

CANADA / JUDGMENT

Kaur v. Residential Tenancy Branch

2025 BCSC 1280

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Supreme Court of British Columbia

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2025 BCSC 1280 Kaur v. Residential Tenancy Branch

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kaur v. Residential Tenancy Branch,

2025 BCSC 1280

Date: 20250710

Docket: S248081

Registry: New Westminster

Between:

Fatehjit Kaur

Petitioner

And

Director, Residential Tenancy Branch and Melvin Javier

Respondents

Before: The Honourable Justice M. Taylor

On judicial review from: The decision and order of an Arbitrator of the Residential Tenancy Branch, dated February 23, 2023 (Javier v. Kaur, File No. 310092655).

Reasons for Judgment

Counsel for the Petitioner:

A. Paranagama

Counsel for the Respondent, M. Javier:

A. Syer

Place and Date of Hearing:

New Westminster, B.C.

June 19, 2025

Place and Date of Judgment:

New Westminster, B.C.

July 10, 2025

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I. Introduction

- [1] This is a petition by Fatehjit Kaur (the "Landlord") to set aside a decision of Residential Tenancy Branch ("RTB") arbitrator I. Borba (the "Arbitrator") dated February 23, 2023 (the "Decision").
- [2] In the Decision, the Arbitrator granted the tenant, Melvin Javier (the "Tenant"), a monetary order for compensation from the Landlord under ss. 51(2) and 72 of the Residential Tenancy Act, S.B.C. 2002, c. 78 [RTA].

II. Background

- [3] The Landlord is the owner of the property located at 7520 Garfield Dr., Delta, British Columbia (the "Property").
- [4] The Tenant rented the Property from the Landlord from February 1, 2021 to May 20, 2022 with a rent of \$2500 per month.

- [5] On or about April 14, 2022, the Landlord served the Tenant with a two-month notice to end tenancy for Landlord's use (the "Notice"). The Notice indicated that the Landlord intended to occupy the Property with her partner and children, and was effective June 9, 2022.
- [6] The Tenant vacated the Property on June 1, 2022 pursuant to the Notice.
- [7] The Landlord renovated the Property over the summer of 2022.
- [8] On or about September 20, 2022, the Landlord sent the Tenant a text message which stated in part:

Hi how are you doing.

Are you looking for rent the house?

We fully renovated and extended the house with 5 bedrooms and 4 full bathrooms.

Let me know if you are still interested I was like I can ask you first. But this time will be \$5000 rent. It's with AC unit and fireplace everything brand new.

If you want you can come look at it. Am putting on rent add in this week. So just telling you advance.

- [9] The text from the Landlord attached photographs, some of which matched closely with the room configuration of the Property while the Tenant was renting it (the Tenant adduced in evidence photographs of the Property prior to the renovation). With respect to these photographs, the Landlord stated in the text message to the Tenant: "It's like this now."
- [10] The Tenant filed an application for dispute resolution at the RTB claiming 12 months' rent as compensation.
- [11] On February 16, 2023, the Tenant's application was heard by the Arbitrator (the "Hearing"). The Landlord, her son, and the Tenant attended the Hearing by telephone and each of them gave oral evidence.
- [12] At the Hearing, the Landlord and her son stated that the new rental unit they offered to the Tenant in September, 2022 was not the Property but instead a property in Surrey (the "Surrey Property") that they had also renovated prior to that time. The Landlord testified that she did not explain that she was actually offering a rental at the Surrey Property in the text message because English is not her first language.
- [13] The Tenant testified that he understood the Landlord to be offering to re-rent the same rental unit at the Property, which is located in Delta and not Surrey.
- [14] The Tenant testified that the Property was in good condition when the tenancy ended and that there was a water leak in one bedroom of the basement but there was no roof damage as the leak originated from old pipes.

