IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nazari v. El Assal*,
2024 BCSC 1938

Date: 20240927
Docket: S252467
Registry: New Westminster

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

Between:

Bejan Nazari

Petitioner

And

Abdel Aziz El Assal and Amr El Assal

Respondents

Before: The Honourable Madam Justice Sukstorf

On judicial review from: Decision of Arbitrator of the Residential Tenancy Branch, January 28, 2024

Oral Reasons for Judgment

Counsel for the Petitioner:	K. Frempong
Counsel for the Respondent Abdel Aziz El Assal:	M. Magaril
For the Respondent Amr El Assal (deceased):	No appearance
Place and Date of Hearing:	Port Coquitlam, B.C. September 26, 2024
Place and Date of Judgment:	Port Coquitlam, B.C. September 27, 2024

Table of Contents

Introduction

[1] This decision was delivered in the form of Oral Reasons. The *Reasons* have since been edited for clarity, structure, grammar, and readability. Citations and quotations from case law relied upon and referenced during the oral ruling have also been incorporated into this written version to ensure completeness.

[2] This is a petition for a judicial review. The Petitioner, Bejan Nazari (the "Petitioner"), asks the court to set aside a decision (the "Decision") of Arbitrator, K. Wang (the "Arbitrator") dated January 28, 2024, in the Residential Tenancy Branch (the "RTB") Dispute number 910111191.

[3] The Arbitrator's Decision ordered the Petitioner to pay a 12-month compensation of $48,400 to the Respondents, Abdel Aziz El Assal and Amr El Assal (the "Respondents") per s. 51(2) of the *Residential Tenancy Act,* S.B.C. 2002, c. 78 [*RTA*].

[4] The Decision was then registered as a judgment of the Supreme Court of British Columbia under New Westminster Court File number 252629 for enforcement. The Petitioner sought an interim stay of execution proceedings arising from the Decision and Order. Justice Verhoeven granted the stay (the "Verhoeven Order") and ordered the Petitioner to deposit as security a sum of $24,200 to the credit of this proceeding. This amount is half of the amount ordered by Arbitrator Wang. The sum of $24,200 was to be deposited within 21 days of the Verhoeven Order and the stay of execution is to expire on September 30, 2024.

[5] During his submissions, counsel for the Respondents requested that due to ongoing refinancing issues, the court provide its decision at the earliest opportunity.

[6] In addition, the Petitioner seeks costs.

Issue

[7] The only issue to be determined is whether the Decision ought to be set aside. The decision can only be set aside if it is patently unreasonable.

Standard of Review

[8] This is a request for judicial review pursuant to s. 5.1 and s. 84.1 of the *RTA* and s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*].

[9] Section 84.1 of the *RTA* contains a privative clause that provides exclusive and final jurisdiction to the Director of Residential Tenancies 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 a review. The Director is also authorized to make any order permitted to be made. Decisions and orders made using this exclusive jurisdiction are not open to question or review in any court. The Director is considered to be an "expert tribunal" within the meaning of s. 58 of the *ATA.*

[10] Under s. 58(2)(a) of the *ATA*, findings of fact or law, or exercises of discretion by the Director or dispute resolution officers in respect of matters within their exclusive jurisdiction are only reviewable on the standard of patent unreasonableness. Further, in determining whether a decision is patently unreasonable, the court is required to examine both the reasons and the outcome.

[11] Under s. 58(2)(b) of the *ATA*, 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.

[12] For all other matters not identified in either s. 58(2)(a) or 58(2)(b), s. 58(2)(c) provides for a review on the standard of correctness.

[13] For those grounds of judicial review which relate to the Arbitrator's findings of fact, law, or mixed fact and law, the Petitioner bears the onus of showing that the findings are patently unreasonable: *Manz v. Sundher*, 2009 BCCA 92.

[14] A decision is patently unreasonable where the decision is evidently not in accordance with reason, or where it is clearly irrational: *Yee v. Montie*, 2016 BCCA 256 at para. 22, citing *Law Society of New Brunswick v. Ryan*, 2003 SCC 20.

