

CANADA / JUDGMENT

Homax Real Estate Services v. Arde

2025 BCSC 2431

COURT

Supreme Court of British Columbia

DECIDED

31 October 2025

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2025 BCSC 2431 Homax Real Estate Services v. Arde

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Homax Real Estate Services v. Arde,

2025 BCSC 2431

Date: 20251031

Docket: S252550

Registry: Vancouver

In the Matter of the Judicial Review Procedure Act,

R.S.B.C. 1996, C. 241

Between:

Homax Real Estate Services

a.k.a. 1256206 BC Ltd.

Petitioner

And

Jeremy Arde and Jada Cheung

Respondents

Before: The Honourable Justice Kirchner

On Judicial Review from: Decisions of Arbitrator H. Mau, dated February 21, 2025; and Arbitrator J. Doyon, dated February 24, 2025

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

A. Ehteshami

The Respondents, appearing in person:

J. Arde

J. Cheung

Place and Date of Hearing:

Vancouver, B.C.

October 31, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 31, 2025

- [1] THE COURT: This is a petition for judicial review of a decision of a Residential Tenancy Branch arbitrator. The arbitrator made an order against the petitioner, Homax Real Estate Services, in favour of the respondents Ms. Cheung and Mr. Arde, in the amount of \$32,928 under s. 51(2) of the Residential Tenancy Act, S.B.C. 2002, c. 78. That amount is the equivalent of 12 months of the respondents' rent when they were tenants.
- [2] By way of background, the petitioner is a licenced real estate management company and was the property manager for a rental unit located on Dunblane Avenue in Burnaby, B.C. The owner of that unit is, or at least was at the material time, Yiyang Liu, and the petitioner was contracted by the owner to manage that unit. The petitioner is, or was at the material times, the owner's agent.
- [3] The respondents were the tenants in the rental unit I have just described.
- [4] On or about April 13, 2022, the respondents signed a residential tenancy agreement with the owner for the tenancy to commence on May 1, 2022. The tenancy agreement lists the owner as the landlord and it was signed by the owner. The petitioner is not identified as the owner and no representative of the petitioner signed the tenancy agreement. The address for service stated in the tenancy agreement is the petitioner's business address on West Boulevard in Vancouver. That was described in the agreement as being the address of the landlord's agent.

- [5] The agreement further includes an addendum that contains additional clauses, also signed by the respondents and the owner of the unit but not the petitioner. The addendum at clause 3 states that the tenant understands that the property manager (i.e. the petitioner) owes a duty of loyalty to the owner and is working for the owner's best interests.
- [6] The petitioner managed the unit as the owner's agent during the respondents' tenancy, including by accepting rental payments in trust for the owner and facilitating communication between the owner and the respondents.
- [7] In or around March 2024, the owner advised the petitioner that the owner intended to move into the unit and wanted to end the respondents' tenancy for that purpose. That is a permitted purpose to end a tenancy under s. 49(3) the Residential Tenancy Act if the owner intends in good faith to occupy the unit themselves or have a close family member do so. On or about March 11, 2024, the owner issued to the respondents a two-month notice to end tenancy for the landlord's use, pursuant to s. 49.
- [8] In or around April 2024, the petitioner, on the owner's behalf, served the notice to end tenancy on the respondents. That notice listed the owner as the landlord and was signed by the owner, not by the petitioner. It listed the petitioner's business address, being the same address that was stated in the tenancy agreement, as the address for service
- [9] In or around May 2024, an employee of the petitioner conducted an inspection of the rental unit with the respondents to assess the condition of the unit before the tenants moved out. That was done by the petitioner on the owner's behalf. The petitioner's employee signed the report that was generated from that inspection. The respondents then moved out of the unit and, presumably, the owner moved in around June 2024.
- [10] Around October 2024, the owner informed the petitioner that the owner would be moving out of the unit in late December 2024 and asked the petitioner to relist the unit for rent. The petitioner did that by running a rental advertisement online shortly after the owner instructed it to do so.
- [11] On November 1, 2024, the respondents served the petitioner with an application for dispute resolution under the Residential Tenancy Act. Apparently, the respondents had seen the advertisement for the rental unit and deduced that the owner had not occupied the unit for 12 months. Under s. 51(2)(b)(ii), if a landlord ends a tenancy under s. 49(3) but then fails to live in the unit for at least 12 months thereafter, or have a close family member do so, the tenant is entitled to be compensated for the equivalent of 12 times the monthly rent they were paying when the tenancy was ended, subject to certain exceptions set out in s. 51(3). The respondents thus claimed that compensation through the dispute resolution process under the Act.