- [15] The Landlord testified that she renovated the "whole house" at the Property because there was a water leak, the roof was damaged and because she wanted a new kitchen and fully renovated house. The Landlord testified that only two people worked on the renovation and some products needed for the renovation were not available, so it took a longer time than expected to renovate the Property.
- [16] On or about February 23, 2023, the Arbitrator issued the Decision.
- [17] In the Decision, the Arbitrator correctly set out the relevant sections of the RTA (ss. 49 and 51) and the RTB Rules of Procedure, along with excerpts from the RTB policy guidelines, stipulating that the Landlord had the onus to prove that the stated purpose for ending the tenancy was accomplished.
- [18] In the Decision, the Arbitrator made a finding of fact that the Landlord offered to rent the Property to the Tenant at a 100% higher rate of rent in September 2022, noting the Landlord's statement to the Tenant that she had "fully renovated and extended the house." The Arbitrator also observed that the Landlord was "able to clearly communicate in English during the hearing".
- [19] While accepting the Landlord's testimony that she had moved into the Property on September 13, 2022, more than three months after the Notice's effective date, the Arbitrator found that the Landlord had failed to prove, on a balance of probabilities, that she had moved to the Property within a reasonable time after the Notice's effective date. In reaching this conclusion, the Arbitrator referenced the following evidence:
- The Landlord's testimony about the length of time necessary for the renovation was vague. The Landlord did not explain which products were not available or why the Landlord did not hire more workers to complete the renovation faster;
 - The Tenant's testimony about the water leak was more detailed and convincing than the Landlord's testimony; and
 - The Landlord testified that she wanted to renovate the "whole house", which the Arbitrator evidently found was not consistent with the Landlord's testimony that the renovation was due to the water leak.
- [20] Having found that the Landlord had failed to prove that she moved into the Property within a reasonable period of time after the effective date of the Notice, the Arbitrator made a monetary order in favour of the Tenant in the amount of \$30,100.00, pursuant to Section 51(2) of the RTA.

III. Issues

- [21] The Landlord asks that the Decision be set aside on the basis that it was: (1) procedurally unfair and (2) patently unreasonable.

IV. Analysis

[22] I will address each of the Landlord's two grounds for review in turn.

1. Procedural Unfairness

[23] The standard of review with regard to the common law rules of natural justice and procedural fairness is "whether, in all the circumstances, the tribunal acted fairly": s. 58(2) (b) of the Administrative Tribunals Act, S.B.C. 2004, c. 45.

[24] The guiding principles are set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 1999 CanLII 699 (SCC), where the court noted that "procedural fairness is eminently variable and its content is to be decided in the specific context of each case" (para. 21). The goal is to ensure that "administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker" (para. 22).

[25] In *Crest Group Holdings Ltd. v. British Columbia (Attorney General)*, 2014 BCSC 1651, Justice Kent explained the scope of procedural fairness:

[36] Procedural fairness is comprised of two rights: the right to be heard, and the right to an impartial hearing. The content of procedural fairness goes to the manner in which the decision-maker went about making his decision: *Therrien (Re)*, 2001 SCC 35, [2001] 2 S.C.R. 3 at para. 82; *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539 at para. 102.

[37] Adequacy of a decision maker's reasons does not generally give rise to an issue of procedural fairness. Any challenge to the reasoning of the decision should therefore be made within the reasonableness analysis, whether it be "patent unreasonableness" as mandated by the ATA or reasonableness required by the common law as the case may be: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 at para. 22.

[38] There have been cases where an erroneous decision to reject relevant evidence has such an impact on the fairness of the proceeding that it can only be concluded there has been a breach of the rules of natural justice: *Université du Québec à Trois-Rivières v. Larocque*, 1993 CanLII 162 (SCC), [1993] 1 S.C.R. 471 at para. 46.

[26] Procedural fairness requires that a party to an administrative proceeding has the right to be heard, the right to know the case they are required to meet, and the right to a hearing before an impartial decision maker: *McDonald v. Creekside Campgrounds and RV Park*, 2020 BCSC 2095 at para. 28.

