

CANADA / JUDGMENT

Eskandarzadeh v. Nate

2025 BCSC 1236

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1236 Eskandarzadeh v. Nate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Eskandarzadeh v. Nate,

2025 BCSC 1236

Date: 20250604

Docket: S245474

Registry: Vancouver

Between:

Bahareh Eskandarzadeh

Petitioner

And:

Bahar Nate

Respondent

Before: The Honourable Justice Giltrow

On judicial review from: The decision of Arbitrator N. Smith,

Residential Tenancy Branch, dated July 3, 2024

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

A. Ehteshami

Counsel for the Respondent:

S. Saran

Place and Date of Hearing:

Vancouver, B.C.

June 2, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 4, 2025

- [1] THE COURT: In this petition for judicial review of an arbitrator's decision under the Residential Tenancy Act, S.B.C. 2002, c.78 [Act] the petitioners, (I refer to them in the plural in these oral reasons for judgment as the petitioner was representing the interest of both himself and his wife), ask the Court to set aside the arbitrator's decision awarding the tenant respondent compensation under s. 51 of the Act for failing to accomplish the purpose for which the tenancy was terminated. The petitioners say that the decision should be set aside for any of three reasons:
- a) The arbitrator's decision was procedurally unfair.
 - b) The arbitrator's decision was patently unreasonable, either
 - i. in determining whether the purpose was achieved within a reasonable time as required by the Act or
 - ii. in failing to consider extenuating circumstances despite evidence of such circumstances.
- [2] They say that if they are successful in setting aside the arbitrator's decision, this is a case in which it is appropriate for this Court to exercise its jurisdiction to substitute the Court's decision for the arbitrator's decision rather than sending it back to the director for a fresh hearing. In the alternative, they ask that the matter be sent back to the director for a hearing de novo.
- [3] The petitioners were purchasers of the property, and asked the landlord to end the existing tenancy because they intended to occupy the house. The landlord delivered the notice to the respondent September 21, 2023, for an end of tenancy November 30, 2023. The petitioners ultimately moved into the house February 25, 2024.

Standard of Review

[4] There is no dispute between the parties that the questions before the Court are to be reviewed on the standard of review established under s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 [ATA] and pursuant to s. 5.1 of the Act. Section 58 of the ATA states:

58(1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.

- (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
- (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
 - (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
 - (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
- (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
- (a) is exercised arbitrarily or in bad faith,
 - (b) is exercised for an improper purpose,
 - (c) is based entirely or predominantly on irrelevant factors, or
 - (d) fails to take statutory requirements into account.
- [5] In *Yee v. Montie*, 2016 BCCA 256, our Court of Appeal discussed the patent unreasonableness standard of review in the context of judicial review of an RTB decision:
- [21] The ATA does not define patent unreasonableness as the term applies to questions of fact or law. In *Manz v. Sundher*, 2009 BCCA 92, at para. 39, Saunders J.A. adopted the meaning of the phrase in relation to factual matters from *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80:
- [37] As the chambers judge noted, a decision is not patently unreasonable because the evidence is insufficient. It is not for the court on judicial review, or for this Court on appeal, to second guess the conclusions drawn from the evidence considered by the Appeal Division and substitute different findings of fact or inferences drawn from those facts. A court on review or appeal cannot reweigh the evidence. Only if there is no evidence to support the findings, or the decision is "openly, clearly, evidently unreasonable", can it be said to be patently unreasonable. That is not the case here.

- [22] In *Pacific Newspaper Group Inc. v. Communications, Energy and Paperworkers Union of Canada*, Local 2000, 2014 BCCA 496, at paras. 39-44, this Court affirmed that the standard of patent unreasonableness is at the high end of the deference spectrum, and endorsed this description of the phrase from *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, at para. 52:

a patently unreasonable defect, once identified, can be explained simply and easily, leaving no real possibility of doubting that the decision is defective. A patently unreasonable decision has been described as "clearly irrational" or "evidently not in accordance with reason". A decision that is patently unreasonable is so flawed that no amount of curial deference can justify letting it stand.

[Emphasis added.]