[15] Pursuant to *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*], when conducting a judicial review, the court is required to focus on the reasons given by the tribunal, and not engage in its own "treasure hunt for error": *Vavilov* at paras. 84, 91, 102.

[16] It is therefore not open to the court to second guess conclusions drawn from the evidence considered by the decision-maker, or to substitute different findings of fact or inferences. Stated slightly differently, a decision can only be said to be patently unreasonable where there is no evidence to support the findings, or the decision is openly, clearly, and evidently unreasonable: *Manz* at para. 39, citing *Speckling v. British Columbia* (*Workers' Compensation Board*), 2005 BCCA 80.

Background Facts

[17] The Petitioner owns the home located at 2140 No. 4 Road, Richmond, BC (the "Property") and the Respondents were tenants of the Property when on or about September 2022, the Petitioner served the Respondents with a Two Month Notice to End Tenancy for Petitioner's Use of Property (the "Notice"). At the time, the Petitioner and his family were living in a condo (the "Condo") in Vancouver, which the Petitioner also owned.

[18] The reason for ending the tenancy selected on the Notice was that the "Petitioner or Petitioner's spouse" will occupy the Property.

[19] The Petitioner also provided the Respondents with a more specific reason for taking possession, via either an email or a text. This communication was entered into evidence by the Respondents and is consistent with the position of the Petitioner. The communication reads as follows:

> Hello sister,
>
> First of all I'm really not happy with my notice to you and honestly I never thought nor I ever wanted to move back in to my house. I respect you and your family and wished you stay there for a very long time. However, given my sons health and being able to provide them enough space we had absolutely no choice but to move back in. I believe and wish you are able to find a space that works best for you and if there's anything I can do to help pls let me know.

> As stated on the notice, I require to move back in on December 1, 2022 and ask you to move out by November 30 2022.
>
> The notice is for the entire house including the suite downstairs.
>
> Again I hope I am not causing too much of inconvenience and I am sorry if this caused you and your family any trouble.
>
> September 15 2022
>
> Bejan Nazari
>
> [Emphasis added.]

[20] The Respondents vacated the Property by November 30, 2022. However, on January 28, 2023, the Respondents emailed the Petitioner to advise that they were trying to send him registered mail and wanted to confirm where they should send it. The Petitioner responded and advised the Respondents that:

> … I have not received any document from you by mail/ registered mail. Perhaps you sent it to your old address (2140 No. 4 road) and as we have not moved in here yet and we have major reno going on I am not there to receive any registered mail.

[21] After learning that the Petitioner had not moved into the Property, the Respondents applied for an order for compensation under s. 51(2) of the *RTA* claiming that the Petitioner ended the tenancy under s. 49(3) of the *RTA*, but did not accomplish the stated purpose for ending the tenancy within the *RTA* requirements.

Law

[22] Section 49(3) of the *RTA* states:

> 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.

[23] Pursuant to s. 51(2) of the *RTA*, a landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement unless the landlord establishes that:

> a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of notice provided under s. 49; and

> b) the rental unit has been used for that stated purpose for at least 6 months duration, beginning within a reasonable period after the effective date of the notice.

[24] Under s. 51(3) of the *RTA*, a landlord may be excused from paying the tenant the amount required under s. 51(2) if, there are extenuating circumstances that prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy.

[25] The provision at s. 51(3) aims to balance the rights of landlords and tenant's by ensuring that compensation is not automatically awarded but is rather considered in light of extenuating circumstances.

[26] In this case, the Petitioner was the landlord, and the Respondents were the tenants.

Position of the Petitioner

[27] During the hearing before the Arbitrator as well as in his submitted materials to the Residential Tenancies Branch, the Petitioner presented the following evidence:

1. The Petitioner's reason for issuing the Notice was to move his family back into the Property to have more space for their children.

2. The Petitioner asserts that he moved into the Property in the beginning of December 2022 and began renovations. He asserts that the renovations proceeded at the same time as the Petitioner and his family occupied the Property.