- [27] I note that in this case the Landlord was given the full opportunity to provide the Arbitrator with written materials in advance of the Hearing and also to present oral and documentary evidence at the Hearing. There was no evidence presented on the petition that the Landlord was denied the opportunity to make her case.
- [28] Nonetheless, the Landlord argued on the petition that she was denied procedural fairness because she did not understand the case against her and, in particular, that the issue to be addressed by the Arbitrator would be the delay arising from the renovations prior to moving into the Property following the date of Notice and the reasons of the Landlord supporting the length of the renovation.
- [29] A preliminary issue with this argument arises from the well-accepted principle that allegations of procedural fairness cannot be raised for the first time on judicial review "if they could reasonably have been the subject of timely objection in the first-instance forum": *Athwal v. Johnson*, 2023 BCCA 460 at para. 55. There was no evidence on the petition that a procedural fairness argument was raised before the Arbitrator, or could not reasonably have been raised, which is likely a basis for dismissing the procedural fairness argument at the outset. Nonetheless, I will proceed to consider the argument, as it is also my view that it should be dismissed on the merits.
- [30] The Landlord argued that she was not sufficiently put on notice about the requirement to prove that the renovations were accomplished "within a reasonable time" because the Tenant did not specifically reference this requirement in his dispute notice (the "Tenant's Dispute Notice"). The Tenant's Dispute Notice stated in relevant part:

I want compensation because the landlord ended the tenancy and has not complied with the Act or used the unit/site for the stated purpose.

\$30,000

Landlord sent me text message after finishing the renovations to the house if I want to live in it for double the original rate and if not, they say they will rent it out.

- [31] The Landlord argued that, had she understood that the delay in the renovation was the issue (as opposed to whether she had sought to re-rent the Property to the Tenant), she would have adduced additional evidence at the Hearing to explain and justify the delays in the renovation process.
- [32] In my view, the fundamental weakness in the Landlord's argument is that her argument about procedural unfairness is derived principally from the fact of her own ignorance about the applicable law rather than any specific procedural steps taken or not taken by the Arbitrator.

[33] In this respect, I note that Section 51(2)(a) of the RTA, which was correctly referenced by the Arbitrator, clearly states that the Landlord must establish that the "stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice":

Tenant's compensation: section 49 notice

51(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

- (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;
 - (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used 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.
- (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.

[Emphasis added.]

[34] Given the clarity of the applicable statutory standard (which was readily available to the Landlord with a Google search online), the fact that the Tenant did not specifically reference the applicable legal test in the Tenant's Dispute Notice is not a sufficient basis in my view for concluding that the Landlord was not put on notice in advance of the Hearing about the applicability of this test. To the contrary, in the Notice originally sent by the Landlord to the Tenant for the purposes of evicting the Tenant, there was a section entitled "Important Information About this Notice" (addressed to all tenants who receive such a notice) which included a specific reference to this same legal test:

After you move out, if your landlord does not take steps toward the purpose for which this Notice was given within a reasonable period after the effective date of this Notice, your landlord must compensate you an amount equal to 12 months' rent payable after your current tenancy agreement.

[Emphasis added.]

[35] To the extent that this legal test was expressly contained and set out in the eviction Notice sent by the Landlord to the Tenant, it is difficult to accept the Landlord's argument on this petition that she was unaware of it or taken by surprise. At a minimum, in my view, the Landlord had an obligation to read and understand the Notice that she had previously sent to the Tenant that triggered this litigation.

[36] Seen in this light, the Landlord's procedural unfairness argument therefore depends upon the corollary assumption that the Landlord was not obliged to read or understand the Notice she herself delivered to the Tenant and, more problematically, that she had no legal obligation to inform herself about the proper statutory basis for delivering a two-month notice before she took formal steps to evict the Tenant under s. 49. The Landlord's own ignorance about the applicable law, and failure to adequately inform herself about the law in advance of a hearing, cannot reasonably in my view form the basis for a claim that the hearing was unfair.

[37] There is also no principle of natural justice or procedural fairness I am aware of that imposes a positive obligation on an arbitrator to provide legal advice to one of the parties who has not properly informed him or herself about the law or to ensure that either party fully understands the statutory scheme that applies to them in advance of the hearing. This responsibility, in my view, falls on the parties themselves and not on the arbitrator.

