

CANADA / JUDGMENT

Hurd v. Pinard

2025 BCCA 354

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 354 Hurd v. Pinard COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Hurd v. Pinard, 2025 BCCA 354 Date: 20251008 Docket: CA50185 Between: John Hurd Appellant (Petitioner) And Dorrine Pinard, Robert Gerow, Caren Cameron, Greg Petula and Ken Carson Respondents (Respondents) Before: The Honourable Justice Griffin The Honourable Justice Iyer The Honourable Justice Warren On appeal from: An order of the Supreme Court of British Columbia, dated September 9, 2024 (Hurd v. Carson, 2024 BCSC 2553, Vancouver Docket S234401). Oral Reasons for Judgment The Appellant, appearing in person: J. Hurd The Respondents, appearing in person (via videoconference): D. Pinard K. Carson Place and Date of Hearing: Vancouver, British Columbia October 6, 2025 Place and Date of Judgment: Vancouver, British Columbia October 8, 2025 Summary: The appellant landlord appeals from the order of a chambers judge dismissing his application for judicial review of a decision of a Residential Tenancy Branch arbitrator. The arbitrator disallowed the appellant's inclusion in a notice of rent increase of fees he paid a private sewage company to dispose of waste from his mobile home park's septic system. That fee included the municipality's fee for sewage disposal. The arbitrator found that the municipality's disposal fee could not be included in the rent increase because the appellant did not pay it directly to the municipality. Rather the sewage company paid it to the municipality and passed the cost on to the appellant. Held: Appeal dismissed. The arbitrator's decision was not patently unreasonable because it was not clearly irrational to interpret the statutory scheme as the arbitrator did. IYER J.A.:

Background

- [1] The appellant, John Hurd, is the landlord of Selma Vista, a manufactured home park. The respondents, Dorrine Pinard, Robert Gerow, Caren Cameron and Greg Petula, are tenants who live at Selma Vista. The dispute is about whether the notice of increased rent Mr. Hurd provided to the respondents in November 2022 is permissible.

- [2] The facts are straightforward. Selma Vista is on a septic system that is serviced by a private disposal company. Mr. Hurd pays the company to pump out waste and dispose of it at a municipal facility. The amount he pays the company consists of the sewage disposal fee charged by the municipality ("Disposal Fee") and fees for removal and transportation ("Removal Fee"). Mr. Hurd included both the Disposal Fee and the Removal Fee in the notice of increased rent he gave to the respondents.
- [3] The respondents disagreed with the notice of increased rent and disputed it before an arbitrator at the Residential Tenancy Branch ("RTB"). The RTB arbitrator decided that Mr. Hurd was not entitled to pass on the Removal Fee and Disposal Fee to the respondents by including it in their rent ("RTB Decision").
- [4] Mr. Hurd applied for judicial review. In reasons indexed at 2024 BCSC 2553, the chambers judge dismissed his application ("Decision"). Mr. Hurd now appeals to this Court. Statutory Framework
- [5] Manufactured home parks such as Selma Vista are governed by the Manufactured Home Park Tenancy Act, S.B.C. 2002, c. 77 [Act] and the Manufactured Home Park Tenancy Regulation, B.C. Reg. 481/2003 [Regulation].
- [6] Section 36(1)(a) of the Act permits a landlord to increase rent only up to the amount calculated in accordance with the Regulation.
- [7] Section 32(3) of the Regulation provides that a landlord may impose a rent increase that is no greater than the inflation rate plus the "proportional amount".
- [8] Section 32(1) of the Regulation contains the following relevant definitions: "local government levies" means the sum of the payments respecting a manufactured home park made by the landlord for
- (a) property value taxes, and
 - (b) municipal fees under section 194 of the Community Charter; "proportional amount" means the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the landlord's manufactured home park;
- [9] In relevant part, s. 194 of the Community Charter, S.B.C. 2003, c. 26, provides that municipal fees are fees created by bylaw for all or part of a service provided by the municipality.
- Decisions Below
- [10] In the RTB Decision, the RTB arbitrator concluded Mr. Hurd was not entitled to increase the rent to include the Disposal Fee. The arbitrator reasoned that the Disposal Fee did not fall within the definition of "local government levies" because Mr. Hurd paid it to a private company as part of their fee for services, and not directly to a municipality: Although the landlord asserts some of his cost increases for the septic are due to the fact that the municipality has increased disposal fees, which get passed on to him by way of the sewage disposal company, I am not satisfied that this means the septic system and disposal costs are

a local government levy as laid out under the regulations. The amounts for septic costs are paid by the landlord directly to a private company, not to a municipality. I find the fees and costs paid by the landlord do not qualify as property value taxes or municipal fees under s. 194 of the Community Charter, and I find the landlord is not entitled to include these amounts in the manner he did under local government levies. Therefore, I find that the rent increase notice issued by the landlord was calculated incorrectly and was in excess of the legally allowable amount.

