s. 49 hearing was adjourned three times with interim decisions issued, including a third Interim Decision which "stated LZ was to use his best efforts to submit additional evidence by the Landlord."

[20] Mr. White attests in his affidavit with respect to the s. 49 challenge:

> At no time at any of the Hearings was it ever discussed or alleged that the Petitioner landlord Coldwell Banker Prestige Realty was not correctly named as the Landlord or that the owner JZ should be added.

[21] Mr. White also attests:

> At a hearing in or around August 2022, before we had a chance to present our testimony, the Arbitrator decided that due to the prolonged nature of the proceedings, only one final hour would be allocated for presenting evidence. The Arbitrator cautioned us that a loss in the hearing would result in a possession order being issued against us, mandating their [*sic*] departure

> from the property within 48 hours. Additionally, the Arbitrator issued a warning to the Petitioner that it should seriously consider withdrawing the Notice, stating that the tenants would be entitled to a penalty equal to 12 months rent if the owner or his wife did not move into the Property. At that time, the Arbitrator also stated that even though a 12-month penalty would be $120,000, it would not exceed the monetary jurisdiction of the RTB.

[22] This evidence is uncontested.

[23] Ultimately, around September 30, 2022, the Tenants moved out of the Rental House before the validity of the Notice was determined under s. 49 of the *RTA,* and their application challenging it was dismissed by the RTB on October 20, 2022.

[24] Leo Zheng participated at each stage of the s. 49 hearing defending the validity of the Notice to End Tenancy for Landlord's Use of the Property.

[25] Around the time the Tenants moved out of the Rental House, Mr. White met LZ at the Rental House to complete a Condition Inspection Report. This document read:

> **Legal Name of Landlord** (if entry is a business name, enter the full legal business name):
>
> Coldwell Banker Prestige Realty
>
> **Landlord's Address for Service**: 310- 638 Broughton Street, Vancouver, BC, V6G 3K3.

At the end of the Report, it says,

> Landlord Name & Address at the End of Tenancy: Coldwell Banker Prestige Realty, 130 - 638 Broughton St, Vancouver, BC, V6G 3K3.

[26] Mr. White attested by affidavit:

> Nowhere on the Inspection Report is any other landlord or owner listed for the Property other than the Petitioner. If the Petitioner had included the owner's name and address on the inspection report, then it would have made it possible for us to sue or serve the owner. However, at no time were we ever provided with an address for JZ.

[27] At the hearing of the petition for judicial review, counsel for Coldwell Banker confirmed that at no point has Coldwell Banker provided the Owner's address to the

Tenants. This is relevant beyond the s. 49 challenge, to the matters before this Court on judicial review.

Section 33, 38 and 51 Challenge

[28] The Tenants moved to another house in West Vancouver. However, they continued to check on the Rental House, and came to the view that the house had remained empty for several months after they moved out, and saw that it was listed for sale in or about May 2022.

[29] The Tenants subsequently filed an Application for Dispute Resolution under the *RTA* in which they sought a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy under s. 51 or 51.4 of the *RTA.*

[30] The Tenants also sought monetary orders for the cost of emergency repairs to the rental unit under ss. 33 and 67 of the *RTA*, and for the return of all or a portion of their security deposit and/or pet damage deposit under ss. 38 and 67 of the *RTA*, as well as to recover the filing fee for the application.

[31] The Application was filed November 2022, with hearing set for August 22, 2023. However, the August 22, 2023 hearing was adjourned at the request of the Owner's wife, who attended with LZ for Coldwell Banker.

[32] In addition to granting the adjournment at the August 22, 2023 hearing, the Arbitrator ordered that the Owner be added as a second respondent to the Application for Dispute Resolution. This was based on the request by the Tenants, and the consent of Coldwell Banker. The decision to add the Owner as a respondent was subsequently rescinded by the Arbitrator at the substantive hearing, for reasons that will be explained below. The substantive hearing proceeded with only one respondent, Coldwell Banker.

[33] The substantive hearing was held before the Arbitrator September 18, 2023, with evidence from LZ, the Owner's wife and the Tenants. The Arbitrator issued her decision on September 19, 2023 (the "Decision") holding that on the evidence:

a) With respect to s. 51 issue:

> I find that the landlord has submitted insufficient evidence to establish that the owner, JZ, or the owner's spouse FL, ever moved into the rental unit. In reaching this conclusion I was heavily influenced by the absence of any independent documentary evidence that corroborates FL's testimony that she moved into the unit on March 14, 2023 and/or that JZ moved into the rental unit on November 19, 2022. Examples of independent documentary evidence that may have corroborated this testimony are documents addressed to FL and/or JZ at the rental unit; a letter from a neighbor who declares they are occupying the unit; and photographs of the landlord's personal belongings in the rental unit. In the absence of such evidence, I am not convinced that either JZ or FL ever moved into the unit.

b) With respect to s. 33 issue, the Arbitrator found, *inter alia*:

> The Landlord and the tenant agree that
>
> - On January 11, 2022 the tenant reported that the boiler system was not working;
> - The boiler system provides heat and hot water to the rental unit;
> - A tradesperson hired by the landlord inspected the system shortly after the issue was reported;
> - The tradesperson who initially attended removed some pieces from the system and concluded that parts were required to complete the repair;
> - The necessary parts were "back ordered";
> - The issue was reported to LZ again on January 14, 2022;
>
> PW stated that:
>
> - 3 companies inspected the boiler system;
> - One of the companies spoke with LZ and advised the system needed to be replaced, at a cost of approximately $15,000.00;
> - The tenant told LZ that they would book the replacement and asked for confirmation that the landlord would pay for the replacement;
> - On January 21, 2022 LZ advised the tenant that the landlord would pay for the replacement;
> - The boiler system was replaced on January 25, 2022;
> - They had no issues with the heat/hot water since the boiler was replaced;
> - The tenant paid $15,302.70 to replace the boiler;

- A copy of the invoice for replacing the boiler was submitted in evidence;
- On January 27, 2022 they gave a copy of the invoice to LZ and requested repayment for it; and
- The landlord has not yet compensated them for replacing the system.

[34] The Arbitrator went on to find that the Tenants had established an entitlement to compensation under s. 33 of the *RTA*;

> Section 33(3) of the Act allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in reasonable amount of time and the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs.
>
> …
>
> Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the tenant has established a claim for a monetary award for the cost of emergency repairs to the rental unit or residential property.
>
> …
>
> On the basis of the undisputed evidence, I find the issue with the boiler was reported to LZ, via text message, on January 11, 2022 and January 14, 2022. I find that this method of notification exceeds the requirements of section 33(3) of the Act. which only requires tenants to notify the landlord on two occasions by telephone.
>
> I find that the landlord did not repair the boiler system in a reasonable time after it was first reported on January 11, 2022. Given the time of year and the need to have heat/hot water during winter months, I find that living without those necessities for two weeks is unreasonable. I therefore find that the tenant had the right to repair or replace the system on January 25, 2022, pursuant to section 33(3) of the Act.
>
> …
>
> I find that the landlord is obligated to compensate the tenant for the cost of emergency repairs. Although it is clear that the tenant paid $15,302.70 to replace the boiler, the tenant has only claimed compensation in the amount of $15,061.00 and I grant the application for compensation in that amount.

[35] With respect to the s. 38 issue, the Arbitrator's decision included:

> Section 38(4) allows a landlord to retain money from a security and/or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant. There is no evidence before me that

> establishes that the tenant agreed, in writing, to allow the landlord to retain any portion of the security deposit
>
> …
>
> On the basis of the undisputed evidence, I find that the landlord failed to comply with section 38(1) of the *Act*, as the landlord has not repaid the security deposit; the landlord has not filed an Application for Dispute Resolution claiming against the security deposit, and more than 15 days has passed since the tenancy ended and the forwarding address was received.

[36] The Arbitrator ordered Coldwell Banker to pay the Tenants a total of $148,161.00 (the "Monetary Order") based upon the following awards:

Monetary Issue	**Granted Amount**
a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act	$15,061.00
a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act	$13,000.00
a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51(2) of the Act	$120,000.00
authorization to recover the filing fee for this application from the landlord under section 72 of the Act	$100.00
Total Amount	**$148,161.00**

[37] Two corrections and two reviews were subsequently sought by the parties and the Owner from the RTB with respect to the Monetary Order. The two corrections sought were:

a) September 19, 2023 the Tenants requested that the Order be corrected to state that it is enforceable in the Supreme Court of British Columbia instead of the Provincial Court of British Columbia due to its quantum. This was granted on September 30, 2023 and the "Corrected Decision and Order" was issued.

b) October 2, 2023 Coldwell applied for a request for correction, asking the RTB to replace Coldwell Banker's name with the Owner's name ("Coldwell's Request for Correction").

[38] Coldwell's stated reason for the request was, in its entirety:

> **Requested inadvertent omission**: On the monetary order, We would like to ask the RTB to replace the Property management company's name "Coldwell Banker Prestige Realty" and replace with the homeowners name "JingYi Zeng". As explained to the Arbitrator during the hearing, Coldwell Banker is not the homeowner of the property, but the previous property manager whom we ended property management services with the owner when the tenants moved out on September 30 2022, more than a year ago. The owners name was added as the respondent.

[39] Coldwell's Request for Correction was denied with reasons dated October 3, 2023. In dismissing the requested correction, the Arbitrator included the following reasons:

> As noted in my decision of September 19, 2023, the only party named as a Respondent in this matter is CBPR. CBPR is the party named as the landlord on the written tenancy agreement. Any monetary Order granted as a result of these proceedings will only name CBPR, who LZ testified acted as an agent for JZ during this tenancy.
>
> …
>
> Ideally, the contract between JZ and CBPR will clarify how this liability between those parties should be settled.