- [38] The Landlord cited certain cases where the courts had found procedural unfairness in a context where a defect in the exchange of materials prior to the hearing deprived one party of the opportunity to know the case against them and respond to that case: *Xu v. Jin*, 2025 BCSC 307 at paras. 22-24; *Ball v. Beacham*, 2024 BCSC 21 at paras. 80-89. In *Ball*, for example, there were documents before the arbitrator that had not been served on one of the parties and which went to a matter central to the dispute.
- [39] In my view these authorities are readily distinguishable from this case. There was no evidence on the petition that there had been a deficiency in the service of documents or that the Arbitrator considered documents which had not been made available to the Landlord in advance of the hearing. Moreover, given that the central issue considered by the Arbitrator was whether the length of time for the renovation was reasonable, it is notable in my view that documents and information relating to the renovation would have been entirely within the knowledge and possession of the Landlord because the Tenant had been evicted before the renovation even began and played no role in that process. It cannot therefore be said that the Landlord was deprived of any relevant materials in the possession of the Tenant that would have enabled her to know the case against her and respond to that case.
- [40] Moreover, even if I were to accept the Landlord's argument that the Arbitrator had a procedural duty to inform the Landlord about the statutory standard she had to meet at the hearing, the Landlord has nonetheless failed completely on this petition to adduce any evidence that the Arbitrator did not in fact advise the Landlord about the statutory standard to meet and what evidence she needed to adduce at the Hearing or otherwise acted unfairly. This is because the Landlord failed on this petition to take timely steps to order a transcript of the hearing before the Arbitrator, and therefore did not adduce a transcript of the Hearing as evidence on the petition. There was therefore no admissible evidence before me on the petition as to what exactly was said or done at the Hearing (or not said or done) which could even potentially ground a procedural unfairness finding. While the Landlord included in her affidavit certain recollections about what happened at the Hearing, these statements were hearsay as they pertained to what the Arbitrator stated or did at the Hearing and are therefore entitled to no weight.
- [41] Under ordinary circumstances, the lack of a transcript might have prompted me to consider an adjournment. However, this petition did not involve ordinary circumstances. This is because, after filing the petition on March 15, 2023, the Landlord failed to take any procedural steps for 22 months, which prompted the Tenant to apply to have it dismissed for want of prosecution. Ultimately, the application to dismiss was declined by Justice Layton of this court in *Kaur v. Residential Tenancy Branch*, 2025 BCSC 473, who observed that the Landlord's delay had been "inordinate and inexcusable" but nonetheless found that it was in the interests of justice to allow the Landlord to proceed with the petition.

[42] It is relevant in my view that, in permitting the petition to proceed, Justice Layton made the following specific observations with respect to the Landlord's intention to order a transcript of the Hearing in a timely manner, and the potential relevance of such a transcript at the ultimate hearing of the petition:

· "Having reviewed the petition and petition responses, I cannot say that the petition is bound to fail. For instance, I have not been provided with the Petitioner's affidavit, which I understand provides evidence material to her claim that the RTB hearing was procedurally unfair. Even assuming for the sake of argument that this affidavit should be granted little or no weight absent a transcript of the RTB proceeding, I cannot rule out the possibility that this transcript will be obtained and the Petitioner given leave to rely on it at the hearing of the petition." (para. 59)

· "In this case, the matter is ready or almost ready to be heard, and may take as little as 60 minutes to argue. While it is possible that the Petitioner will seek to obtain and file a transcript of the RTB hearing, I do not anticipate that this will cause any significant additional delay." (para 48)

· "In this supporting affidavit, Petitioner's counsel provided the following explanation for the delay:

(c) When Respondent's counsel replied on August 24 [2023] stating, "We have not obtained a transcript of the recording of the RTB hearing, nor have we filed additional affidavit", she understood this to mean that Respondent's counsel had not yet filed the affidavit because she had not yet received a transcript of the hearing, but that she intended to file the affidavit once the transcript was received." (para. 23)

[43] I conclude from the foregoing that the prospect that the Landlord would order the transcript was very much in the contemplation of the Landlord at the date of the hearing before Justice Layton on February 11, 2025, and also a live issue at that hearing, given Justice Layton's statement that the transcript could add "weight" to the Landlord's argument.