- [11] In the Decision, the chambers judge identified the applicable standard of review as patent unreasonableness: Decision at para. 16. She explained this is a highly deferential standard that permits the reviewing court to intervene only where the decision is clearly irrational and cannot be supported by any tenable line of reasoning: Decision at paras. 17-19. Although she expressed sympathy with Mr. Hurd's situation, she concluded that it was not clearly irrational to limit the definition of "municipal fees" to fees directly charged by the municipality to a landlord:
- [23] I cannot find that the arbitrator's decision, which maintains a distinction between direct fees paid to a municipality for sewage disposal, and private contractor fees that include the indirect payment of municipal waste disposal fees, was clearly irrational or evidently not in accordance with reason. There is a rational line of analysis supporting the decision, namely that the definition of "municipal fees" in the statutory scheme should, properly construed, be limited to the municipal fees directly charged by the municipality to the landlord, and not be accorded the expansive definition promoted by the petitioner. The arbitrator's conclusion [is] entitled to deference. Discussion
- [12] The role of this Court on an appeal from a judicial review is to determine whether the chambers judge correctly identified the applicable standard of review. If so, the focus of the analysis is on the administrative decision. In other words, the question in this Court is whether the judge chose the correct standard of review and applied it properly: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 46-47.
- [13] Together, s. 77.1 of the Residential Tenancy Act, S.B.C. 2002, c. 78 and s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45, establish the applicable standard of review of the RTB Decision is patent unreasonableness for findings of fact, law, or exercises of discretion by an RTB arbitrator. The Supreme Court of Canada affirmed that courts must apply that standard of review within the limits imposed by the rule of law: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 35. The chambers judge selected the correct standard of review.
- [14] The patently unreasonable standard is the most deferential standard of review in Canadian law. A reviewing court cannot interfere with the decision because it disagrees with it. The court may only intervene if the decision is clearly irrational or "evidently not in accordance with reason": *Law Society of New Brunswick v. Ryan*, 2003 SCC 20. More specifically, a patently unreasonable interpretation of a statute is one that "almost border[s] on the

absurd": The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board, 2022 BCCA 10 at paras. 130-131.

- [15] As he did below, Mr. Hurd argues it was patently unreasonable to interpret "local government levies" as excluding the Disposal Fee. He points to the fact that this term is defined as "payments respecting a manufactured home park made by the landlord for municipal fees" not "payments respecting a manufactured home park made by the landlord to a municipality for municipal fees". The definition of "municipal fees" simply permits a council to impose a fee for all or part of a service provided by the municipality, without restricting it to payments made directly to the municipality.
- [16] The RTB arbitrator's interpretation of these provisions may have been incorrect and may even have been unreasonable. However, in my view, the interpretation does not "almost border on the absurd". It is not clearly irrational to limit the allowable rent increase to fees paid by a landlord directly to a municipality rather than permitting rental increases to include indirect payments. Efficient enforcement might be such a reason.
- [17] Mr. Hurd points to the RTB's standard form for landlords to give notices of rent increase in relation to a manufactured home site. He says the form has a heading for calculating "local government levies" that references sewage collection and treatment fees. In my view, the form does no more than provide a means of recording and calculating permitted fees. It does not answer the question that was before the arbitrator, which was whether sewage treatment and disposal fees must be paid by the landlord to the municipality directly to be included in a rent increase. In any event, the form does not assist Mr. Hurd. It also states: You cannot include fees paid to anyone other than a local government or public utility. For example, you cannot include increases paid to a private garbage collection agency or the costs of increased fuel if electricity is generated by diesel fuel.
- [18] Unfortunately, Mr. Hurd's evidence before the RTB arbitrator was less than it might have been in supporting his claim. He provided the sewage collection company's invoice listing the Disposal Fee as a line item, but he did not include any evidence showing the municipality had increased the Disposal Fee from prior years. As well, he claimed a rent increase for the full amount of both the Removal Fee and Disposal Fee, not only the municipality's Disposal Fee.
- [19] In his factum, Mr. Hurd says that owners of manufactured home parks on septic systems have no choice but to hire private companies to collect and deliver sewage to a municipal treatment plant, so the decisions below are unfair to these owners, putting them at a disadvantage compared to owners of manufactured home parks who are connected to municipal systems. However, there is also no evidence that in other respects the fees and taxes paid to operate mobile home parks by owners on municipal systems are the same as those borne by owners on septic systems.
- [20] I would conclude the RTB Decision was not patently unreasonable.

[21] In reaching this conclusion, I note that the RTB Decision did not address the situation where a landlord in Mr. Hurd's position arranges with a private sewage disposal company to have the landlord pay the Disposal Fee directly to the municipality rather than have the company pay it and pass the cost on. Mr. Hurd submitted that the municipality told him it would not permit him to pay the fee directly but there is no evidence establishing this, and it remains an open question.

Disposition

[22] For these reasons, I would dismiss the appeal.

[23] GRIFFIN J.A.: I agree.

[24] WARREN J.A.: I agree.

[25] GRIFFIN J.A.: The appeal is dismissed. "The Honourable Justice Iyer"

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