3. The Petitioner provided the Arbitrator with Telus and FortisBC accounts for the Property.

4. Additionally, the Petitioner provided statements from neighbours to confirm that his family occupied the Property.

5. The Petitioner provided the Arbitrator with a copy of his current driver's license that showed that the Petitioner had changed his address to the Property.

[28] It is the Petitioner's position that the Arbitrator's Decision is patently unreasonable based on the following alleged errors:

1. The reasons for the Decision reflect a misapprehension of the facts.
2. The Decision is not supported by the facts.
3. The Arbitrator applied the wrong legal test.

[29] The Petitioner asserts that while each error, alone, might not suffice to render the decision patently unreasonable, the cumulative effect of the errors do.

Position of the Respondents

[30] In response, the Respondents contend that the Arbitrator's Decision is reasonable and consistent with the applicable legal standards. They also argue that the standard of review in this judicial review should be "patent unreasonableness," which requires a high degree of deference to be given to the Arbitrator. The Respondents argue that the Decision is well-reasoned, based on the available evidence, and is therefore not "clearly irrational."

[31] The Respondents highlights that the Petitioner has failed to articulate how the Decision is unreasonable. They argue that the Petitioner's submissions are attempts to re-argue the facts and evidence, which is not the role of the court in a judicial review.

[32] The Respondents also raise procedural issues related to the Petition, such as the Petitioner's failure to clearly state either the grounds for relief or the legal basis for the petition. These deficiencies, according to the Respondent, render the Petition bound to fail.

[33] The Respondents seek costs against the Petitioner, arguing that the deficiencies in the petition and the need to respond to flawed arguments have led to unnecessary legal expenses.

The Decision

[34] In the Decision, the Arbitrator identified two primary issues that had to be decided:

1. Are the Respondents entitled to compensation due to the Petitioner's failure to accomplish the stated purpose on the Notice to End Tenancy?

2. Are the Respondents entitled to recover the filing fee for this application from the Petitioner?

[35] In the Decision, the Arbitrator summarized the key facts, which were not in dispute, and then summarized the following facts, which are disputed in this court:

1. The Petitioner claims that his family moved into the Property in December 2022. He cites space issues in their condo and confirmed their occupation through utility bills and neighbor statements.

2. However, the Respondents argue that the Petitioner did not occupy the unit as claimed. Instead, the Respondents allege that the Petitioner undertook renovations at the Property while maintaining residency at the Condo. The Respondents alleged that the Petitioner also used the Condo address in a legal petition, suggesting he did not intend to occupy the Property as his primary residence.

[36] The Arbitrator decided in favour of the Respondents. The Arbitrator found that the Petitioner failed to occupy the Property as stated in the Notice. Consequently, the Arbitrator ordered the Petitioner to pay compensation equivalent to 12 months rent, totaling $48,300, plus an additional $100 for the filing fee, amounting to $48,400 in total.

[37] In coming to this decision, the Arbitrator found that the Petitioner's evidence was insufficient to prove that he or his family occupied the Property as their primary residence within a reasonable time and for at least six months.

[38] The Arbitrator reviewed and considered all the Petitioner’s testimony and evidence but found it insufficient and inconsistent. Here are some of the issues identified by the Arbitrator:

1. Testimony and Documentation:

    i. The Petitioner claimed that his family moved into the Property in December 2022. He provided utility bills, a copy of his driver’s license, and statements from neighbours to support his claim.

    ii. The Arbitrator found this evidence to be inadequate and inconsistent. For instance, the Petitioner testified that his family’s move-in date was in December 2022, but contradicted this testimony in an email sent on January 28, 2023. In this email, the Petitioner stated that he had "major renovations" ongoing and would not move in until March 1, 2023.

2. Neighbour's Testimony:

    i. A neighbour, MF, confirmed seeing the Petitioner and his family at the Property, but under cross-examination, admitted to not having observed the family moving in or living there consistently. MF could not recall specific details or give concrete examples of interactions that would indicate actual residency. MF also indicated that he travelled a fair bit and was not always there.