[40] The two Reviews sought were:

a) A Request for Review was filed by the Owner, challenging the s. 33 Monetary Order for Cost of Emergency Repairs (but not the s. 51 Order). This was denied September 29, 2023. In denying the request, the Arbitrator stated:

> I note that an Application for Review Consideration is not an avenue for an applicant to reargue a decision based on the same facts or to provide evidence that was available or could have been made available prior to the original hearing.

b) September 29, 2023 the Tenants requested that Coldwell Banker's name be corrected to its full legal name. On October 12, 2023, the Arbitrator

found that the issue of the legal name of Coldwell had been discussed at the hearing and should have been addressed in the Original Decision. Accordingly, she concluded that a review would be conducted on this point the "Legal Name Issue"].

[41] While further procedural matters arose in the course of the proceeding which will be described where relevant below, ultimately the Final Decision and Order with Coldwell Banker's full legal name was confirmed November 30, 2023.

Preliminary Issue: Time Limit for Judicial Review

[42] A threshold issue arises in this case, as the respondents argue that the petitioner has filed the petition for judicial review outside the time limit established under the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*]. Section 57 of the *ATA* provides:

> **57** (1) Unless this Act or the tribunal's enabling Act provides otherwise, an application for judicial review of a final decision of the tribunal must be commenced within 60 days of the date the decision is issued.

[43] This gives rise to the question of what decision is being challenged by judicial review, and by extension, whether the relevant 60-day time limit had run before the petition was filed.

[44] For convenience I set out below a table of the various decisions in this proceeding. Throughout, I have used the same terms to describe the procedural nature of the decisions as the RTB has used:

Nature of decision as entitled by Director, RTB	**Date of Decision**	**Requesting party**	**Result**
Interim Decision	August 22, 2023	Coldwell Banker and Owner	Adjournment Granted

		Tenants	Owner added as respondent at Tenant's request Tenants Directed to Serve Owner
Hearing	September 18, 2023		Reversal of RTB's decision to add Owner as respondent. Proceed with substantive hearing.
Decision and Monetary Order	September 19, 2023	Tenants	Substantive Decision ordering monetary awards under ss. 33, 38 and 51(2).
Review Consideration Decision	September 29, 2023	Owner (JZ)	Dismissal of Requested Review re: s. 33 Monetary Order for Cost of Emergency Repairs

			(No request for review of s. 51 Order)
Decision on Request for Clarification	September 30, 2023	Tenants	Clarification not necessary as decision corrected to BCSC by order of same date
Corrected Decision and Order	September 30, 2023	Tenants	Decision Corrected by replacing “Small Claims Division of the Provincial Court” with “Supreme Court of British Columbia” due to the value of the monetary award RTB denies Tenant request to “correct” Monetary Order to full legal name of Coldwell Banker
Decision on Request for Correction	October 3, 2023	Coldwell Banker	Denial of Coldwell Banker’s correction request

			that Coldwell Banker be replaced with Owner as respondent in Sept 19 Monetary Order
Review Consideration Decision	October 12, 2023	Tenants	Decision to conduct review regarding whether the full legal name of Coldwell Banker (0808799 B.C. Ltd. dba Coldwell Banker Prestige Reality) should be the named respondent Decision and Monetary Order dated September 19, 2023 are suspended until review is complete
Review Consideration Decision	November 7, 2023		Directions to parties on submission of documents for review

			Decision and Order dated September 19, 2023 remain suspended
Decision	November 30, 2023	Tenant	Application granted to amend Monetary Order to legal name of respondent (0808799 B.C. L.t.d. dba Coldwell Banker Prestige Reality)

[45] The Tenants argue that the time within which to file this petition should have started to run October 3, 2023, at the latest. This is because the only reason the matter remained open after the October 3, 2023 decision denying Coldwell's Request for Correction was that the Tenants were pursuing the need to ensure that the Decision and Monetary Order reflected the full legal name of Coldwell Banker so that it would be enforceable.

[46] The Tenants add that they had raised the problem that "Coldwell Banker Prestige Realty" was not the legal name of Coldwell Banker (even though it was the name under which Coldwell Banker had entered into the Tenancy Agreement) at the very first hearing, August 22, 2023. Moreover, when asked at the hearing what the legal name of Coldwell Banker was, Coldwell Banker's representative did not give a correct answer. It was only through the Tenants' own continued efforts that they came to determine the correct legal name and made application to the RTB to replace the incorrect name with the full legal name of Coldwell Banker. The Tenants say that the petitioner should not benefit from the prolongation of the proceeding,

which was substantively decided September 19, 2023, and at the latest October 3, 2023, because of its own misrepresentations, both on the Tenancy Agreement and at the hearing.

[47] I agree with the Tenants that, to the extent that the matter was still open at all before the RTB after October 3, 2023, it was with respect only to ensuring that the correct legal name for Coldwell Banker was recorded in the Order. This was a non-substantive issue that had been created by Coldwell Banker, and which Coldwell Banker provided no assistance in resolving. Coldwell Banker should arguably not have the benefit of an extended limitation period in these circumstances.

