
CANADA / JUDGMENT

Campbell v. McInnes

2017 BCSC 1134

COURT

Supreme Court of British Columbia

DECIDED

4 July 2017

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2017 BCSC 1134 Campbell v. McInnes

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Campbell v. McInnes,

2017 BCSC 1134

Date: 20170704

Docket: S77795

Registry: Nanaimo

Between:

Ronald Campbell

Karla Campbell

Petitioners

And

Matt McInnes

Tara McInnes

Respondents

Corrected Judgment: The text of the judgment was corrected at pages 2, 3 and 5 on October 16, 2017.

Before: The Honourable Mr. Justice Baird

On judicial review from: An order of the Residential Tenancy Branch, dated December 10, 2015 (Residential Tenancy Branch File No. 836807).

Reasons for Judgment

The Petitioners in person:

R. Campbell

K. Campbell

Respondent M. McInnes in person:

M. McInnes

(by telephone)

Place and Date of Hearing:

Nanaimo, B.C.

June 20, 2017

Place and Date of Judgment:

Nanaimo, B.C.

July 4, 2017

INTRODUCTION

- [1] The petitioners seek judicial review of a December 10, 2015 Residential Tenancy Branch ("RTB") arbitral decision rendered by Mr. J. Ceraldi respecting two claims, the first by the respondents under s. 38(6)(b) of the Residential Tenancy Act, S.B.C. 2002, c. 78 ("RTA") seeking double their security and pet damage deposit, and the second by the petitioners under s. 67 of the RTA for damage or loss to their property allegedly caused by the respondents.

BACKGROUND

- [2] The petitioners own a residential dwelling house in Coldstream, B.C. which they rented to the respondents for a term beginning on May 1, 2014 and ending on May 31, 2015. The respondents needed a place to stay because their permanent residence in nearby Vernon was in the midst of renovation and repair. The respondents have two young children and, when the tenancy began, they had two dogs and two cats.
- [3] All of this was disclosed to the petitioners. At first they declined to rent the place to the respondents because they did not want pets on site. There was a form of negotiation between the parties on this issue, apparently, and eventually the petitioners relented subject to conditions that they spelled out in reasonably clear terms to protect their interests in a type-written addendum to the parties' standard form rental agreement. In brief terms, the addendum stipulated that the respondents were to be responsible for any damage caused by their pets, and they were forbidden from acquiring any additional pets during their tenancy.

- [4] At the end of the tenancy, the respondents filed a dispute with the RTB claiming double the amount of their security and pet damage deposit under s. 38(6) of the RTA, as they had provided the petitioners with their forwarding address and 15 days had elapsed since the end of the tenancy without the petitioners filing a dispute: see s. 38(1). It was only on June 23, 2015 that the petitioners filed a separate dispute under s. 67 of the RTA claiming compensation for damage or loss allegedly caused to the property by the respondents' cats, specifically that carpets within the residence had been heavily damaged by cat urine during the tenancy.
- [5] These disputes were heard at the same time by the arbitrator, Mr. Ceraldi. He allowed the respondents' dispute and ordered the petitioners to pay them \$5,800, being double the amount of the damage and pet deposit plus a \$100 filing fee. He dismissed the petitioners' claim for damage or loss saying, essentially, that the evidence failed to establish that the damage in question had been caused by the respondents' pets and, in any event, that the carpets in question were 10 years old and therefore, according to RTB guidelines, the petitioners were not entitled to any compensation.
- [6] The petitioners applied under s. 79 of the RTA for a review of the arbitrator's decision. Under s. 79(2), however, the grounds of review are limited to situations in which a party was unable to attend the hearing for reasons beyond his or her control, where a party establishes that there is new and relevant evidence that was not available at the time of the original hearing, or where a party has proof that the arbitrator's decision was obtained by fraud. The review arbitrator decided that none of these grounds had been established and this decision was not challenged before me.
- [7] The grounds for the present petition relate to Mr. Ceraldi's original decision, the substance of which could not be dealt with on internal review because of the restrictive scope of s. 79(2). The original underlying decision of the RTB is an appropriate subject of judicial review: *Martin v. Bennett*, 2015 BCSC 426 at paras. 15-25. The petitioners say that Mr. Ceraldi's ruling on their dispute was patently unreasonable and procedurally unfair. For the reasons that follow, I agree with them.