3. Renovations and Use of the Property:

    i. The Arbitrator noted that the Petitioner gave few details about the scope and timeline of the renovations, despite claiming to have done significant work on the unit.

ii. The Petitioner described the renovations as “minor” during the hearing, which was inconsistent with his previous emails describing major renovations.

iii. The Petitioner’s evidence regarding the Property's use was also contradictory. During his testimony, the Petitioner stated his family was fine living at the Property during the renovations, yet his emails suggested otherwise.

4. Address and Petition for Judicial Review:

i. The Arbitrator highlighted that the Petitioner used the Condo address in a judicial review petition filed in September 2023. This contradicted the Petitioner’s claim that the Property became his principal residence in December 2022.

ii. The Arbitrator also considered that registered mail sent to the Petitioner at the Property was returned as unclaimed, further undermining his claim of residency.

5. Lack of Corroborating Evidence:

i. The Arbitrator pointed out that the Petitioner provided only three months of utility bills and no other supporting evidence, such as tenancy agreements, additional utility bills, or photographs of the inside of the Property or suite, to corroborate his claim that he and his family lived at the Property.

[39] Based on the inconsistent and insufficient evidence, the Arbitrator concluded that the Petitioner did not prove that he had occupied the Property within a reasonable time and for at least six months, as required.

Analysis

[40] I turn my attention now to considering the three arguments put forward by the Petitioner.

Do the reasons for the Decision reflect a misapprehension of the facts thereby rendering the Decision patently unreasonable?

[41] The Petitioner maintains that the Decision is patently unreasonable because the Arbitrator misapprehended the facts related to his address of service, and the witness testimony of MF.

Address for Service

[42] The Petitioner argues that the Decision of the Arbitrator misapprehended the facts by placing weight on an address for service that was provided in a separate proceeding.

[43] On September 11, 2023, the Petitioner filed a petition in a separate proceeding that was related to the same parties. The Petitioner's Condo, not the Property, was listed as the Petitioner's address for service. The Arbitrator was not deciding upon the merits of the September 2023 petition, but this petition was placed in evidence.

[44] Upon review, the Arbitrator concluded that the Petitioner's use of his Condo's address for service created an inconsistency in the Petitioner's evidence.

[45] The Petitioner asserts that an address for service is provided for purposes of serving legal documents and is often a lawyer's or a business office's address. An address for service is not synonymous with a person's home address. Therefore, the Petitioner argues that the Arbitrator misapprehended the facts when he expected consistency between an address for service in separate proceedings and his home address in these proceedings, and that the Arbitrator was wrong to put any weight on this discrepancy.

[46] In response, the Respondents argue that the Arbitrator's consideration that the Petitioner used his Condo's address, rather than the Property's address, for legal service was appropriate as it was a relevant piece of evidence. They argue that the service address contradicts the Petitioner's claim of having moved into the Property. Further, they argue the Petitioner's email, dated November 30, 2022, stated that he had not received the mail as he was not yet residing at the Property due to ongoing

renovations. The Respondents argue that this further undermines the Petitioners argument that the Arbitrator misapprehended the evidence.

Witness Testimony

[47] The Petitioner argues that the Arbitrator's summary of MF's testimony is not supported by the transcript of the hearing and that the Arbitrator therefore misapprehended the evidence.

[48] The Petitioner relies upon the transcript to suggest that MF testified that he saw the Petitioner and his family when he was in town, four to five days a week, and that he did not hear any construction noises.

[49] In response, the Respondents argue that the Arbitrator correctly stated that the witness could not provide specific details about the Petitioner's presence or interactions at the rental unit, and therefore, the testimony did not support the Petitioner's claims. Further, the Respondents argue that the Arbitrator's assessment of witness credibility and the weight given to MF's testimony were reasonable.

[50] I reviewed the testimony. I find that MF stated that he was out of town for four to five days at a time. Nonetheless, I find that his testimonial evidence on its own is not determinative of whether the Petitioner occupied the Property.

[51] A decision is patently unreasonable if it is based on a clear misapprehension of the evidence or if the decision failed to consider relevant evidence, leading to an unreasonable conclusion. The case law also suggests that a decision is patently unreasonable if it is based entirely on irrelevant factors or if it misinterprets crucial evidence.

