

CANADA / JUDGMENT

Le v. Card

2025 BCSC 2204

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2025 BCSC 2204 Le v. Card

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Le v. Card,

2025 BCSC 2204

Date: 20251106

Docket: S251991

Registry: Vancouver

Between:

Thi Quynh Van Le

Petitioner

And

Lisa Card

Respondent

Before: The Honourable Madam Justice W.A. Baker

On judicial review from: An order of the Residential Tenancy Branch, dated January 14, 2025
(RTB File No. 910170163)

Reasons for Judgment

The Petitioner, appearing in person:

T. Le

Counsel for Respondent:

N. Del Negro, Law Student

Place and Date of Hearing:

Vancouver, B.C.

July 3, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 6, 2025

- [1] This is a petition brought by the landlord, Thi Quynh Van Li, seeking to set aside an order of Arbitrator Alstad of the Residential Tenancy Branch ("RTB"), dated January 14, 2025 (the "Merits Decision").
- [2] The landlord served on the tenant, Lisa Card, a two month notice to end tenancy for landlord's use of property, which was effective November 30, 2023. On September 21, 2024 Ms. Card filed a notice of dispute against the landlord, arguing the landlord failed to occupy the property in accordance with s. 49(5) of the Residential Tenancy Act, S.B.C. 2002, c. 78 (the "Act"). She sought compensation from the landlord pursuant to s. 51(2) of the Act, representing 12 times the monthly rent she paid for the property.
- [3] In the Merits Decision, Arbitrator Alstad found in favour of the tenant and ordered the landlord to pay her \$22,800.
- [4] On January 28, 2025, the landlord applied for a review consideration, claiming that they had new and relevant evidence which was not available at the time of the original hearing, the decision was obtained by fraud, the issue was not determined, and the arbitrator had no jurisdiction for the issue to be determined.
- [5] On February 5, 2025 Arbitrator Alstad dismissed the landlord's application for a review consideration ("Review Consideration"). The petitioner does not challenge the Review Consideration.
- [6] While not named as a respondent to this petition, the Director of the RTB filed a response and an affidavit setting out the RTB file on Merits Decision and the Review Decision. The Director provided submissions on the relevant standard of review, on which decision is properly under review, and on the available remedies on a judicial review.

What is the decision under review

- [7] Section 79(2) of the Act sets out specific grounds upon which a party may seek an internal review of a Director's decision. A claim that the original decision is patently unreasonable is not a ground of review under s. 79(2). In this case, the petitioner challenges the Merits Decision as being patently unreasonable. Therefore, even though the petitioner brought a review under s. 79 of the Act, I am satisfied that the decision properly under review in the petition is the Merits Decision.

What is the Appropriate Standard of Review

- [8] The petitioners submit that the Merits Decision is patently unreasonable.
- [9] The appropriate standard of review of an arbitrator's decision under the Act has been determined many times by this court, and is grounded in ss. 5.1 and 84.1 of the Act and s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 [ATA]. Questions of fact, law and discretion are only open to review if such decisions are patently unreasonable: *Campbell v. The Bloom Group*, 2023 BCCA 84 at paras. 11-14.
- [10] Under the ATA, a decision is patently unreasonable if there is no evidence to support the findings, or the reasoning in the decision is clearly irrational or so flawed that no amount of curial deference can justify letting it stand: *Yee v Montie*, 2016 BCCA 256 at para 21-22; *Pacific Newspaper Group Inc. v. Communications, Energy and Paperworkers Union of Canada*, Local 2000, 2014 BCCA 496 at paras. 39-44 (citing *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52).

Background Facts

- [11] The petitioner is Thi Quynh Van Le. She is not a native English speaker, and had a friend who speaks English, Mr. Trevor Davies, assist her with these proceedings. Ms. Thi Quynh Van Le is known by the English name "Chelsea". I will refer to her as Chelsea in these reasons, as that is how she is referred to in much of the evidence.
- [12] Chelsea entered into a one year residential tenancy agreement with the respondent, Ms. Card, on November 11, 2022, regarding a suite in a house in Maple Ridge. At the time she entered into the agreement, Chelsea lived upstairs in the same house with her mother. Her mother also had difficulties with the English language. Her mother used the English name "Amy". I will refer to her as Amy in these reasons, as that is how she is referred to in much of the evidence.
- [13] Mr. Davies is a neighbor and friend of Chelsea and Amy. Because he had better facility with English, he assisted them with tenants, the RTB dispute, and attended with Chelsea on this judicial review. He is not a lawyer and has no particular expertise in the area of residential tenancies.