DISCUSSION

- [8] By virtue of s. 78.1 of the RTA and s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 ("ATA"), the decision of a RTB arbitrator should not be disturbed unless it is patently unreasonable: *Yee v. Montie*, 2016 BCCA 256 at para. 19.
- [9] The patently unreasonable standard is at the high end of the deference spectrum. A decision is patently unreasonable if it is openly, clearly, and evidently unreasonable: *Manz v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2009 BCCA 92 at para. 39. The same may be said if a decision is so flawed that no amount of curial deference can justify letting it stand: *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52; *Pacific Newspaper Group Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2014

BCCA 496 at para. 39.

- [10] According to s. 58(2) of the ATA, which applies by virtue of s. 78.1 of the RTA, questions of procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly. In *Kikals v. British Columbia (Residential Tenancy Act, Dispute Resolution Officers)*, 2009 BCSC 1642, the court observed that in respect of proceedings before dispute resolution officers under the RTA:
- [37] It should be understood that in a system as stripped of the usual guarantees of due process as this, with no record, hearings by telephone, and lay participants appearing without assistance or advice, extra care must be taken to ensure fairness and the appearance of fairness
- [11] I have concluded that Mr. Ceraldi's decision is materially flawed and must be set aside. He seems either to have misapprehended the petitioners' evidence more or less in its entirety or completely ignored it. His finding that the petitioners failed to establish that the respondents' cats caused the damage alleged, for example, totally overlooked a considerable body of evidence martialled by the petitioners suggesting precisely that, and if he considered and rejected that evidence he made no attempt to explain why.
- [12] Along the way, Mr. Ceraldi failed to make any reference to the testimony of the petitioners' caretaker, Mr. Proctor, who said that the carpets were in perfect condition before the respondents moved in and were heavily damaged by cat urine when they moved out, and confirmed the petitioners evidence that, in violation of the addendum terms in the tenancy contract, the respondents purchased another dog and brought a guinea pig to live in the house. Mr. Proctor told Mr. Ceraldi at arbitration that the respondents' pets had the run of the house and that there was urine damage throughout the place because of it, but there was no mention of this in the decision or any reason given for rejecting Mr. Proctor's testimony.
- [13] Mr. Ceraldi concluded, essentially, that the petitioners had rented to a young family with pets, and must therefore be taken to have accepted the risk of enhanced wear and tear. This completely ignores the addendum to the tenancy agreement, in which the petitioners took care to spell out their concerns about pet damage and to make it explicit that the respondents had a duty to control their dogs and cats and would be held responsible for any damage they caused.
- [14] Mr. Ceraldi's contention that the petitioners did not bring to the respondents' attention any major concerns about the carpets at the end of the tenancy flies in the face of the evidence. The parties discussed urine damage on May 30, 2015, the day before the respondents moved out. By that time the carpets had been professionally cleaned by a man called Otto, of Pristine Carpet Cleaning Services Ltd., who wrote directly on his invoice -- which was included in the package of evidence given to Mr. Ceraldi -- that the carpets, both upstairs and downstairs, were liberally stained with cat urine that he had not been able to get out.