[52] The Arbitrator noted that the Petitioner provided conflicting timelines. For example, the Petitioner claimed to have moved into the Property at one time, but the renovations were not actually completed until another. The Petitioner's failure to provide credible evidence, such as photographs or detailed records of the family's occupancy, also supports the Arbitrator's findings.

[53] I find that the Arbitrator's decision was based on relevant factors such as the Petitioner's credibility and the lack of proof of actual occupancy. Thus, I find that the Petitioner's claim of misapprehension of facts does not meet the stringent standard required for a finding of patent unreasonableness.

Is the Decision patently unreasonable because it was not supported by the facts?

[54] The Petitioner contends that the Decision is patently unreasonable because it is based on findings of fact unsupported by the evidence. The Petitioner also claims that the Arbitrator ignored or failed to consider relevant evidence.

[55] It is the Petitioner's position that there was no evidence before the tribunal which showed that the Petitioner undertook substantial renovations after the Respondents moved out of the Property. The Petitioner admits that text messages show that multiple contractors came to the rental unit before the Respondents moved out. However, the Petitioner argues that there was no evidence presented to the tribunal of renovations occurring after the move-out.

[56] The Arbitrator acknowledged that the Petitioner described the renovations as "minor" during the hearing, however the Arbitrator chose to put more weight on the email of the Petitioner, dated January 28, 2023. The Petitioner argues that this was an error.

[57] The Petitioner submits that his neighbour's evidence confirms the position that there was no major renovation. He further submits that there was no corroborating evidence before the Arbitrator that could reasonably have indicated major renovations.

[58] In response, the Respondents argue that while the Petitioner described the renovations as "minor" during the hearing, this contradicted the Petitioner's email where he described a "major reno." Text messages and contractor visits prior to the end of the tenancy also indicated that significant work would be done, yet the Petitioner provided minimal details about the work and did not submit any photographs or evidence of the renovations or clear evidence of his family residing in the rental unit.

[59] While the Petitioner focused on the scale of the renovations, I find that whether or not the renovations are classified as “major” or “minor” is of less importance than the fact that the Petitioner stated that he had not moved into the Property and the fact that the Petitioner was not at the Property to receive registered mail. The reason for not moving in does not matter unless the Petitioner submitted that there were extenuating circumstances, which he did not. The Arbitrator was entitled to consider all the evidence before him, not just the evidence related to the scope of the renovations.

[60] For the Decision to be overturned on the ground of it lacking factual support, it must be shown that there was no evidence to justify the conclusions reached. That is not the case here.

[61] In this case, the Arbitrator found that the Petitioner provided insufficient evidence of when the Petitioner moved into the Property or how he occupied it. Evidence of occupancy could have been proven through photos, financial documents, or reliable witness testimony.

[62] The Arbitrator considered the Petitioner’s email where he stated that he would not be moving into the unit until at least March. The Arbitrator also detailed the inconsistencies in the Petitioner’s evidence, which were relevant to the Petitioner’s credibility. Examples of inconsistencies include shifting timelines and contradictory statements about residency. These are the type of facts that the Arbitrator was required to assess and did so.

[63] I find that the Arbitrator’s findings were supported by the testimony and evidence of the Respondents and the absence of corroborative residency evidence from the Petitioner.

Is the Decision patently unreasonable because the Arbitrator applied the wrong legal test?

[64] In the Decision, the Arbitrator wrote, “I do not find the Petitioner to have proven that more likely than not, the stated purpose of the Two Month Notice was accomplished within a reasonable period and that the rental unit has been used for the stated purpose for at least 6 months.”

[65] The Petitioner argues that the Arbitrator applied a standard that was beyond what was required by the *RTA*. The Petitioner suggests that the test is “occupy”, not when the Petitioner moved into the unit or when actual residence occurred move-in. Section 49(3) of the *RTA* reads as follows:

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

[66] The landlord, in this case the Petitioner, must occupy the unit within a reasonable time pursuant to section 51(2) of the *RTA*, which reads as follows:

> (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.