[48] I am also aware that when an internal review decision does not address the merits of the underlying decision, the original decision should be the subject of the judicial review: see *Yellow Cab Company Limited v. Passenger Transportation Board*, 2014 BCCA 329 para. 44 and see Justice McNaughton's discussion in *Olenga v. Metro Vancouver Housing Corporation,* 2024 BCSC 1579 paras. 73-77. However, this does not directly address the question of when limitation periods begin to run.

[49] I am of the view that given the subsequent suspensions of the original Decision and Monetary Order, and the subsequent review process, a petition filed before November 30, 2023 may have been viewed as premature. I have been referred to no authority directly on point.

[50] In these circumstances, I am of the view that the petition was filed within the time permitted under s. 57(1) of the *ATA*.

Issues on Judicial Review

[51] The petitioner, Coldwell Banker, seeks an order that the decision of the Arbitrator dated September 30, 2023 (what it calls the "First Amended Decision") and amended November 30, 2023 (what it calls the "Final Amended Decision") be set aside. In the alternative the petitioner seeks an order that the Final Amended Decision be quashed and remitted to the RTB to be heard by a different adjudicator

for a re-consideration in an oral hearing, naming Jingyi Zeng, the Owner, as a respondent. The petitioner further seeks costs.

[52] The petitioner argues:

a) with respect to the s. 51(2) order that the Arbitrator incorrectly applied s. 51 of the *RTA*, because Coldwell Banker is not a "landlord" within s. 49 of the *RTA*. Only a landlord as defined under s. 49 of the *RTA* can take back property for landlord's use under s. 49(3) of the *RTA*;

b) that the Arbitrator misapplied s. 33(3) of the *RTA* by finding that the Tenants had satisfied that obligation to notify the landlord of the need for emergency repairs by telephone; and

c) that in finding no evidence of a written agreement that would satisfy s. 38 and allow the landlord to keep the security deposit, the Arbitrator failed to account for the Condition Inspection Report and the Tenancy Agreement.

Standard of Review and Statutory Interpretation

[53] It is undisputed that the issues raised in this petition are to be reviewed on a standard of patent unreasonableness: s. 5.1 of the *RTA* and s. 58 of the *ATA.*

[54] While s. 58(2)(a) of the *ATA* makes clear that the standard of patent unreasonableness applies to "a finding of fact or law or an exercise of discretion", the *ATA* defines patent unreasonableness only with respect to discretionary decisions (s. 58(3)), not decisions of fact or law. In this case the petitioner's challenges on judicial review involves both questions of fact and law, in particular statutory interpretation. Accordingly, the common law guides the meaning of patently unreasonable to be applied in this case. The Court of Appeal recently considered the patently unreasonable standard of review in the context of a residential tenancy dispute in *Shuster v. British Columbia (Residential Tenancy Branch)*, 2024 BCCA 282, where Justice Abrioux said:

> [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.

[55] The Court of Appeal went on in *Shuster* to explain the approach to reviewing a decision-maker's statutory interpretation against the standard of patent unreasonableness:

> [50] Patent unreasonableness is the standard that is most deferential to the decision maker. If a decision maker's interpretation is not unreasonable, it is also not patently unreasonable: *Team Transport Services Ltd. v. Unifor, Local No. VCTA*, 2021 BCCA 211 at paras. 28–29.
>
> [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.
>
> [52] It is not for the court on review or appeal to re-weigh evidence or second guess conclusions drawn from the evidence and substitute different findings. A decision will be patently unreasonable only where there is no evidence to support the findings or the decision is "openly, clearly, evidently unreasonable": *Maung* at para. 42.

[56] 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 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 117–118. The Court of Appeal recently affirmed this in *Shuster*:

> [20] As recently explained by this Court in *Sayyari v. Provincial Health Authority*, 2023 BCCA 413:
>
> > [27] The basic rule of statutory interpretation is that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21.

> [28] The usual first step in interpreting a statute is to examine the text of the provision to determine its plain or ordinary meaning. Ultimately, however, the true meaning of the words being interpreted can only be determined contextually by considering other indicators of legislative meaning—context, purpose, and relevant legal norms: *La Presse Inc. v. Quebec*, 2023 SCC 22 at para. 23; *R. v. Alex*, 2017 SCC 37 at para. 31. Put differently, a court engaged in an exercise of statutory interpretation must not construe a provision in isolation. Instead, individual provisions must be considered in light of the Act as a whole, with each provision informing the meaning to be given to the rest. As the Supreme Court of Canada explained in *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at para. 45, the rule ensures that the statutes are read as coherent legislative pronouncements.

[57] Before embarking on statutory interpretation in this case, there are two preliminary matters to address: the issue of arguments not raised before the Arbitrator and further procedural facts relevant to the matters on judicial review.

Argument not raised before Arbitrator

[58] Before undertaking the statutory interpretation required of the reviewing Court, I will first address an important preliminary issue. The petitioner's argument on judicial review—that a s. 51 order was not available against an agent because of s. 49 of the *RTA*—was not raised before the Arbitrator.