- [15] At the time of the meeting on May 30, 2015, the only concern expressed by the petitioners was about the carpeting near the main entrance to the house, but it is clear on the evidence that the problem was known to be more widespread than that. There can be no doubt, based on all of the evidence, that the problem of pet urine damage had arisen squarely and prominently at the end of the respondents' tenancy and the necessity of action and remediation was under active consideration at move-out.
- [16] The record before Mr. Ceraldi included email correspondence in early June between the parties giving the respondents clear notice that further inspection had revealed extensive cat urine damage in various parts of the house and that a dispute was brewing concerning the extent of the loss or damage occasioned thereby. On June 11, 2015, for example, the petitioner sent an e-mail to the respondents as follows:
- As indicated on the invoice from Pristine Carpets there was cat urine stains upstairs and downstairs. Today Otto attended the house with [Mr. Proctor] to see if the urine came out but it is still in the carpets in particular the upstairs front foyer, in front of the patio doors, in both the bedrooms and dining room and all down the basement hallway and downstairs office.
- [17] There was other correspondence submitted to Mr. Ceraldi indicating that Otto the carpet cleaner came back twice after the respondents moved out and was unable to remove the staining and odour of cat urine despite his best efforts. Mr. Ceraldi could only have concluded that there was "no major concern about the carpet" if he failed to consider the evidence in its totality.
- [18] Mr. Ceraldi's factual finding, moreover, that the petitioners did not provide the respondents with a written condition inspection report when they moved out was wrong. Although this document was not exchanged and signed by both parties in accordance with s. 35 of the RTA when the parties met in person on May 30, 2015, nevertheless the petitioners completed such a report and left it for the respondents to sign before they moved out on May 31, 2015. When the respondents claimed not to have received the report the petitioners sent them a copy by email. The pet damage is clearly noted and identified in this report, which was included in the package of materials provided to Mr. Ceraldi and discussed during the hearing.
- [19] Mr. Ceraldi's assertion that according to RTB guidelines the petitioners' carpets had "exceeded their useful life and the landlord would not be entitled to any compensation for them in any event" was counterintuitive and wrong. The guidelines refer to the general proposition that carpets have a useful lifespan of 10 years, but the carpets in question were not 10 years old and Mr. Ceraldi had no plausible reason for thinking that they were. There was no evidentiary basis for his conclusion that the petitioners' carpets had no compensable value because of their age.
- [20] Finally, in dealing with the petitioners' claim that they lost rental income because of the time it took to replace the carpets, Mr. Ceraldi expressed the view that the delay was caused by the petitioners, who were slow in arranging remediation work to be done because by

then they were living on Salt Spring Island. The petitioners depose that they never said anything to this effect during the arbitration hearing, and, in any event, the evidence makes it abundantly clear that they were on site dealing with matters at the end of the respondents' tenancy or had Mr. Proctor doing so as their agent. Mr. Ceraldi also failed to refer to, or to give any reason for rejecting, the petitioners' evidence that time was required to get quotes for the job, identify a supplier, order the carpets, and wait for availability of installers.

- [21] On the procedural fairness front the petitioners' allege, and the respondents do not dispute, that Mr. Ceraldi prevented them from asking questions of the respondents concerning the accuracy and truthfulness of their evidence and refused them permission to respond to a supplementary submission that the respondent had filed a mere six days before the hearing. In my view, these were procedural flaws which cannot be overlooked in the name of deference.
- [22] To the contrary, it must always be borne in mind, especially nowadays when so many legal relationships are regulated and mediated by statutory boards and tribunals, that such bodies, including arbitrators under the RTA, are governed by the principles of natural justice. They are bound by a solemn obligation to discharge their functions fairly. Where there has been a breach of natural justice or a failure in the duty of fairness, a statutory body's decision is entitled to no deference and is rendered void: see, for example, *Neustadter v. Residential Tenancy Office et al.*, 2004 BCSC 381.
- [23] In my view, for the foregoing reasons, Mr. Ceraldi's decision is patently unreasonable and the petitioners were not dealt with fairly. In order for proper justice to be done between the parties there must be a rehearing of their dispute before another arbitrator. The decision in the respondents' dispute -- their claim, that is, for return of double their pet and damage deposit -- was not much referred to in oral argument, but in my view it should be set aside as well. I would do so on the basis that Mr. Ceraldi gave no consideration to the petitioners' argument that, in the circumstances, they should have been granted an extension, under s. 66 of the RTA, of the 15 day time limitation referred to in s. 38 for filing a dispute.

CONCLUSION

- [24] The petition is allowed, Mr. Ceraldi's decision is set aside, and both disputes are remitted to the RTB for a rehearing before another arbitrator.

"Baird J."

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