[67] In the context of this case, the Petitioner stated in the Notice that he intended to move into the Property with his family due to his son's health issues and because the family needed more space. In this context, the Arbitrator was required to determine whether the Petitioner’s stated purpose in the Notice was accomplished.

[68] The cases relied upon by the Petitioner involve situations where landlords ended tenancies for reasons such as using the unit as a secondary residence, vacation home, or office space. These cases are distinguishable because, in such cases, the intended use is inherently more transient. These reasons were also not the stated purpose which the Petitioner set out in his Notice.

[69] In the Notice, the Petitioner explicitly stated that he intended to move into the Property with his family due to health and space needs. This claim warrants a different approach than that used in the Petitioner's case law. In this case, his purpose for moving into the Property was for the Property to be their family residence, and this is clearly aligned with residential use.

[70] The distinction from cases involving occupancy for secondary or non-residential use underscores that the issue is not merely what the stated intent was, but also whether that stated intent was carried out. The Arbitrator was therefore required to focus on whether the Petitioner's stated intent was fulfilled.

[71] Here, the Petitioner stated his intention was to "move in" to the Property. He then failed to do so. The Arbitrator was therefore justified in referencing him "moving in." Consequently, based on the facts of this case, I do not find that the Arbitrator applied the wrong legal test.

Is the Decision patently unreasonable because of the cumulative effect of the Arbitrator's errors?

[72] The Petitioner concedes that any single reason may not suffice to show patent unreasonableness but argues that the cumulative effect of all three alleged errors renders the decision patently unreasonable. Consequently, I considered the totality of the evidence to determine if the cumulative effect of the Arbitrator's alleged shortcomings make the Decision patently unreasonable.

[73] Upon review, I note that there is a great deal of evidence available to the Arbitrator. In *Vavilov*, at para. 128, the Supreme Court of Canada emphasized that while decision-makers are not required to address every possible nuance, failing to consider a key element that could change the outcome is deemed indefensible and unreasonable. As a reviewing court, I reviewed the Decision to ensure that the Arbitrator's reasons adequately address the main issue or issues that needed to be decided.

[74] I considered all the Petitioner's arguments and the evidence that was available to the Arbitrator in rendering his decision. I was mindful of those facts that

the Petitioner challenged including whether the renovations were major or minor, what his neighbour MF witnessed, the subsequent renting out of the suite, or what address the Petitioner used to receive service. After careful examination, I find that even if the Arbitrator did err in the inferences he drew from these facts, there was still sufficient evidence available for the Arbitrator to assess whether the Petitioner occupied the Property in a reasonable time frame.

[75] Outside of the areas disputed by the Petitioner, there are significant inconsistencies that raise some doubt as to the Petitioner's version of events.

[76] As an example, I note that the Petitioner provided inconsistent timelines regarding when he and his family moved into the Property. Initially, he claimed that they occupied the Property in December 2022, but his email from January 2023 shows that he had not "moved in" and indicates that him and his family would not move in until at least March or April 2023 due to ongoing renovations. The Petitioner also admitted that he was not at the Property to receive mail.

[77] There is no other evidence before the court as to when the Petitioner actually occupied the Property as a primary residence. The Petitioner's failure to provide consistent, corroborative evidence of occupancy undermines his claim and supports the Arbitrator's finding that the Property was not occupied and used within a reasonable time for its stated purpose.

[78] After reviewing the evidence, I do not believe the Petitioner was dishonest or acted in bad faith when he issued the Notice. I am convinced that he fully intended to move his family into the Property, as he explained in his email to the Respondents dated January 28, 2023.

[79] The Petitioner's intention to relocate his family is further supported by evidence showing that he is now living in the Property with his family. However, it is also evident that the second suite on the Property which he stated he needed is either being rented to or occupied by someone else.

[80] Concerning the second suite, I am unsure of the exact date when the Petitioner and his family moved into the Property. As a result, I cannot determine when the required six-month occupancy period began. This makes it unclear whether the suite was occupied by the Petitioner for the full six months before it was re-rented, or if the rental of the second suite conflicts with the Petitioner's stated intentions.