[44] The parties booked the date for the June 19, 2025 hearing of this petition on March 13, 2025, which was more than three months before the date of the hearing. As noted by Justice Layton, this should have provided the Landlord with ample time to order the transcript but, as of the date of the hearing of the petition, counsel for the Landlord admitted that no transcript that was compliant with RTB rules had in fact been ordered. No explanation was provided for the delay at the hearing of this petition.

[45] Accordingly, the fault for failing to order the transcript in a timely manner falls squarely at the feet of the Landlord in this case. Given the already "inordinate" delay of the Landlord in prosecuting this case, I decided that a further adjournment was not appropriate nor was it fair to the Tenant under the circumstances, who has waited a long time for this matter to be resolved.

- [46] Absent a transcript, there was therefore no evidentiary foundation before me to support an argument that the Arbitrator acted in a procedurally unfair manner. For this reason, and for the other reasons set out above, I conclude that this ground for review should be dismissed.
2. Patent Unreasonableness
- [47] The Landlord argued that the decision of the Arbitrator was patently unreasonable because the Arbitrator failed to take into account:
- a) relevant evidence in determining the bona fide intention of the Landlord to occupy the Property; and
 - b) relevant evidence relating to the delays in completing the renovations by the contractors, which the Landlord claim had the effect of delaying the occupancy.
- [48] The Landlord also alleged that the Arbitrator took into account irrelevant considerations such as:
- a) that the Landlord was able clearly to communicate in English during the hearing; and
 - b) that the Landlord did not explain which products were not available or why she did not hire more workers to complete the renovations faster.
- [49] In addressing these arguments, I emphasize at the outset the limited role of the court on judicial review, which is reflected in the patent unreasonableness standard of review. In *Holojuch v. Residential Tenancy Branch*, 2021 BCCA 133, the Court of Appeal summarized the standard of review to be applied to decisions of the RTB:
- [16] In this case, the Legislature has conferred exclusive jurisdiction on the Director of the Residential Tenancy Branch to determine whether compensation is payable pursuant to s. 67 of the Residential Tenancy Act. The Director's decision is reviewable on judicial review, but only on the standard of review that is established by the operation of ss. 5.1 and 84.1 of the Residential Tenancy Act and s. 58(2)(a) of the Administrative Tribunals Act, S.B.C. 2004, c. 45. In *Metro Vancouver (Regional District) v. Belcarra South Preservation Society*, 2021 BCCA 121, this Court described that standard of review in these terms:
- [30] The standard of review of the Arbitrator's decision is determined by the Administrative Tribunals Act, S.B.C. 2004, c. 45. Arbitrators of the RTB have delegated authority to make decisions pursuant to various provisions of the RTA that pertain to applications for dispute resolution. Matters within an arbitrator's exclusive jurisdiction are subject to the patent unreasonableness standard of review that is set out in s. 58 of the Administrative Tribunals Act: *Ahmad v. Merriman*, 2019 BCCA 82 at para. 37.
- [17] The meaning to be given to patent unreasonableness under this legislative scheme depends on the nature of the decision under review. If it is a discretionary decision, s. 58(3) of the Administrative Tribunals Act explains how this standard is to be applied:

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.

[18] If the decision contains a finding of fact that is disputed, the standard of review is still patent unreasonableness, but the content of that standard is defined by the common law rather than a statutory provision. This Court explained that standard in *Ahmad v. Merriman*, 2019 BCCA 82, in these terms:

[37] Section 58(2)(a) of the ATA requires that a decision of an expert tribunal, such as the RTB, may not be interfered with unless it is patently unreasonable. The standard of patent unreasonableness requires the decision under review be accorded "curial deference, absent a finding of fact or law that is patently unreasonable": *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, 2016 SCC 25 at para. 29. Stated otherwise, it must be "clearly irrational" or "evidently not in accordance with reason": *Canada (Attorney General) v. Public Service Alliance of Canada*, [1993] 1 S.C.R. 941 at 963–64. A patently unreasonable decision is one that is "so flawed that no amount of curial def[er]ence can justify letting it stand": *Ryan v. Law Society (New Brunswick)*, 2003 SCC 20 at paras. 52–53.