The Hearing

[14] The RTB hearing was conducted by telephone, as is the usual case. A transcript of the hearing was prepared by Ms. Card, and all parties agreed that it was an accurate transcription of the oral testimony. As such, I rely on this transcript in my reasons.

[15] Mr. Davies appeared on behalf of Chelsea. Mr. Davies was sworn to tell the truth. Mr. Davies gave the following evidence on behalf of Chelsea:

- a) "Yes, this whole thing is based on a mistake that put down onto the ownership of the property, the mother and daughter were living upstairs and they wanted to be separated. They wanted their own space and it was a mistake on our part."
- b) "Chelsea was actually the registered owner of the property. It was Amy's cousin that did up the lease and put down Chelsea as the owner of the property when from the beginning of time in my view, Amy was the mother and she actually owns the property and the only reason that she put it in her daughter's name was just for legitimate reasons of not understanding English properly and her daughter had a much vaster knowledge of English right? So that's why."
- c) Mr. Davies was asked by the arbitrator if the landlord's child moved into the rental unit, to which Mr. Davies replied "Yes. Yes. She moved into her space. Yep."
- d) The arbitrator asked when the daughter began occupying the unit, to which Mr. Davies replied "Yeah. Well, it took about a month to clean up the mess from when they left, so I think she was downstairs living there within probably about a month, I think. Yeah."
- e) The arbitrator asked if the child still lived in the rental unit or whether she had left, to which Mr. Davies replied "No, she's still there."
- f) The arbitrator asked Mr. Davies if he had any additional evidence, to which Mr. Davies replied,

"I don't know what to say. They basically wanted their house back. It was Amy's house. But it was in Chelsea's name, and that's what this whole dispute is about. I didn't know that it was registered owner was Chelsea, but its still mother daughter reclaiming their property. And that's basically what it is. You know, Chelsea was moving downstairs and the mother stayed upstairs. That's basically what it was all about."

- g) The arbitrator clearly struggled with the Vietnamese names of Chelsea and Amy, and how those related to the name on title. He asked Mr. Davies, "So with that Mister Davies, do you happen to have the full legal name of the landlord prepared with the correct spelling?" Mr. Davies then spelled out the Vietnamese name of Chelsea "Van Thi Quynh Le" and confirmed that was Chelsea.

The arbitrator then asked, "I just want to, so that I'm where do you do you have any information like so you say that Chelsea also basically also has this different legal name that they are the actual owner. Are you saying that they were the actual one to purchase it and they never transferred title? I'm just trying to make sure that I know -"

Mr. Davies replied, "Well, the title was transferred to Chelsea and Amy was the mother. She's the one that actually owned the property, but it was transferred to Chelsea for just, you know, reasons of English compliance. And the mother does not feel comfortable knowing, you know, a lot of the English legalities. So that's why she just basically put it in her daughter's name, right?"

But nevertheless, it's still the mother and daughter in the house, period. You know, because there's nobody else."

h) The arbitrator asked Mr. Davies if he had anything else he would like to present:

AA: And is there any evidence other than your testimony, that you would like to direct me towards?

TD: Anything that might shed the light on it? Yeah, Chelsea moved -

AA: Yes.

TD: Back downstairs. And it's a mother and daughter that owned the house that take their house back, you know, that's basically it.

AA: Alright, So is there anything else that you'd like to present on regarding this issue?

TD: I don't know what else to say. You know, this is a money grab like times two now. They're going over the big dollars and it just makes no sense. There's no, there's no sibling other than Chelsea and her mother. And when I said sibling is moving downstairs in her video recording of me, it was meaning Chelsea, because I had no idea the property was in Chelsea's name. I thought it was in Amy's name, but it's a technicality that the cousin did up and I and I didn't bother to look at the title. And I had no idea that, you know, Chelsea was the owner, but it's just about the two of them in the house, period, you know.

i) Later in the hearing, the arbitrator's confusion over the names of the Le parties continued:

AA: So yeah, says both parties seem to agree that the daughter is, that Amy is the one who we've been and and is. And my apologies. I just want to make sure that I have the family tree properly mapped out in my head. So Mr. Davies, is Amy Chelsea's daughter?

TD: No. Amy is the mother and Amy is the one that basically dealt with the tenants for the most part always because she was basically considered the landlord. I did not know that Chelsea was on title, you know, but even if Chelsea is on title, it's still mother, daughter, taking back the property, its not anything new. There's nobody coming in to play here that shouldn't be here. It's all family, right? Yeah.

AA: And I interrupt, I apologize for the interruption of the tenants case. I just want to make sure that I firmly understand the landlord's position. So, did - was it Chelsea who moved into the unit or was it Chelsea's daughter?

