

CANADA / JUDGMENT

Komer v. BCIMC Realty Corporation

2025 BCCA 421

COURT

British Columbia Court of Appeal

DECIDED

6 November 2025

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2025 BCCA 421 Komer v. BCIMC Realty Corporation

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Komer v. BCIMC Realty Corporation,

2025 BCCA 421

Date: 20251106

Docket: CA51088

Between:

William Komer

Appellant

(Petitioner)

And

BCIMC Realty Corporation, Yaletown 939 Holdings Inc.,

Director of the Residential Tenancy Branch, and

Attorney General of British Columbia

Respondents

(Respondents)

Before:

The Honourable Madam Justice Fisher

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
October 28, 2025 (Komer v. BCIMC Realty Corporation,
Vancouver Docket S257342).

Oral Reasons for Judgment

The Appellant, appearing in person:

W. Komer

Counsel for the Respondents,

BCIMC Realty Corporation and Yaletown 939 Holdings Inc.:

L.M. Mackie

Place and Date of Hearing:

Vancouver, British Columbia

November 6, 2025

Place and Date of Judgment:

Vancouver, British Columbia

November 6, 2025

Summary:

The applicant applies for a stay of proceedings originating with an order of the Residential Tenancy Branch (RTB) granting an order of possession of his rental unit to the respondents for unpaid rent. The applicant claimed the respondents had a duty to accommodate him due to a disability and sought an adjournment of a dispute resolution hearing until his claim for discrimination could be heard by the Human Rights Tribunal. The RTB arbitrator declined the request for an adjournment and granted the respondents an order for possession and a monetary order. The decision was upheld on a reconsideration. The applicant's subsequent application for judicial review was dismissed and the court issued a writ of possession.

Held: The application for a stay of proceedings is dismissed. The applicant has not shown an arguable case that has any reasonable chance of succeeding on appeal. The applicant will not necessarily suffer irreparable harm if the stay is not granted, but there is some risk of temporary homelessness. However, the balance of convenience favours the respondents. The applicant has provided little evidence of the effect of his disability and no evidence of any effort to make some kind of proposal to the respondents regarding payment. It is unfair for him to continue to occupy the unit without paying rent. The writ of possession is enforceable on December 1, 2025.

- [1] FISHER J.A.: The applicant, William Komer, applies for a stay of proceedings originating with an order of the Residential Tenancy Branch (RTB) granting an order of possession of a rental unit to the respondents, BCIMC Realty Corporation and Yaletown 939 Holdings Inc. (collectively, the Landlord).
- [2] Mr. Komer has been a tenant of the rental unit since May 1, 2021. In July 2025, he failed to pay his rent and on August 12, 2025, the Landlord served him with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). Mr. Komer applied to cancel the Notice and the Landlord applied for an order of possession and a monetary order. Mr. Komer also applied for an order requiring the Landlord to make certain repairs to the rental unit.
- [3] At a dispute resolution hearing before an arbitrator of the RTB on September 16, 2025, Mr. Komer asserted he had suffered an injury in February 2025, a concussion, in the rental unit, which I understand is his place of work, that caused a disability. He argued that the RTB did not have jurisdiction to hear the matter because the Landlord had been discriminatory and harassing in asking for rent while he was suffering from a disability. He contended the Landlord had a duty to accommodate him and therefore the matter should be adjourned until his claim could be heard by the Human Rights Tribunal.
- [4] The arbitrator found that Mr. Komer had not provided sufficient evidence of a lack of accommodation, harassment or discrimination and declined to adjourn the hearing. He was not satisfied that Mr. Komer had provided sufficient evidence of a subsequent injury that allegedly left him with a disability and did not provide any documentation about his complaint to the Human Rights Tribunal. The arbitrator found the Notice had been duly served and since Mr. Komer acknowledged his non-payment of rent he dismissed the application to cancel the Notice without leave to reapply. He found the Landlord was entitled to the orders it sought and issued the order of possession and a monetary order for non-payment of rent in the amount of \$8,933. He also dismissed Mr. Komer's application for repairs.
- [5] Mr. Komer sought a reconsideration of the arbitrator's decision under s. 79 of the Residential Tenancy Act, S.B.C. 2002, c. 78, on three grounds: (1) he had new and relevant evidence not available at the time of the hearing regarding his complaint to the Human Rights Tribunal, (2) the issue of jurisdiction was not determined, and (3) the arbitrator had no jurisdiction to decide the issue. On September 22, 2025, an adjudicator of the RTB dismissed the application for reconsideration. He found that Mr. Komer was attempting to reargue the case on information that was available to the arbitrator or could have been provided in advance of the hearing and the arbitrator did not miss a legal issue or claim. He also found that the arbitrator had jurisdiction to hear the matter because Mr. Komer did not provide evidence that his application to the BC Human Rights Tribunal had been accepted. This was all decided in the context of an application for an adjournment.