Extenuating Circumstances

- [6] The arbitrator refused to admit or consider the documentary evidence submitted to the RTB by the petitioners because it was not served by the petitioners on the tenant respondent. I will return to this in dealing with the petitioners' argument on procedural fairness. For now, it is relevant to say only that the arbitrator did receive viva voce testimony from the petitioners, including evidence on the nature of the repairs that were effected and their circumstances after the tenant moved out.

- [7] Both parties agree that in this case, it is appropriate for the Court to consider the transcript of the proceedings before the arbitrator. In their decision at page 8, the arbitrator said:

The landlord did not provide submissions that they encountered extenuating circumstances that prevented them from doing the stated purpose. I find the landlord had decision-making authority and conducted the renovations under their own control.

- [8] I find the arbitrator's statement on this point ambiguous. It can either mean the arbitrator received no evidence or submissions at all that were relevant to the subject of extenuating circumstances, or that the arbitrator held that evidence that demonstrated the petitioners retained decision-making authority and control over renovations was not, or could not be, also evidence of extenuating circumstances.
- [9] Ambiguity itself does not make a decision patently unreasonable. However, in my view both of the two possible meanings in the arbitrator's conclusion on this point are patently unreasonable. The first is patently unreasonable because the arbitrator plainly on the face of the record did receive evidence and submissions on extenuating circumstances. This is set out in pages 212-227 of the transcript.
- [10] Indeed, the arbitrator recited this evidence at page 6 of their decision, including that a new roof was installed, active leaks in the master bedroom and garage were addressed, a plumber was brought in to examine the leaks, suspected asbestos, and a demolition company came to remove the drywall in the bedroom ceiling and walls. Another company

came to replace the drywall that had been removed with the asbestos. A pipe needed repair and water was shut off for a period, although the arbitrator does not mention that. The shutoff was done by the city, and that repair was completed in January 2024. The petitioners ordered new windows for the house in November 2023, they were installed in February 23, 2024, and the petitioners moved in two days later.

- [11] The second possible meaning of the arbitrator's finding at page 8 is that evidence must demonstrate that the owner was not in a position of decision-making authority or control over the renovations for the evidence to be relevant to the question of extenuating circumstances. I have been provided with no authority in support of that proposition. Nor do I find that the principles of statutory interpretation support such a narrowing of the plain language of the statute.
- [12] I recite here the relevant statutory provisions at issue, ss. 51(2)(a) and (3) of the Act:

Tenant's compensation: Section 49 notice

51(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;
- (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.

- [13] Nothing in the language of the statute requires that the relevant extenuating circumstances under s. 51(3) must remove all decision-making authority or control over the work on the property from the owner of the property or the landlord or the purchaser. This would seem to envision only a circumstance where a regulatory authority has issued a stop-work order over repairs, and the authority to continue repairs has been removed, at least temporarily, from the owner.
- [14] If the legislature had intended that extenuating circumstances were to apply only in that narrow set of circumstances, it could have said so. Instead, "extenuating circumstances" is not defined in the legislation and is to be considered on a case-by-case basis. In my view, its plain meaning would readily accommodate circumstances such as those in evidence before the arbitrator: where an initial repair has begun, further serious issues are revealed, such as the unexpected need to remove asbestos, and repairs extend beyond an initially estimated period.
- [15] Indeed, the RTB policy manual contemplates that this is not an uncommon scenario once repairs or renovations have begun, and flexibility should be incorporated into the assessment of whether a stated purpose for ending tenancy has been accomplished. To refuse to consider these as extenuating circumstances without explaining why, other than the arbitrator's comments about decision-making authority and control, which are not limitations based on the statute, is patently unreasonable. Without explanation by the arbitrator as to why the petitioners' loss of decision-making authority and control was necessary to establish extenuating circumstances, I am left to conclude that this determination was made predominantly on these irrelevant factors, and that is patently unreasonable, with reference to s. 58(3)(c) of the ATA.
- [16] The only authority to which I have been directed on the interpretation of extenuating circumstances under the Act supports the proposition that the petitioners have advanced that they met extenuating circumstances when they were faced with evidence of an unforeseen scope of renovations, difficulties getting tradespeople to complete the work, and even intervening action by a city authority. This was the case here, as it was in *Furtado v. Maasanen*, 2020 BCSC 1340, where Justice Murray said it was:
- [34]... incumbent on the arbitrator to consider whether the evidence constituted extenuating circumstances that prevented the petitioners from occupying the suite earlier, and if so, whether those circumstances would make it unreasonable and unjust to order the petitioners to pay compensation to the respondents.
- [35] The arbitrator not only failed to consider the evidence of extenuating circumstances as mandated by the RTA, the arbitrator completely removed the consideration of same out of the analysis by inaccurately paraphrasing the sections of the RTA.
- [17] The latter does not apply here. In *Furtado*, Murray J. was satisfied that the arbitrator erred as a result of both of those factors and that the decision is unsupportable in both fact and law.