TD: Chelsea doesn't have a daughter. Chelea is the daughter.

AA: Yeah. So the person who?

TD: Amy's the mother. Chelsea is the daughter. Yeah.

AA: Ok, so Chelsea moved into the rental unit. Chelsea is Amy's daughter therefore, at the very least, either the landlord or the landlords child did move into the rental unit. Am I correct on your position?

TD: Yes, 100%.

[16] The notice to end tenancy was delivered by Mr. Davies, and he signed the notice as agent for the landlord. When preparing the form, he listed Amy as the landlord, consistent with his understanding at that time of the ownership of the house. The notice indicated that the reason to terminate the tenancy was "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child: or the parent or child of that individual's spouse)." The form used by Mr. Davies included three check boxes where the landlord could indicate which close family member would occupy the unit. Mr. Davies checked the box that stated the occupier would be the child of the landlord.

[17] Ms. Card was represented by a law student, Ms. Del Negro, before the RTB. Ms. Card was present at the hearing. After Mr. Davies had completed his evidence, Ms. Del Negro gave the position of the tenant, stating:

What we were told or what the tenant was told by Trevor upon the eviction notice was that it would be Amy's children moving in, plural, is what we have in the video, and so the tenant made it very clear at the time of eviction that Amy, not being the landlord, given that Chelsea is the landlord, any of Amy's children would Chelsea's siblings. And so they wouldn't be valid family members under the RTA.

[18] After being asked to clarify what evidence the tenant had as to who actually moved into the unit, Ms. Del Negro stated:

We just have, I mean, yeah. We just, we just have what we were told which at the time was that Amy's children would be moving in. We have, We have nothing more than that. But it was children, plural. And at no time was specified that it was Chelsea who was the child that was moving in." "Yeah, we have video of Trevor, the landlord's agent, informing the tenant that Amy's children will be moving plural, which is the basis for this claim."

[19] The arbitrator asked Ms. Del Negro if there was anything else that she wanted to bring to his attention, and Ms. Del Negro replied, "Uh no. That's all from our side."

The Merits Decision

[20] In the Merits Decision, Arbitrator Alstad found that Chelsea was the landlord:

I find that T. [Chelsea] is the Landlord. I base this on how I find the tenancy agreement and the Title Search, to be more credible and independent sources of evidence that T.D.'s [Mr. Davies's] testimony.

[21] I note that Mr. Davies, in his testimony, agreed that Chelsea appeared on title as the owner, and appeared on the tenancy agreement. His evidence was that he understood that Amy transferred ownership to Chelsea because of her limitations with the English language. He testified that Amy performed the daily tasks as landlord, such as collecting rent, and he thought she was the landlord. He agreed that he originally misunderstood that Chelsea was on title.

[22] The arbitrator held:

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant has established their claim for compensation related to a notice to end tenancy where the Landlord did not accomplish the stated purpose or comply with the Act.

[23] After reviewing s. 52(2) of the Act, the arbitrator stated:

Before making further findings, I will clarify the law on some key points the parties focused on in the hearing. First, section 49(3) of the Act enables a landlord to end the tenancy to allow the landlord or a close family member to occupy it. Therefore, if a landlord stated on the Two Month Notice that their child would occupy the rental unit and they themselves occupied it instead they would have fulfilled the stated purpose.

This, in turn, also makes it irrelevant to my section 52(2) analysis whether T. [Chelsea] or V. [Amy] is legally the Landlord. V. [Chelsea] and T. [Amy] are both close family members as defined by section 49. Therefore, if V. [Amy] personally occupied the rental unit, the Landlord would fulfil their obligation regardless of whether the Landlord is legally V. [Amy] or T. [Chelsea].

[24] Having correctly identified that s. 49(3) of the Act permits a landlord to give notice to a tenant if the "landlord or a close family member of the landlord intends in good faith to occupy the rental unit", the arbitrator then rejects the landlord's evidence of use. The arbitrator held:

I find the Landlord has not proven on a balance of probabilities that V. [Amy] personally occupied the rental unit. The Landlord's only evidence to show V. [Amy] occupied the rental was their agent T.D.'s testimony that they did. T.D. did not provide any reason why they would know if V. [Amy] moved into the rental unit or how they knew they were still there. They did not testify if they currently still have any role in the management of the rental unit, or if they have visited it since the Tenant moved out.

