

CANADA / JUDGMENT

Holojuch v. Residential Tenancy Branch

2020 BCSC 2217

COURT

Supreme Court of British Columbia

DECIDED

5 October 2020

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2020 BCSC 2217 Holojuch v. Residential Tenancy Branch IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Holojuch v. Residential Tenancy Branch, 2020 BCSC 2217 Date: 20201005 Docket: S208374 Registry: Vancouver In the Matter of the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241 Between: John Holojuch Petitioner And Residential Tenancy Branch, Southvan Foundation, False Creek Management (2006) Ltd., John Cartwright, Deputy Attorney General and Ministry of Attorney General Respondents Before: The Honourable Madam Justice Lyster On judicial review from: A decision of the Residential Tenancy Branch, dated July 21, 2020 (Holojuch v. SouthVan Foundation, File No. 910003595). Oral Reasons for Judgment (In Chambers) The Petitioner, appearing on his own behalf via teleconference: J. Holojuch Counsel for the Respondents, Southvan Foundation, John Cartwright, and Southvan Property Management Ltd., appearing via teleconference: A. Peng Place and Date of Trial/Hearing: Vancouver, B.C. October 5, 2020 Place and Date of Judgment: Vancouver, B.C. October 5, 2020

- [1] Since a transcript of these reasons was ordered, I have reviewed the transcript and made minor edits to ensure clarity and that the quotations from the decisions of the Residential Tenancy Branch were correctly transcribed. I have not altered or enlarged upon my analysis or meaning.
- [2] I have also amended the style of cause. The style of cause handwritten by Mr. Holojuch on his petition read as follows: "Landlord Southview Foundation - John Cartwright False Creek Management 881 Withrod St. New Westminster V3L 5NG, Residential Tenancy Branch 400 - 5021 Kingsway Burnaby BC V3L 4A5, Deputy Att. General, Ministry of ATG. PO Box 9290 Stn. Prov. Govt. Victoria BC V8W 9J7". I have amended it to remove the addresses and duplications contained in the original, but all parties named by Mr. Holojuch remain.
- [3] THE COURT: Mr. Holojuch applies --
- [4] JOHN HOLOJUCH: Yes.
- [5] THE COURT: -- for judicial review of a decision from the Residential Tenancy Branch dated July 21, 2020. There is a lengthy background to that decision. I understand from the submissions of Mr. Holojuch and Mr. Peng that Mr. Holojuch was evicted from his tenancy in or about February of 2018. He challenged that eviction before the Residential Tenancy

Branch ("RTB") and I understand that he was unsuccessful in overturning the eviction. I do not have the decision of the RTB in which the eviction was upheld, dated February 23, 2018, or the RTB's March 12, 2018, decision in which I am told Mr. Holojuch's application for review of the RTB's February 23, 2018 decision with respect to the eviction was dismissed.

[6] Mr. Holojuch was and continues to be very concerned about the circumstances surrounding that eviction and maintains that he was unjustly evicted. However, those are not the decisions that are before me for judicial review. The decision that is before me for judicial review is the much more recent RTB decision, dated July 21, 2020. The reasons for decision of Arbitrator Weitzel indicate that a hearing was convened in response to Mr. Holojuch's application for compensation. The decision indicates that the landlord did not attend the hearing. Mr. Holojuch stated that he served the landlord with his application for dispute resolution. However, the Arbitrator was unable to find that the tenant, Mr. Holojuch, in fact served the landlord with his application and notice of hearing as required under the Residential Tenancy Act, S.B.C. 2002, c. 78 [Act]. That is a finding of fact that was made by the Arbitrator in their decision.

[7] JOHN HOLOJUCH: [Indiscernible].

[8] THE COURT: I am speaking now, sir.

[9] JOHN HOLOJUCH: Okay.

[10] THE COURT: In Arbitrator Weitzel's decision, they therefore dismissed the claim with leave to reapply. They stated that leave to reapply is not an extension of any applicable limitation period, and the Arbitrator went on to encourage Mr. Holojuch to seek some advocacy assistance in terms of dealing with this matter.

[11] It appears that Mr. Holojuch then twice applied for a review of the July 21, 2020 decision. I have been able to locate the second of the two decisions from the RTB in respect of those applications for review. I have not been able to locate the first decision in the binder containing the application record. However, in the August 17, 2020, decision, Arbitrator Maddia wrote that on August 10, 2020, the tenant applied for a second review consideration of a decision issued on July 21, 2020. Arbitrator Maddia concluded that the issues before the original arbitrator in the July 21, 2020 decision related to a monetary claim and, as such, they found that the original decision allowed the applicant, Mr. Holojuch, 15 days to file their application for review. As that earlier decision had been rendered on July 21 and Mr. Holojuch made his application for review on August 10, Arbitrator Maddia found that the application for review consideration was not filed within the required timelines. Arbitrator Maddia also referred to the fact that Mr. Holojuch had submitted an earlier application for review on July 24 which was dismissed on July 31, 2020.

[12] As I say, I have not been able to locate the July 31, 2020 decision in the materials in the application record. However, Arbitrator Maddia in the August 10, 2020 decision states that, in Mr. Holojuch's then current application for review, Mr. Holojuch reidentified the same

issues he had in his original application, and that Mr. Holojuch stated that the original reviewing arbitrator did not wait for his evidence before writing the first review decision. Arbitrator Maddia went on to note that, pursuant to s. 79(7) of the Act, a party to a dispute is only allowed to submit one application for review per proceeding and, as this was the second, it was not properly before the RTB. So, for those reasons, Arbitrator Maddia dismissed the application for review, confirming the decision of July 21, 2020.

- [13] I think importantly Arbitrator Maddia went on to state, "I also note that the tenant was granted leave to reapply on the original decision for the original claim - that right remains with the tenant to pursue - he does not have to keep pursue it by submitting additional Applications for Review Considerations."
- [14] So, considering the material before me and the submissions that have been made, I find that Mr. Holojuch has failed to exhaust his internal remedies before the RTB and, by that, I mean that he has been told by the RTB on at least two occasions that he has a right -- he has been granted leave to reapply on the original decision for the original claim. So Mr. Holojuch has leave to reapply before the RTB on the claim that was dismissed on July 21, 2020. There is no evidence before me he has done that. The Court on judicial review requires applicants to exhaust their internal remedies before they come to Court and so, on that basis, I dismiss this application for judicial review.
- [15] I would further note that, in any event, it does not appear to me that the Court would have jurisdiction to grant the remedies sought by Mr. Holojuch on this petition. In his petition filed with the Court on August 28, 2020, in terms of the orders sought, Mr. Holojuch wrote that he was seeking "to receive full compensations from Canadian Government, falsely evicted in March 22, 2018. To receive full compensation from landlord Southvan Foundation - Alema and John Cartwright False Creek Management". This Court on an application for judicial review does not have the jurisdiction or power to grant an order for compensation or damages. That power would lie with the RTB potentially in respect of the landlord. Even the RTB, however, would not have power to order compensation from the Canadian Government, who is not a party that is involved in this matter.
- [16] I find that the judicial review application is prematurely brought because Mr. Holojuch failed to exhaust his internal avenues within the RTB and, in any event, I find that even if it were properly before me the petition would be bound to fail because the orders sought are not ones which are within the jurisdiction of the Court to order on an application for judicial review. So, for all of those reasons, I dismiss the petition. "Lyster J."

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Prepared on 27 October 2026 · Esheria