[18] I agree with Murray J. that, as she put it in Furtado:

[32] In my view, the plain reading of s. 51(2) is that if evidence of extenuating circumstances is presented, the adjudicator must consider it to determine whether those circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the Notice, the stated purpose for ending the tenancy.

[Emphasis added.]

[19] In the case before me, the arbitrator refused to consider the evidence before them in relation to whether there were 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. This was patently unreasonable.

[20] In my view, not only was it incumbent upon the arbitrator to consider whether the evidence constituted extenuating circumstances, the evidence was also capable of establishing the preceding stage in the analysis the arbitrator was obligated to consider: that the period of time within which the petitioners did occupy the home was "a reasonable period after the effective date of the notice" (s. 51(2)(a)).

Reasonable Time Under ss. 49 and 49.2

[21] This relates to the second point upon which I find the arbitrator's decision was patently unreasonable: the arbitrator's determination that the petitioners had not accomplished the purpose within a reasonable time under s. 51(2)(a) of the Act.

[22] Assessment of reasonable time is a discretionary determination that will require the arbitrator to exercise their judgment on the facts before them in each case. However, in this case, the arbitrator appears to have accepted the respondent's argument that the petitioners "issued the wrong notice to the tenants instead of the two-month notice to the landlord [the petitioner] should have applied for an order to end the tenancy because they needed to do renovations or repairs to the rental unit. The renovations conducted were extensive" (Decision at page 6).

[23] The arbitrator then held at page 5:

I find that the Landlord's renovations were not small and did not take a short amount of time to complete. The Landlord was alerted to problems in the house by the home inspection, but the Landlord cannot substitute another purpose, e.g. renovations or repairs, even if this other purpose would also have provided a valid reason for ending the tenancy, e.g. seeking an order of possession to do renovations or repairs.

I find the Landlord did not accomplish the stated purpose within a reasonable amount of time after the effective date of the Two Month Notice.

- [24] I understand in this passage that the arbitrator is referring to s. 49(2) of the Act. This is a section that counsel for the respondent advises they argued properly applied before the arbitrator. There is no suggestion that s. 49(6) (which addresses demolition) is at issue in this case.
- [25] The respondent argues that the arbitrator appropriately determined that the petitioners had undertaken a "full-blown renovation," as counsel for the respondent put it to the arbitrator at the hearing, and therefore had not achieved the purpose for which the tenancy had ended within a reasonable time. The gravamen of what the petitioners did wrong, the respondent says, is that they issued the "wrong notice"--they should have issued a notice under s. 49.2 of the Act. The prejudice the respondent suffered, her counsel says, is that in that case she would have had four months' notice to end the tenancy and not two.
- [26] First, I do not read s. 49.2 as having been available to the petitioners, as they were purchasers, not landlords. That section does not contemplate notice to end tenancy being provided on behalf of purchasers; only s. 49(5) does, which is the provision that the petitioners relied upon. While the arbitrator's reasons are not clear on this point, it appears the arbitrator was of the view that the petitioners should have issued a notice under s. 49.2, which was not a section available to them as purchasers. This conclusion is patently unreasonable in itself.
- [27] More importantly, I do not read s. 49(5), under which the notice to end tenancy on the petitioners' behalf was issued, as limiting or prohibiting the petitioners' right to undertake a "full-blown renovation", if that is what they did, which I do not, and need not, find. It appears to have been uncontroversial at the hearing that the petitioners were permitted to do some physical work on the house before they occupied it. The arbitrator appears to accept or assume that, as I read the reasons, when they assess whether the renovations were "small" (at page 5).
- [28] The respondent has been unable to point me to any legal principle in the statute or case law that establishes that at some point, the physical work before occupancy becomes "too much", thereby inherently characterizing the delay before occupancy as "unreasonable". More importantly, the arbitrator's reasons provide no explanation or rationale.
- [29] This is all the more confounding when the arbitrator had before them evidence that explained how an anticipated repair (the leak) led to unanticipated repairs (the removal of asbestos) as well as the difficulty of getting tradespeople to complete such repairs over the winter holidays. The arbitrator also had evidence that the furnace and main water pipe broke due to winter freezing, requiring the city to shut off the water supply to the property temporarily. Then, as soon as the further originally-anticipated repair of window replacements (to address the known mould issue) was completed, the petitioners moved in within a few days.