I have no evidence of the source of T.D.'s knowledge of whether V. [Amy] occupied the rental unit. Therefore, I find on this question that T.D.'s testimony has no more weight than the Tenant's assertion that V. [Amy] did not move into the rental unit. The Landlord bears the burden of proof meaning they must show that on the key legal questions that their account is more likely than the Tenant's. As I have found the Landlord and Tenant's evidence on this issue equally compelling, I find the Landlord has not proven V. [Amy] moved in on a balance of probabilities.

Analysis

- [25] I find that the reasons of Arbitrator Alstad for finding that the landlord or the landlord's child did not move into the rental unit cannot be supported on the evidence. This finding is completely untethered from the actual evidence in the hearing.
- [26] The tenant presented no evidence of who actually moved into the rental unit. The tenant did not assert that Amy did not move into the rental unit (as stated by the arbitrator). The tenant's sole evidence was that they were told by Mr. Davies, when he delivered the notice to end tenancy, that Amy's children were moving into the rental unit. The record is clear that the tenant had no other evidence. Ms. Del Negro stated on the record that "We have nothing more than that." She confirmed that the basis of the claim was a video they had, at the time the notice was delivered, that Amy's children would be moving into the suite.
- [27] The arbitrator rejected Mr. Davies' evidence, but I find the basis for doing so is patently unreasonable. At no time was Mr. Davies' evidence challenged as to its veracity, the source of his knowledge, or any of the other faults expressed by the arbitrator in his reasons. While the court will ordinarily defer to an arbitrator's assessment of credibility, such an assessment must still be based in the evidence to be afforded deference. The arbitrator must point to contradictions in the evidence, or unanswered challenges to the credibility of the witness, or some other basis rooted in the evidence itself, upon which they reject the evidence of a witness.
- [28] In this case, Mr. Davies was sworn to tell the truth, he explained how he assisted the Le family, he explained what he knew when helped them with the notice to end tenancy, and what he since learned in looking at the title documents. He was candid and consistent in his evidence. Not once did the arbitrator or the tenant challenge Mr. Davies' ability to testify about the matters at issue. Mr. Davies did not rely on hearsay evidence on any material points, or state that he did not have personal knowledge of the matters of which he spoke. He testified about what he knew about Chelsea moving into the unit, including when she moved in and whether she was still in the unit.
- [29] The only evidence before the arbitrator as to who actually moved into the rental suite came from Mr. Davies, and he was entirely consistent throughout his testimony that it was Chelsea who moved in, and was still living in the unit. The only evidence before the arbitrator was that Amy, the mother, lived in the upstairs suite and Chelsea, the daughter, lived downstairs in the former rental unit.

- [30] The arbitrator did not accurately state the evidence of Mr. Davies, in that the reasons state the landlord's only evidence to show V. [Amy] occupied the rental was their agent T.D.'s testimony that they did. At no time did Mr. Davies ever testify that Amy moved into the rental unit. His evidence was consistent that Amy and Chelsea had been living upstairs, and Chelsea moved into the former rental unit after the tenant moved out. Further, the arbitrator held that the landlord did not prove that Amy moved into the rental unit. At no time did the landlord assert in these proceedings that Amy intended to move into the rental unit, or that Amy did move into the rental unit. At all times, the landlord asserted that Amy's child, Chelsea, would and did move into the rental unit.
- [31] I find there is no valid basis in the evidence at the hearing to reject the evidence of Mr. Davies. In rejecting Mr. Davies' evidence the arbitrator's reasons are irrational and so flawed that no amount of curial deference can justify letting these reasons stand.
- [32] The complaint of the tenant at the RTB hearing was that she understood, based on a statement made by Mr. Davies, that Amy's children, plural, would be moving into the suite. The arbitrator found that Chelsea was the landlord. The only evidence before the arbitrator as to use of the rental unit, was that Chelsea, Amy's child, moved into the unit.
- [33] The Act must govern over any statements made by agents for the landlord. The Act permits a landlord to give notice if they or their close relative intends to use the suite. While there was initial confusion as to who held title to the unit and who was the landlord - Amy or Chelsea, the evidence was entirely clear that the landlord or their close relative intended to and did move into the rental unit. Therefore, s. 49(3) was complied with and there was no basis upon which the arbitrator could make an award in favour of the tenant pursuant to s. 51(2) of the Act.
- [34] In the circumstances of this case, I see no benefit in remitting this matter to the RTB for a new hearing. I find that a dismissal of the tenant's dispute is inevitable as the basis for the dispute, as articulated by the tenant at the hearing, is not sustainable. As such, I decline to remit this matter to the RTB: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 142.

Conclusion

- [35] The decision of Arbitrator Alstad dated January 14, 2025, is set aside, without leave to reapply.
- [36] I order costs against the respondent, in favour of the petitioner.

"W.A. Baker J."

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