- [6] On September 29, 2025, Mr. Komer filed a petition for judicial review of the RTB arbitrator and the RTB adjudicator's decisions. He obtained an interim stay of the orders issued by the RTB arbitrator pending its determination. The judicial review hearing took place on October 24, 2025, and reasons were issued on October 28, 2025, dismissing the petition and awarding costs to the respondents. The court also issued a writ of possession to the Landlord for Mr. Komer's rental unit. The Landlord agreed to suspend enforcement pending this application.

Stay of proceedings

- [7] Mr. Komor filed a notice of appeal on October 28, 2025. He now applies under s. 33 of the Court of Appeal Act, S.B.C. 2021, c. 6 for a stay of the proceedings below. The stay, if granted, would apply to the writ of possession issued by the Supreme Court, as I understand it, since it has superseded the RTB order for possession.
- [8] To obtain a stay, Mr. Komer must meet the three-part test set out in *RJR-MacDonald Inc v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 341, 1994 CanLII 117: (1) there is merit to the appeal in that there is a serious question to be tried, (2) he will suffer irreparable harm if the stay is not granted, and (3) the balance of convenience favors granting the stay. The overarching focus is the interest of justice: *Moore v. Cheung*, 2025 BCCA 39 at para. 22.

Merits of the appeal

- [9] The merits threshold is low. The issues raised on appeal must not be frivolous or vexatious and the applicant must show an arguable case that has a reasonable chance of success.
- [10] On this point, both parties have focused, or attempted to focus, on the reasons of the judicial review judge rather than the reasons of the RTB arbitrator and adjudicator. Mr. Komer asserts the judge made numerous errors, including a misapprehension of the evidence relating to the proof of his disability, deficient reasons, and a failure to apply the correct standard of review. The Landlord says the judge correctly found no reviewable error by the RTB arbitrator or adjudicator.
- [11] The problem with this is that the reasons of the judge are not available in the materials before me. However, on an appeal of a judicial review, this Court owes no deference to the judge and often focuses instead on the original decisions. The standard of review of those original decisions in this case is the very deferential standard of patent unreasonableness. As confirmed by counsel for the respondents, the standard of review is governed by the Administrative Tribunals Act, S.B.C. 2004, c. 45, s. 58, which provides a patently unreasonable standard of review on questions that include questions of law of a decision of a tribunal with a privative clause, as this one does here.
- [12] Mr. Komer says the arbitrator erred in finding there was insufficient evidence of his subsequent injury because there was evidence before the RTB about his disability from February through to late July 2025. The record provided in the Landlord's materials confirms this. There are physician's reports on WorkSafeBC forms indicating Mr. Komer suffered from

a concussion in February and March, and post-concussion syndrome in July. There are also documents indicating Mr. Komer received some disability benefits in March, April, June and July 2025.

- [13] From this, I am prepared to accept that Mr. Komer may have a point to make about the circumstances in which he was unable to pay the rent. However, it does not follow that simply because of his condition, the Landlord was not entitled to be paid rent because of a duty to accommodate Mr. Komer.
- [14] The Landlord submits there is no conflict between the Human Rights Code, R.S.B.C. 1996, c. 210 and the Residential Tenancy Act that would invalidate the Notice, as the Human Rights Tribunal has not made any determination of the merits of Mr. Komer's complaint. It says the mere submission of a human rights complaint is not a sufficient basis on which to adjourn an RTB proceeding and the arbitrator made no error in declining to adjourn that hearing on that basis. The Landlord also points to the lack of evidence that was before both the arbitrator and the adjudicator to support Mr. Komer's arguments.
- [15] I agree with the Landlord's assessment. Despite the low merits threshold, Mr. Komer has not shown that he has an arguable case that has any reasonable chance of succeeding on appeal.