- [12] The respondents served that dispute notice at the petitioner's address, which of course is the address given for the landlord in both the tenancy agreement and the notice to end tenancy. The dispute notice named the petitioner - Homax Real Estate Services - as the landlord. It did not identify the owner as the landlord or otherwise refer to the owner. The notice alleged that the landlord had failed to comply with the stated purpose of the notice to end tenancy.
- [13] At some point in the beginning of November, the petitioner had stopped managing the rental unit for the owner altogether, but that was after the respondents had served the dispute notice at the petitioner's place of business.
- [14] Apparently, the petitioner did not advise the owner of the dispute notice. Nor did the petitioner seek to add the owner as a party to the dispute resolution proceedings. Rather, the petitioner took the position that because the dispute notice named the petitioner rather than the owner as the landlord, neither the petitioner nor the owner could be liable for a compensation payment under s. 51(2). The petitioner reasoned that because the owner was not named in the dispute and because the petitioner is not the owner of the unit, the dispute notice was essentially defective. Thus, the petitioner did not submit evidence to the Residential Tenancy Branch in response to the dispute notice because it had no intention of substantively participating in the dispute resolution proceeding as the landlord. It simply maintained that the owner was the proper respondent to the dispute and the owner had not been named.
- [15] As I have said, the petitioner apparently did not inform the owner of the dispute. The owner was not present at the dispute resolution hearing before the arbitrator, which was held on February 6, 2025.
- [16] At that hearing, the petitioner took the position that it should not be responsible for paying a penalty under s. 51(2) because it merely managed the unit and is not the owner. It was the petitioner's position that the tenants should have named the owner in the dispute notice, not the petitioner.
- [17] The arbitrator rejected that argument and did so based on Justice Giltrow's decision in 0808799 B.C. v. British Columbia (Residential Tenancy Branch), 2024 BCSC 1915. (I am going to refer to that as the "Coldwell Banker" decision, as did counsel, since the numbered company did business under the name Coldwell Banker Prestige Realty.) In reliance on that decision, the arbitrator wrote:

I find these facts similar to [the Coldwell Banker decision]. In this dispute a property manager acting as the landlord's agent claimed to not be captured by the definition of landlord in s. 51 of the Act. The agent oversaw the issuing of the Two Month Notice and took no action to substitute or add the rental unit's owner as a respondent. The court found that it was reasonable for the arbitrator to find that the landlord's agent was responsible for compensating the tenant under s. 51.

I find that the Respondent [now the petitioner] was actively managing and performing duties under the Act on behalf of the rental unit owner and therefore [Home Real Estate Services] meets the Act's definition of landlord.

[18] Ultimately, the arbitrator found that the petitioner was responsible for the penalty on the basis of Coldwell Banker and awarded the respondents \$32,928.

[19] On this judicial review, the petitioner argues the arbitrator's decision is patently unreasonable because it fails to appreciate some distinguishing features of Coldwell Banker. It argues the arbitrator's finding does not properly apply the law of privity of contract. It argues the petitioner is simply the owner's agent for managing the property and is not a party to the tenancy agreement, which is a contract between the owner and the tenant. It argues the arbitrator's decision results in an absurdity because it makes a person who is not a party to the contract liable for one of the contracting party's debts that arose under the contract. It argues this is contrary to principles of contract and agency.

[20] I disagree the arbitrator's decision results in an absurdity. Rather, for the following reasons, I find it is reasonable and is certainly not patently unreasonable. In fact, based on Justice Giltrow's decision in Coldwell Banker, I find it is the correct decision.

[21] As Giltrow J. found in Coldwell Banker, the definition of "landlord" under the Act expressly includes the owner's agent. That is apparent in s. 1 of the Act under the definition of "landlord" which reads:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement; . . .

[Emphasis added]

[22] On the face of the definition, the term "landlord" expressly includes the owner's agent. Here, that is, the petitioner.

[23] As Giltrow J. observed at para. 83 of Coldwell Banker, s. 49 of the Act carves out a narrow exception to this definition but that applies only to s. 49. It would exclude the petitioner as a "landlord" for the purpose of that section but it does not apply to s. 51. As Giltrow J. said at para. 86, the broader definition as found in s. 1 applies to s. 51, which imposes the obligation on the "landlord" to make the compensation payment.

- [24] The petitioner seeks to distinguish Coldwell Banker on a number of points set out in para. 60 of the petition. I will not read those but I accept they are all factors that differentiate this case from Coldwell Banker. For example, it was the owner who signed the notice to end tenancy and the tenancy agreement in this case whereas in Coldwell Banker it was the property manager who signed as agent
- [25] However, neither this nor the other distinguishing points make the result in Coldwell Banker inapplicable to this case. The result in Coldwell Banker is not based on principles of contract. It arises from statute, namely the Residential Tenancy Act. The right to be compensated under s. 51(2) is not a contractual entitlement but arises by operation of the Act. Section 51 creates a right of compensation that must be paid solely by the "landlord" who is defined under s. 1 to include the landlord's agent. Thus, the principles of contract, including privity of contract, do not apply here. This is a statutory right of compensation that, according to the statute, is to be paid by the "landlord". Under s. 1, that could be the owner or the owner's agent.
- [26] I disagree with the petitioner that this leads to an absurd result, either a patently unreasonable one under the applicable standard of review. Nor is it an absurdity as defined in *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, at para. 27.
- [27] Nor is the result inconsistent with the purpose of the Residential Tenancy Act. By operation of s. 51(2) and the definition of landlord, an agent such as the petitioner can be burdened with potential liability under s. 51(2) if they do not take steps to notify the owner of a dispute notice or apply to add the owner as a party to the dispute. It is in keeping with the purpose of the Act to require the owner's agent, who represents the owner and is the face of the owner to most tenants, to take those steps rather than force the tenant to chase down the owner and ensure the owner is properly named.
- [28] In this respect, the issue here is something of a technicality in that while the agent rather than the owner was named as the landlord, the dispute notice was delivered to the correct address for delivery and the petitioner received that notice while still acting in the capacity as the owner's agent. The petitioner tried to take advantage of what it thought was a defect in the notice and elected not to alert the owner, seek to name the owner as a party, or otherwise substantively respond to the dispute notice.
- [29] For those reasons, I would dismiss the petition with costs to the respondents at Scale B.

"Kirchner J."

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