[59] The petitioner says this is not a barrier to overturning the decision on judicial review because there was no evidence before the Arbitrator that Coldwell Banker was an owner, and therefore a landlord against whom an order *could* be made under s. 51.

[60] However, this presupposes that only an owner, and never an agent, can be directed to pay compensation under s. 51.

[61] As set out below, I do not accede to this view. The Arbitrator was, on the face of the record, clearly aware that Coldwell Banker was the agent, and JZ the owner of the house. The Arbitrator also quite clearly was of the view that she could make a compensation order against Coldwell Banker under s. 51. This was evident in her September 19, 2023 Reasons explaining her decision to rescind the Order adding

the Owner as a respondent, and in her October 3, 2023 Reasons denying Coldwell's Request for Correction. As explained below, I do not find that to be a patently unreasonable conclusion, either as a matter of statutory interpretation or in the context of the facts before the Arbitrator.

[62] I am reluctant to engage on judicial review an argument that was not advanced before the Arbitrator. This is especially so since the Arbitrator's ability to order compensation against Coldwell Banker under s. 51 was centrally before the parties and the Arbitrator from the first hearing on August 22, 2023, and Coldwell Banker made no objection and raised no issue about the Arbitrator's statutory authority to make the s. 51 order against Coldwell Banker.

[63] I have nevertheless undertaken substantive review of the question of statutory interpretation raised by the petitioner on judicial review, because if the petitioner were correct, and the Arbitrator's interpretation of her authority under s. 51 was patently unreasonable, there would be significant prejudice to the petitioner to let the order stand.

[64] I will not, however, consider the common law "agency" argument set out briefly in the petition. This argument was not raised before the Arbitrator, nor was it pressed at the hearing of the judicial review. Based on the principles articulated by Justice Rothstein in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association,* 2011 SCC 61 at paras. 22–26, I am of the view that it would not be appropriate to consider this argument in this judicial review.

Naming Owner as Respondent: Addition and Reversal

Interim Decision August 22 2023

[65] In her Interim Decision August 22, 2023 the Arbitrator addresses the preliminary matter of adding a second respondent in the Application for Dispute Resolution:

> At the hearing PW requested that the Application for Dispute Resolution be amended to include the name of a second Respondent, with the initials "JZ", who is an owner of the rental unit.

> The landlord consented to this amendment and the Application for Dispute Resolution has been amended accordingly.
>
> The name of the second Respondent has been added to this first page of this interim decision.

[66] From this it is clear that at this early stage and at all times during the RTB proceeding it was uncontroverted and known to the parties and the Arbitrator, that JZ, not Coldwell Banker, was the owner of the unit.

[67] The landlord, Coldwell Banker, consented to the adding of the owner, JZ.

[68] The Arbitrator continued to refer to Coldwell Banker as "the landlord" in the context of knowledge that the owner of the unit was JZ. It is apparent on the record that this was a considered decision of the Arbitrator and not an inadvertence. "Landlord" is also an important term to which I will return later.

[69] I also note that the cover of the August 22, 2023 Interim Decision states:

> Attending for the Landlord:
> Leo Zheng, (LZ) agent for the landlord
> Fiona Leng, (FL) landlord

[70] However, in subsequent RTB decisions where Ms. Leng's appearance is noted it is corrected to reflect "agent for the owner."

Adjournment

[71] The preliminary hearing was conducted by conference call. As noted, Ms. Leng, appeared along with Leo Zheng.

[72] The Interim Reasons state that at the outset of the August 22, 2023 hearing "the landlord requested an adjournment." The Interim Decision goes on to set out the support for the request, which comes entirely from Ms. Leng (the owner's wife) and relates to a death in her family.

[73] The Tenants opposed the adjournment on the grounds they had been waiting a long time for a resolution and delay would cause financial burden.

[74] In written reasons dated August 22, 2023 the Arbitrator granted the adjournment, and additionally, ordered *inter alia* that

> **I order** the tenant to serve a copy of the Application for Dispute Resolution, the Notice of Reconvened Hearing, and all evidence previously submitted to the Residential Tenancy Branch to the new Respondent, JZ, no later than September 15, 2023. The tenant will be required to provide proof of service of these documents at the reconvened hearing and may submit evidence of such service to the Residential Tenancy Branch, no later than September 15, 2023.

Reconvened Hearing September 18, 2023 and Substantive Decision

[75] The hearing reconvened September 18, 2023. Along with the Tenants, both Mr. Zheng and Ms. Leng attended, although as noted above, from this point on Ms. Leng's attendance is written on the cover of each RTB decision as: "Fiona Leng, (FL) agent for the owner (incorrectly identified as a landlord on the interim decision)".

[76] At the hearing of the judicial review, Ms. White says that Ms. Leng attended in the capacity as a witness for Coldwell Banker. This characterization was not disputed by counsel for the petitioner.