- [30] In my view, on a plain reading of the statute, there is nothing preventing a purchaser, that has had notice served on their behalf to tenants under s. 49(5), from undertaking physical works to prepare the property for their own occupation. I note the similarity between s. 49(3) and (5), and I note that in *Lu v. Marchand*, 2025 BCSC 834, Justice Wilson held that:
- [37] The Landlords are correct in pointing out that because they issued the Notice pursuant to s. 49 of the RTA, ss. 49.2 and 51.4 do not apply.
- [31] I take Wilson J.'s conclusion to be consistent with the conclusion I have drawn that, where notice is provided under s. 49, s. 49 governs and not s. 49.2, despite repairs following the end of tenancy. I have been shown no authority for the proposition that where the purpose is for the landlord or the purchaser to move into the house, they must serve notice under s. 49.2 and not s. 49(3) or (5), as the case may be.
- [32] To assume that some repairs are acceptable under s. 49 but more were not reasonable, without explanation and without reference to any guiding statutory provision, has an air, with respect, of arbitrariness. While the RTB's policy may provide examples of repairs and timelines as guidelines, appropriately, there was no suggestion by any party before me that the arbitrator is bound by RTB guidelines. As the Court of Appeal said in *Athwal v. Johnson*, 2023 BCCA 460:
- [74] The arbitrator's determination under s. 51 is inherently contextual. It would be an error of law for an arbitrator to fetter their discretion by simply relying on policy directions when considering an individual's case. The application of a rigid policy is insufficient.
- [33] It is essential that the arbitrator assess the facts before them and exercise their judgment and explain their reasons, at least sufficiently to allow understanding by the parties and meaningful review: *Middlegate Development Ltd. v. Acosta*, 2023 BCCA 459.
- [34] With respect, the arbitrator's reasons for dismissing the petitioner's "reasonable time" argument appears to rest on the premise that s. 49(5) permits no, or only some, physical works before occupation, and that anything further before occupation is a "change in purpose" under the statute such that termination of tenancy could only be effected under s. 49.2. In my view, quite aside from the fact that s. 49.2 is not available to purchasers, this is not a supportable interpretation of ss. 49 or 51 of the Act, and is patently unreasonable.

Purpose of s. 49 and s. 51 of the Act

- [35] On a plain reading of the text and context of s. 51, the Act is meant to prevent against wrongful evictions--that is, evictions for purposes other than those permitted under the Act. This was explained by Justice Lyster in *Van Walsh v. Morrell*, 2025 BCSC 386, where she said:
- [58] Section 51, the provision under which Mr. Van Walsh was seeking compensation, has what was described by Justice Elwood in *Mangat v. Dhindsa*, 2024 BCSC 2406, at para. 21, as a "protective purpose". It seeks to deter landlords from wrongfully evicting their tenants. It, and all of the provisions of the ATA, must be construed as being remedial, and must be

given such fair, large, and liberal construction and interpretation as best ensures the attainment of the Act's objects. The ATA seeks to balance the rights of landlords and tenants and, in doing so, grants tenants benefits to which they would not otherwise be entitled: *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, at paras. 11 and 27.

[Emphasis added.]