Irreparable harm

- [16] Irreparable harm refers to the nature of the harm, not its magnitude, such as harm that cannot be quantified in monetary terms. An eviction can be irreparable harm, especially for a vulnerable person with nowhere to go, which is acknowledged by both parties: see, for example, *Douglas v. Anavets Senior Citizens' Housing Society*, 2002 BCCA 486. However, having to move in and of itself may not cause irreparable harm to a tenant, depending on the circumstances.
- [17] Mr. Komer submits he will suffer irreparable harm if the stay is not granted. He says he is waiting for resolution of an issue regarding his disability insurance benefits, which has caused his inability to meet his rent payments, and if he is forced to leave the rental unit, he faces the risk of homelessness. He compares his circumstances with those of the Landlord, who he says is a large corporation with significant assets and who is well able to absorb the loss of rent pending this appeal: see *Lee v. Wedekind*, 2021 BCCA 372.
- [18] The Landlord submits that Mr. Komer will not suffer irreparable harm if the stay is not granted. It points out that the rental unit is a 900 square foot, two-bedroom apartment with a monthly rent of \$3,579. It also says Mr. Komer's accommodation request sought to use the unit for a short-term rental business, not a primary residence and submits this contradicts Mr. Komer's position that he will be homeless if evicted.
- [19] Mr. Komer's accommodation request does not necessarily undermine his position that he may risk homelessness if evicted. As explained in Mr. Komer's petition and the materials filed today, he made that request to give him "a means with which to pay the rent while

awaiting the complications with the disability insurance payments to be resolved". The record shows that he wanted to list the bedrooms on Airbnb to be able to pay rent. This does not necessarily imply that Mr. Komer had somewhere else to live. But I do take the point that the unit has only so much space and it is unclear what Mr. Komer would do, depending on how many guests he was able to accommodate. In any event, Mr. Komer simply asserts he will be forced into homelessness without providing any evidence of options that may be available to him. Nor has he provided much information about the nature of his disability in respect of its effect on his ability to provide for himself.

- [20] I cannot say with certainty that Mr. Komer will suffer irreparable harm if the stay is not granted, but I certainly accept that there is a risk he could become homeless, at least temporarily.

Balance of convenience

- [21] The balance of convenience involves assessing which of the parties will suffer the greater harm from granting or refusing a stay.
- [22] Mr. Komer submits that the balance of convenience favors a stay. He says his human rights complaint should take precedence over the Landlord's rights under the Residential Tenancy Act, citing jurisprudence that says human rights legislation is paramount to other provincial legislation. He also says that he is a disabled tenant in dire financial circumstances who faces the risk of homelessness, whereas the Landlord is a multi-billion dollar corporation.
- [23] The Landlord says Mr. Komer now owes \$16,016 in unpaid rent and has still provided no evidence showing a delayed receipt of disability benefits. They say it is significantly prejudicial to them to allow Mr. Komer to live in the rental unit without being paid, particularly where he simultaneously asked to rent out the unit for a short-term business purpose.
- [24] In my view, it is a superficially easy balance to strike where one party is faced with eviction and the other is a corporate landlord. But just because the Landlord is a corporation with assets, it does not necessarily follow that Mr. Komer will suffer the greater harm. The record shows that Mr. Komer has some history of late or insufficient rental payments that have been tolerated by the Landlord for a considerable period of time and, more importantly, he has paid no rent to the Landlord since July of this year. With little evidence of the effect of his disability and no evidence of any effort to make some kind of proposal to the Landlord currently, in my view, it is unfair for him to continue to occupy the unit without paying rent.
- [25] In these circumstances, I am not satisfied that the balance of convenience favours Mr. Komer.
- [26] The application for a stay is therefore dismissed.

[27] I am prepared to provide Mr. Komer with time until the end of this month to vacate, to be reasonable. I found his proposal to be extremely reasonable and I think he should be given the benefit of looking for a place for the beginning of December.

[28] The writ of possession will be enforceable on December 1, 2025.

[Discussion re: dispensing with signature]

[29] FISHER J.A.: The requirement of Mr. Komer's signature is dispensed with.

"The Honourable Madam Justice Fisher"

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