[77] The Arbitrator found that the Tenants had not served the Owner. The entirety of the Arbitrator's decision with respect to how to proceed on this "preliminary matter" is reproduced here:

> At the hearing on August 22, 2023, I granted the tenant's request to amend the Application for Dispute Resolution to add the owner of the rental unit, whose initials are JZ, as a Respondent in this matter.
>
> In my interim decision of August 22, 2023, I Ordered the tenant to serve JZ with a copy of the Application for Dispute Resolution, the Notice of Reconvened Hearing, and all evidence previously submitted to the Residential Tenancy Branch, no later than September 15, 2023.
>
> At the hearing on September 19, 2023, PW stated that the tenant did not understand documents needed to be served to JZ and, as such, the aforementioned documents were not served to JZ.
>
> Rule 3.1 of the Residential Tenancy Branch Rules of Procedure requires an Applicant to serve each Respondent with the Notice of Dispute Resolution Proceeding Package, which includes the Application for Dispute Resolution.
>
> On the basis of the undisputed evidence, I find that JZ has never been served with a copy of the Notice of Dispute Resolution Package. As JZ was never served with the Application for Dispute Resolution, I am unable to proceed

> with this hearing in the absence of JZ. On September 18, 2023, I therefore rescinded my decision to amend the Application for Dispute Resolution to include JZ as a Respondent, and the hearing proceeded.
>
> The only party named as a Respondent in this matter is CBPR. I note that CBPR is the party named as the landlord on the written tenancy agreement. Any monetary Order granted as a result of these proceedings will only name CBPR, who LZ testified acted as an agent for JZ during this tenancy.
>
> On the basis of LZ's testimony that CBPR was not acting as an agent for JZ after the rental unit was vacated on September 30, 2022, I cannot conclude that JZ was served with a copy of the Notice of Dispute Resolution Package when it was mailed to CBPR on November 25, 2022.
>
> I am aware that LZ submitted a letter, dated August 19, 2023, in which he "authorized" JZ to be added as a Respondent to the Application for Dispute Resolution. On the basis of LZ's testimony that CBPR was not acting as an agent for JZ after the rental unit was vacated on September 30, 2022, I cannot conclude that LZ had authority to consent to this amendment on behalf of JZ.
>
> I note that there is nothing before me that causes me to conclude that JZ is aware that the Application for Dispute Resolution was amended to add him as a Respondent.

[78] In their response on judicial review, the Tenants plead that they misunderstood the order directing them to serve JZ. At the hearing of the judicial review Ms. White advised that the direction to serve the Owner was not discussed at the August 22, 2023 hearing, and the Tenants did not read it on the Order. They had misunderstood the presence of the Owner's wife at the August 22 hearing (who, it is to be recalled, was the individual who asked for and was granted the adjournment of the hearing over the objection of the Tenants) as providing the required notice to the Owner. The Tenants further state that they have never been provided the address of the Owner who, they understand, lives abroad, although they do not know in what country. The Owner's address was not available from an LTO search, which merely provides the name of the Rental House as the Owner's address. As noted, counsel for the petitioner confirmed at the hearing of the judicial review that Coldwell Banker has never provided the Owner's address to the Tenants.

[79] There is no evidence that either party objected to proceeding with the hearing on September 18 without the Owner named as a respondent, the Arbitrator having

rescinded the Order by which the Owner had been added. I further note the following relevant facts:

a) Coldwell Banker was served with the Notice of Dispute Resolution November 25, 2022. Based on this Notice, Coldwell Banker knew that it was the only named respondent, and that monetary compensation was being sought against Coldwell Banker under s. 51(2) because the stated purpose for ending the tenancy had not been accomplished. However, Coldwell Banker made no objection to the form or proceeding, nor did Coldwell Banker take any steps to add the Owner as a respondent in the 8 months preceding the first hearing in August 2023. It was only on the Tenant's motion that the Owner was added. The Tenant had sought to add JZ because the Tenant had become aware that Coldwell Banker was not a legal entity and had become concerned that a compensatory award may not be enforceable against Coldwell Banker.

b) The Owner's wife did attend, and gave evidence at, the September 18 substantive hearing.

c) The legal issue raised now, on judicial review, that the Arbitrator could not order a s. 51(2) compensation award against a landlord who does not meet the narrow definition of landlord under s. 49, was not raised before the Arbitrator.

d) It was only after the Arbitrator issued the September 19, 2023 Decision and Monetary Order finding that the stated purpose for ending the tenancy had not been accomplished that Coldwell Banker made a motion for "correction" to have the Owner substituted in Coldwell Banker's place as respondent. The request for correction was considered by the Arbitrator and rejected with reasons. Again, the arguments now raised on judicial review were not raised by Coldwell Banker.

Statutory interpretation

[80] For the reasons that follow, I do not find that the Arbitrator's determination that an order for compensation could be made against Coldwell Banker in this case is patently unreasonable.

[81] Looking at the text, context and purpose of s. 51, I am of the view that in the circumstances of this case it was not unreasonable for the Arbitrator to conclude that she could make an order against Coldwell Banker as a "landlord" under s. 51 notwithstanding that Coldwell Banker was an agent for the owner of the Rental House, and did not meet the definition of landlord under s. 49 of the *RTA*. In my view s. 51 of the *RTA* lends itself to the statutory interpretation inherent in the Arbitrator's decision.