[50] In this case, the Landlord did not argue that the Arbitrator made any legal error or failed to take relevant statutory requirements into account, nor did she argue that the Arbitrator exercised a discretion arbitrarily, in bad faith or for an improper purpose. Instead the Landlord argued solely that the Arbitrator failed to take relevant evidence into account and based the Decision on irrelevant factors. Given that the Landlord challenges solely findings of fact and not law, these findings of fact are entitled to a high level of curial deference, requiring me to find that they are "clearly irrational" or "evidently not in accordance with reason" if I am going to set the decision aside.

[51] In my view, the Landlord has failed to establish on this petition that the factual findings of the Arbitrator were patently unreasonable. To the contrary, a review of the Decision indicates that:

- the Arbitrator applied the correct legal test by considering whether the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice;

- the Arbitrator appropriately made credibility and reliability findings with respect to the testimony of both the Landlord and the Tenant, and clearly found the evidence of the Tenant to be more credible and reliable; and
- the Arbitrator considered and weighed the evidence of both parties adduced at the hearing.

[52] The Landlord argued that the Arbitrator failed to take into account the following relevant factors to determine the bona fide intention of the Petitioner in occupying the Property:

- a) change of address of all utilities and bank information;
- b) the Landlord had constructive occupation of the Property since June 15, 2022;
- c) the Landlord and her family resided at the Property since September 2022;
- d) the fact that the Property had to be renovated before occupying the premises as there was a water leak and the roof was not in good shape;
- e) that the Landlord was already occupying the Property when she offered to rent the Surrey Property to the Tenant;
- f) the reason for not being able to occupy the Property was due to the delay in completing the renovations by the contractor;
- g) the delay in occupying the Property was caused by the contractors who failed to complete the renovations on time;
- h) that the Surrey Property was also under renovation and the evidence relating to correspondence with prospective tenants and the rental agreements of the Surrey Property dated November 14, 2022; and
- i) the testimony of the Landlord that the text message was for the Surrey Property.

[53] In *Ganitano v. Yeung*, 2016 BCSC 2227 at para. 33, the court made it clear that an arbitrator is not necessarily required to address every argument made at a hearing and may address some arguments implicitly. Taking this principle into account, a review of the text of the Decision reveals that the Arbitrator did either expressly or implicitly take into account all the factual considerations raised by the Landlord on this petition but was simply not persuaded by the Landlord's evidence and arguments.

[54] The Arbitrator clearly accepted the Landlord's argument that she ultimately did move into the Property in September, 2022 (indicating that the Arbitrator had considered and accepted many of the evidentiary factors put forth by the Landlord as set out above). Nonetheless, despite accepting these factors, the Arbitrator determined that the length of time taken to renovate the Property before the Landlord moved in was not reasonable. In reaching this conclusion, which was consistent with the statutory test, the Arbitrator expressly weighed the evidence of the Landlord concerning the reasons for delays in completing the renovations to the Property and concluded that the Landlord's testimony was "vague" on this

central issue. In reaching this conclusion the Arbitrator, in my view, rationally considered:

- the fact that the Landlord did not explain which products were not available or why the Landlord did not hire more workers to complete the renovation faster. On this petition the Landlord argued the foregoing was an "irrelevant" consideration but in my view it was indeed relevant to the credibility of the Landlord's testimony concerning the justification for the renovation delay. Given that the Landlord was the owner of the Property and had directed and paid for the renovation, it was reasonable in my view for the Arbitrator to have expected that the Landlord would have specific knowledge concerning the details of the renovation and the precise reasons for any delays;
- the inconsistency on the evidence of the Landlord relating to whether the purpose of the renovation was to renovate the damage from a water leak (which is a more limited purpose which would not have justified a long renovation period) or to renovate the "whole house" (which is a broader purpose consistent with a longer renovation but inconsistent with her testimony that her intention was solely to fix water damage); and
- the lack of credibility of the Landlord's testimony that, following completion of the renovation, she had offered to rent the Surrey Property to the Tenant rather than re-renting the Property. In my view this evidence was potentially relevant not only to credibility but also to the question whether the Landlord had herself created additional unnecessary delay by attempting to re-rent the Property rather than moving into the Property in a timely manner as contemplated by the Notice. The Arbitrator may quite reasonably have drawn the inference from the evidence, for example, that the Landlord was keeping her options open with respect to accomplishing the stated purpose by exploring whether she could secure a more lucrative rental arrangement in lieu of moving into the Property. Although it is true that the text message sent by the Landlord to the Tenant on September 20, 2022 was sent a week after the Arbitrator found the Landlord had moved into the Property (on September 13, 2022), this would not have precluded the Landlord from moving out of the Property if the Tenant had accepted the rental offer, thereby undermining the requirement to fulfill the stated purpose for a period of at least 6 months pursuant to s. 51(2)(b) of the RTA.

[55] The foregoing findings of the Arbitrator were derived in large part from adverse credibility findings against the Landlord. These credibility findings are entitled to a high level of curial deference.

[56] Further, this was not a situation, as in *Maasanen v. Furtado*, 2023 BCCA 193 at paras. 24-26, where the Arbitrator had failed to consider evidence of extenuating circumstances that prevented the Landlord from accomplishing the stated purpose. In this case, the alleged extenuating circumstances were the delays of contractors relating to the renovation of the Property and the Landlord's evidence concerning the reasonableness of those extenuating circumstances was expressly considered and addressed by the Arbitrator.

- [57] The Landlord cited *Dowling v. Heitner*, 2024 BCSC 2139 at para. 35 and *Osama v. Jiang*, 2025 BCSC 1079 at 31 for the proposition that two-three months is a reasonable period for a renovation. However, as noted in *Sefcikova v. Orca Realty*, 2024 BCSC 697 at para. 62, a "reasonable period" is not defined in the RTA and consequently that which is required to accomplish the stated purpose "will vary depending on the circumstances". In the circumstances of this case, and based on the evidence adduced at the hearing, the Arbitrator made a factual determination that a three-month renovation period was not reasonable. This decision was not clearly irrational in my view and is entitled to curial deference.
- [58] The Landlord further argued that the Arbitrator's consideration of the Landlord's English proficiency at the hearing was "irrelevant" but I disagree. In my view the Landlord's English proficiency was clearly relevant to credibility because the Landlord had herself testified that the confusion in her texts about renting the Surrey Property as opposed to the Property was due to her poor English (putting her own credibility relating to her language skills in issue). Given the testimony of the Landlord, the Arbitrator in my view had no choice but to consider the credibility of her statement that her proficiency in English was not good.
- [59] Finally, the Landlord also argued on the petition that the Arbitrator had erred by asserting on page 5 of the Decision that the Landlord "must have occupied" the Property from June 10, 2022 to December 9, 2022", implying that any delay beyond June 10, 2022 was not reasonable.
- [60] I am not persuaded by this argument. A reading of the Decision as a whole makes it clear that, in making this statement, the Arbitrator was merely referencing an understanding of when the formal Notice period commenced and not reaching a conclusion as to what a "reasonable period" for occupying the unit was. If this were not the case (i.e. if the Arbitrator believed that any move in date after June 10, 2022 was unreasonable), the Arbitrator would obviously have found it unnecessary to consider all the evidence concerning the reasons for delay between June 10, 2022 and September, 2022.
- [61] For all the above reasons, the patent unreasonableness argument is dismissed.

V. Order

- [62] The petition is dismissed.
- [63] The parties have leave to speak to costs. If the parties do not seek leave, the Tenant shall have his costs at Scale B, payable forthwith.

"M. Taylor J."

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