- [36] The Act places landlords under an obligation not to give notice to end a tenancy unless the relevant requirements or circumstances apply, or they have a reasonable belief that they do: s. 44.1. In this case, the relevant requirement or circumstance that had to exist at the time the notice was given was that the purchaser or close family member of the purchaser "intends in good faith to occupy the rental unit": s. 49(5).
- [37] Under the statute, at no point when the landlord ends the tenancy for purpose to occupy is there an obligation upon them to make known to the tenant (or anyone) how long they believe they need to reasonably be able to occupy the rental unit. There was no argument or suggestion before the arbitrator that the petitioners did not have the good-faith intent to occupy required for lawful termination of the tenancy. Nor was any challenge to the notice brought by the tenant under s. 49(8). Indeed, the petitioners and their children did occupy the home within three months of the effective end date of the tenancy.
- [38] There are two mechanisms under the Act under which compliance with s. 49 of the Act is enforced: a review of the notice under s. 49(8) when the notice is given, or after the tenant has vacated the property the tenant can bring an application under s. 51(2) compelling the landlord, or the purchaser as the case may be, to demonstrate they have accomplished the stated purpose for ending the tenancy within a reasonable period of time. "Reasonable period" is not defined in the Act. Instead, the assessment is made retrospectively by the tribunal, based upon the evidence, and in exercising the judgment and discretion of the arbitrator. The statutory guideposts are broad--"reasonable period" and "extenuating circumstances" meant to allow a fulsome assessment of the reasonableness and the particularities of the circumstances by the tribunal. Importantly, in my view, the Act does not enforce a specific timeline for landlords or purchasers to occupy units under s. 49, but rather, seeks to ensure the good-faith exercise of the right to end tenancies for certain reasons.
- [39] The purpose of the Act is not to make certain that purchasers move into their new homes within, for example, 6 rather than 10 weeks of possession. This would be arbitrary and unrelated to the purpose of the Act. The purpose is to ensure that purchasers do not end tenancies in bad faith, for example, so as to be able to rent their newly acquired property out at a higher rent than the previous owner did.

- [40] For this mechanism to work and to strike the balance the statute seeks to strike, it is imperative that arbitrators exercise their judgment and discretion in the circumstances to determine "reasonable period" and "extenuating circumstances" under s. 51. As I have explained, in my view in this case the arbitrator did not do so with respect to either assessment, and accordingly the decision is patently unreasonable and should be quashed.

Procedural Fairness

- [41] I will address briefly the procedural-fairness argument by saying only that given that I have found that the arbitrator's decision to be patently unreasonable, I need not consider the procedural-fairness arguments of the petitioners. However, I will say that the fact that the petitioners had not received the respondent's documents prior to the hearing was incontrovertibly contributed to by an error on the part of counsel for the respondent. Legal counsel had mailed the documents to the petitioners' address but addressed it to his own client, the respondent. The petitioners did not open it as a result.
- [42] These facts were in evidence and not controverted. In my view, the petitioners' decision not to open an envelope that was addressed to the name of opposing party at that party's former address and from the opposing party's own legal counsel is reasonable and, in fact, just what we would hope would happen so as to respect solicitor/client privilege. This, in my view, is more important than the fact that the respondent's documents were served two days late. It is more important that the petitioners had never seen the documents before the hearing due to a reasonable decision not to open the envelope they received because of an error that lay entirely at the feet of the respondent.
- [43] Due to errors by both parties, at the hearing neither party had the evidence upon which the other party sought to rely, and yet the arbitrator decided to proceed by admitting the documentary evidence of the respondent and refusing to admit the documentary evidence of the petitioners. I do understand the petitioners' sense that this was not procedurally fair. However, the arbitrator had discretion and decided to allow the petitioners to give viva voce evidence about the circumstances that affected when they ultimately moved into the property. The arbitrator did not reject any of this evidence for lack of documentary corroboration, nor make any negative credibility findings against the petitioners. I do not see that this ultimately led to procedural unfairness as there was no prejudice to the petitioners. The arbitrator accepted the viva voce evidence but found it did not demonstrate reasonable time and was not evidence of extenuating circumstances. I have found those determinations to be patently unreasonable and would quash the decision on that basis.

Settlement Agreement

[44] With respect to the settlement agreement, in light of my determination on the arbitrator's conclusions about reasonable time and extenuating circumstances, I need not address the petitioners' argument regarding a settlement agreement and the conditions under which the tenant vacated the home before November 30, 2023.