[82] In this case, Coldwell Banker is clearly a "landlord" under the overarching definition of landlord in the *RTA*, which is set out at s. 1:

> "landlord", in relation to a rental unit, includes any of the following:
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> [Emphasis added.]

[83] The only modification to the definition of landlord within the *RTA* is under s. 49. However, that modification is narrow:

> **Landlord's notice: landlord's use of property**
>
> **49** (1) In this section:
>
> "landlord" means
>
> (a) for the purposes of subsection (3), an individual who
>
> (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest;

[84] Sections 49(3) and (4) of the *RTA* state:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

[85] The effect of these provisions is to narrow the class of landlords who can end a tenancy for their own or their family's use. Considering the context and purpose of this modification, it is clear that the narrowing of the definition of landlord in s. 49 makes tenants less vulnerable to eviction—for example non-family corporate landlords cannot end tenancies under the s. 49 "landlord's use of property" provision.

[86] Section 51, which places obligations upon a landlord purporting to end a tenancy under s. 49, does not, on a plain reading, include the same narrowed definition of landlord as s. 49 does. Section 51 includes the following relevant provisions:

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 unless the landlord or purchaser, as applicable, establishes that both of the following conditions are met:

> (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice;
>
> (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose, beginning within a reasonable period after the effective date of the notice, for at least the following period of time, as applicable:
>
> (i) if a period is not prescribed under subparagraph (ii), 12 months;
>
> (ii) a prescribed period, which prescribed period must be at least 6 months.
>
> (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 applicable, from
>
> (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
>
> (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose, beginning within a reasonable period after the effective date of the notice, for at least the following period of time, as applicable:
>
> (i) if a period is not prescribed under subparagraph (ii), 12 months;
>
> (ii) a prescribed period, which prescribed period must be at least 6 months.

[87] The petitioner argues that the s. 49 definition of landlord should be read into s. 51 since s. 51 refers to terminations of tenancy under s. 49.

[88] However, on this approach it is difficult to understand how the petitioner Coldwell Banker says it had authority to terminate the tenancy at all based on the s. 49 “landlord’s use of property” provision. Moreover, not only did Coldwell Banker assert that it had that right, and served the Notice to End Tenancy for Landlord’s Use of the Property on the tenants in reliance on that right, the petitioner then defended that Notice over the several months the Tenant’s challenge of it was

before the RTB, until ultimately the Tenants moved out and their challenge to the petitioner's Notice to End tenancy was dismissed.

[89] Having exercised and defended its authority to end the tenancy under s. 49, it is surprising that Coldwell Banker now argues that it is not a landlord for the purpose of ending a tenancy under s. 49. Moreover, it is not obvious on a plain reading of the statute that the petitioner should not be subject to the provisions of s. 51, which are intended to oversee the good faith use of s. 49 by landlords.

[90] On a plain reading of the statute, the meaning of landlord under s. 51 is not restricted to the narrow definition contained in s. 49. Section 49 states that the restricted definition applies only "in this section." If the legislature had wanted the restricted definition to apply to "this section and all sections referring to this section or related to this section" it could have said so.

[91] Agent landlords enjoy the rights and are burdened by the responsibilities of landlords under the *RTA.* The only exception to the broad definition of landlord at s. 1 is provided under s. 49 which narrows the class of landlords who can end a tenancy for their own (or their close family's) use of the rental property.

[92] The *RTA* does not provide a mechanism by which tenants can identify and correspond with or serve owners with whom they have not directly contracted. The interpretation the petitioner advances of s. 51 would leave a gap in the legislative scheme whereby agents could evict on the basis of landlord's use (as occurred in this case), but leave tenants without practical remedy when the 'owners' (that is, the narrow class of landlords defined under s. 49) failed to move in. This result would be unjust, and inconsistent with the legislative scheme of the *RTA*, which *inter alia*, seeks to protect against unlawful evictions.

[93] Moreover, any potential injustice to agents in such situations has two remedies:

a) Agent landlords may apply to have s. 49 owners added as respondents to applications for dispute resolution in appropriate circumstances, and ensure the owners are served with dispute resolution materials.

b) Agent landlords may persuade an arbitrator under s. 51(3) that extenuating circumstances warrant against granting the s. 51(2) order against the agent.

[94] Neither occurred in this case.