[81] Nonetheless, based on the Petitioner's January 28, 2023, email, I believe he was making an honest effort to cooperate with the Respondents. He did not appear to be hiding anything, and his admissions were forthcoming. I find little turns on whether the renovations were major or minor. He was taking the time to prepare the Property for his family to move into and live in.

[82] As I mentioned in court during the proceedings and stated in *Shigani v. Taylor*, 2024 BCSC 979 at paras. 63 and 90, determining whether a landlord acted in good or bad faith is not, by itself, a requirement or factor that will determine compensation under s. 51 of the *RTA*. Simply put, if the elements of s. 51(2) are not satisfied, the tenant is entitled to compensation in the amount of 12 months' rent.

[83] I find that it was the timeline of the Petitioner's move into the Property that was the decisive issue in this case. The inconsistency in the Petitioner's story reasonably raised concerns for the Arbitrator. The Arbitrator concluded that the Petitioner had not moved into or occupied the Property with his family within a reasonable time, as he had stated he intended to do.

[84] It may be that in doing the renovations, the Petitioner encountered problems with available time to complete them or encountered financing challenges that interfered with his ability to finish the project as planned. While I can speculate about extenuating circumstances that delayed the Petitioner's ability to occupy the Property, these were not argued. I specifically asked during submissions if there were any facts available on the record that suggested such extenuating circumstances existed and might not have been considered. Counsel for the

Petitioner stated that there were not and reiterated that it is the Petitioner's position that he took "occupancy" of the Property in December 2022.

[85] As explained above, the test for "patent unreasonableness" is particularly stringent. It requires the reviewing court to show deference to the decision-maker, and a decision can only be overturned if it is clearly irrational or evidently not in accordance with reason.

[86] I find that the Arbitrator carefully evaluated the Petitioner's testimony, documentary evidence (or lack thereof), and witness statements. The Decision highlighted several inconsistencies in the Petitioner's narrative, such as conflicting timelines regarding when the family moved in and descriptions of renovations that were inconsistent with the stated purpose of immediate occupancy.

[87] Although it is true that the Arbitrator preferred some evidence over other evidence, the Decision is not patently unreasonable simply because the Arbitrator was more persuaded by the evidence that goes against the Petitioner's position. The Arbitrator's methodical evaluation of the evidence demonstrates that the decision was not arbitrary or capricious.

[88] It was clear from the facts before the Arbitrator that neither the Petitioner, nor any of his family members moved into the Property within a reasonable time. As mentioned above, in his submissions before the court, the Petitioner did not argue extenuating circumstances, but rather maintained that he did in fact "occupy" the Property effective December 2022.

[89] In summary, under s. 49(3) *RTA*, a landlord can end a tenancy if they or a close family member intend, in good faith, to occupy the rental unit. The companion provision, s. 51(2), requires the landlord to compensate the tenant with 12 months' rent if the landlord does not fulfill this stated purpose within a reasonable period or does not occupy the unit for at least six months.

[90] After considering all the evidence and the submissions of counsel, I find that the Decision was well within the range of reasonable outcomes given the evidence

and the applicable legal principles. The Arbitrator provided clear reasons, considered all relevant evidence, and applied the correct legal test. According to the case law on patently unreasonable decisions, the Arbitrator's Decision does not meet the high threshold for judicial intervention because it is neither clearly irrational nor absurd.

Conclusion

[91] The petition for judicial review is dismissed.

[92] Given the outcome of the decision on the merits of the case, it is unnecessary to address the Respondent's argument regarding the sufficiency of the Petitioner's Notice of Application. Since the primary issues have been resolved and are dispositive of the Petition, the arguments concerning procedural deficiencies in the Notice of Application do not impact the final determination and therefore will not be considered further.

[93] Accordingly, I revoke the Verhoeven Order, effective immediately.

[94] I reserve the issue of costs. The issue of costs will be considered at a later date, following submissions in writing within 21 days by the parties.

"Sukstorf J."