Remedy

[45] I turn now to the question of the petitioners' request that the Court substitute its own decision rather than remitting the matter. As a general rule, courts should respect the legislature's intention to entrust the matter to the administrative decision makers: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 142. However, as the Supreme Court of Canada recognized in *Vavilov*:

there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended: []. An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose: []. Elements like concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and the efficient use of public resources may also influence the exercise of a court's discretion to remit a matter, just as they may influence the exercise of its discretion to quash a decision that is flawed: [].

[46] In reviewing this Court's decision in *Maasanen v. Furtado*, 2023 BCCA 193, our Court of Appeal addressed the chambers judge's decision to decline to remit the matter to the director for reconsideration and instead substitute this Court's decision. The Court of Appeal said:

[26] I can see no error in the judge's conclusion that the arbitrator's decision is patently unreasonable. The obligation to consider the evidence is obvious; failing which the decision is plainly unsupportable in law. The arbitrator plainly failed to apply the law. I would not give effect to this ground of appeal.

[28] I turn now to the remedy. I accept the general proposition that, typically, in allowing a petition for judicial review and setting aside a decision, the conventional order is to remit the matter for reconsideration, perhaps limited to one issue. But, as is acknowledged and is common ground, what remedy to grant is a discretionary matter, albeit one to be exercised on a principled and judicial basis. The principles engaged in the exercise of discretion are well settled, and laid out in the cases, including *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 142; *Mobil Oil Canada Ltd. v.*

Canada-Newfoundland Offshore Petroleum Board, 1994 CanLII 114 (SCC), [1994] 1 S.C.R. 202, at 228-230; and MiningWatch Canada v. Canada (Fisheries and Oceans), 2010 SCC 2, at paras. 45-51.

- [29] Here, although the judge gave only cursory reasons to explain her exercise of discretion, I find that decision is supportable. The circumstances leading to the delay in occupation were incontrovertible. There is no reasonable argument that they were anything other than extenuating. This is precisely the kind of exceptional case identified in Vavilov that justifies a departure from the ordinary remedy of remitting the question for redetermination. The legislation cannot possibly have intended to capture this landlord on these facts. In my view, a reconsideration of the issue by an arbitrator could lead to only one result. Given the amounts in issue, the costs of the process, the risks of further judicial review proceedings in the light of the apparent bad blood between the parties, and the efficient use of public resources, the judge's decision not to remit the matter, but to make the decision, was a principled exercise of discretion, and not one calling for appellate intervention.
- [47] With these considerations in mind, I would exercise my discretion as Justice Murray did in Furtado, and substitute the Court's decision. In this case, not only have I concluded that the arbitrator's failure to consider evidence of extenuating circumstances was patently unreasonable, as was the case in Furtado, but so too was the arbitrator's interpretation of ss. 49 and 49.2 of the statute, which appears to have been the basis upon which the arbitrator determined that the petitioners had not established that they had occupied the property within a reasonable period of time.
- [48] In my view, applying the statutory provisions of the Act and considering the evidence of the petitioners can only lead to one ultimate result, which is absolving the petitioners of any obligation to pay compensation under s. 51 of the Act. This result derives either from determining that the petitioners occupied the property within a reasonable time, or extenuating circumstances exist such that they should be relieved of the obligation to pay compensation to the respondent. Either way, the ultimate result is inevitable.
- [49] Accordingly, I find that this is "precisely the kind of exceptional case identified in Vavilov, that justifies a departure from the ordinary remedy of remitting the question for a redetermination" as the Court of Appeal put it in Furtado, and I exercise my discretion not to remit the matter back to the director for reconsideration.
- [50] Given the uncontroverted evidence of the repairs required to ready the house for the petitioners and their children to live in it, and that they moved in February 25, 2024, two days after the physical work on the house was complete and less than three months after the effective date of the end of tenancy, I find that the petitioners accomplished the purpose for which the tenancy was ended within a reasonable period. I would accordingly dismiss the respondent's application for compensation under s. 51 of the Act.

[51] As to costs, in the circumstances of this case, I order that each party shall bear their own costs.

"Giltrow J."

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