Application of s. 51 to the facts

[95] In this case, the Arbitrator had ample facts on the record before her to support an order against Coldwell Banker under s. 51. While it is not clear that the Arbitrator knew that only a few days before Coldwell Banker served the Notice to End Tenancy for Landlord's Use of the Property, LZ initially told the Tenants that the Owner wanted to sell the house, and their tenancy would be terminated for that reason, it is undisputed that the Arbitrator knew:

a) Coldwell Banker served a Two Month Notice to End Tenancy for Landlord's Use of the Property on the Tenants, listing itself and only itself as landlord.

b) The Tenants challenged the Notice under s. 49 of the *RTA.*

c) Coldwell Banker defended that Notice, and after several adjournments of the hearing to determine the challenge, the Tenants moved out, and the challenge was dismissed. Accordingly, the Notice was upheld and the Tenants moved out in response to it.

d) In the present hearing Coldwell Banker participated fully as a respondent.

e) Coldwell Banker did not make any application to join the Owner as a respondent. This was only done after the Tenants made an application to join the Owner.

f) While the Tenants were ordered to serve the Owner, at no time did Coldwell Banker provide the tenants with the Owner's address. The Tenants had only ever dealt with Coldwell Banker as landlord during the course of the tenancy.

g) Coldwell Banker was the landlord, and the only landlord, listed in the Tenancy Agreement, and in the Notice to end Tenancy.

[96] Contrary to the arguments of the petitioner, the Arbitrator made no finding that Coldwell Banker had to "itself" move in to the house or use the property. In this way the case is distinct from *Hefzi v. Louw*, 2023 BCSC 994, which held that for the purpose of s. 49, an agent or someone acting on behalf of the landlord cannot take back the property for their own use. I agree with the petitioner that this is something that Coldwell Banker is not permitted to do under the s. 49 definition of landlord. But that is not what s. 51 requires before an award can be made against a landlord. An award must be made when the landlord has not established that "the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice" (s. 51(2)(a)). Coldwell Banker failed to do that. Coldwell Banker led evidence (including evidence from the Owner's wife) but did not satisfy the RTB. There was no reversal of onus as the petitioner argues.

[97] The petitioner argues that it was inconsistent for the Arbitrator to find that Coldwell Banker ceased being an agent for the Owner on September 30, 2022 when the tenancy ended, but made the order under s. 51(2) against Coldwell Banker for the Owner's failure to move in within 6 months (or at all) after September 30, 2022. However, the Order against Coldwell Banker was made with the full procedural history before the Arbitrator. Coldwell Banker took no steps to assist in ensuring that the Tenants could recover compensation from the Owner, if it should not be from Coldwell Banker. Coldwell Banker was the landlord for all purposes during the tenancy.

[98] Leaving Tenants to find and chase an owner landlord, with whom they did not contract and have never had dealings, in order to realize their statutory entitlement

under s. 51 of the *RTA* may not be the just result in a particular case. The Arbitrator apparently was of that view in this case.

[99] Coldwell Banker provided a service to the Owner by contract, to enter directly into a tenancy, provide the sole and only contact as landlord to the Tenants throughout that tenancy, and to terminate that tenancy under the provisions of the *RTA*. Coldwell Banker was remunerated for that service by the Owner. As the Arbitrator said in her reasons dismissing Coldwell's Request for Correction, the liability as between Coldwell Banker and the Owner is best determined as a private law matter between those parties in these circumstances.

[100] While s. 51 orders may typically be issued directly against the landlord who purported an intent to use the rental unit as permitted under s. 49, the provision does not on its face require that be so in every case. There may be circumstances where the appropriate award is made against a landlord who falls under the broader and prevailing definition of landlord under s. 1 of the *RTA*. The Arbitrator evidently found this to be so in the circumstances of this case. I do not find she was patently unreasonable to do so.

Emergency Repairs

[101] I have set out above the Arbitrator's findings regarding the communication between the parties regarding the emergency repairs. After two texts from the Tenants January 11 and 14, LZ advised the Tenants by email January 27 that the landlord would pay for the required repair. The Arbitrator found there had been sufficient communication as required by s. 33 the *RTA.* Whether the communication "exceeded" (as the Arbitrator found) or simply "met" the requirements of s. 33 need not be determined on judicial review. I see no basis to find that the conclusion that the requirements of s. 33 were met was patently unreasonable.

[102] I would not accede to this ground for review.

Security Deposit

[103] Section 38(4) of the *RTA* states:

> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
>
> (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
>
> (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

[104] The petitioner points to the Tenancy Agreement and the Condition Inspection Report. However, the Tenancy Agreement is not an agreement made "at the end of a tenancy" and accordingly does not satisfy the requirement of s. 38(4)(a).

[105] The Condition Inspection Report in this case did not contain an agreement for "the amount" to be retained, as it said only "TBD." It was not patently unreasonable for the Arbitrator to find as she did that there was no evidence before her that satisfied s. 38(4)(a).

[106] I would not accede to this ground for review.

Order

[107] Accordingly, I make the following orders:

1. The style of cause is amended so as to replace "Residential Tenancy Branch" with "Director, Residential Tenancy Branch".

2. The petition is dismissed with costs.

[108] At the hearing of this judicial review, the parties agreed that the Tenant's related application (No L240033) regarding the Letter of Credit posted by Coldwell Banker pursuant to the Order of Justice Chan April 4 2024, should not be heard until the judicial review was determined. Now that the judicial review has been determined, the parties may be in a position to resolve that application without need for hearing. If not, the parties are directed to contact Supreme Court Scheduling to set the matter down for hearing.

"Giltrow J."