

CANADA / JUDGMENT

Leung v. Kung

2025 BCSC 2340

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2025 BCSC 2340 Leung v. Kung

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Leung v. Kung,

2025 BCSC 2340

Date: 20251127

Docket: S250088

Registry: Vancouver

Between:

Yuk Ching Leung

Petitioner

And

Hui Fen Kung

Respondent

Before: The Honourable Justice Loo

On judicial review from: An order of the Residential Tenancy Branch, dated November 8, 2024
(Leung v. Kung, File no 91071184)

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.

October 24, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 27, 2025

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Introduction

- [1] This is a petition for judicial review in which the petitioner, Yuk Ching Leung, seeks to set aside a decision made by the Residential Tenancy Branch ("RTB") made on November 8, 2024 (the "Decision").

Background

- [2] The petitioner has been a tenant at the subject property for 18 years. She resides in the basement suite of a house. The rental unit in the basement has a separate entrance, two bedrooms, one bathroom and a combined kitchen, dining and living area.
- [3] Adjacent to the petitioner's unit is another self-contained basement suite which has its own separate entrance, one bedroom, one bathroom and one kitchen. It was occupied by another tenant at the time of the RTB hearing in this case.
- [4] The respondent Hui Fen Kung is the owner of the property and occupies the main and upper floors of the property, which together comprise three bedrooms, two bathrooms and one kitchen. One of the bedrooms is used by the respondent and another by the respondent's niece. The third is a spare room used by the respondent's daughter and niece when they visit.
- [5] Throughout the petitioner's tenancy until November 2023, the respondent imposed only the rent increases permitted under the Residential Tenancy Act, S.B.C. 2002, c. 78 [RTA]. The allowable limit in 2023 was 3.5%.
- [6] However, in November 2023, the respondent told the petitioner that the rent would rise to \$1400--a 41.7% increase from the previous rent. The petitioner's evidence is that when the petitioner resisted the increase, relying upon the 3.5% cap, the respondent was angry. The petitioner ultimately agreed to a 23% increase in December 2023. The relationship between the parties subsequently deteriorated.
- [7] On or about September 7, 2024, the respondent served a Four Month Notice to End Tenancy for Landlord's Use (the "Notice").
- [8] On or about October 4, 2024, the petitioner filed an Application for Dispute Resolution with the RTB seeking to cancel the Notice.
- [9] On November 8, 2024, a hearing was held before an RTB arbitrator. Both parties attended the hearing. The petitioner was assisted by a lay advocate, and the respondent was represented by counsel. The hearing will be further described below.
- [10] That same day, the arbitrator issued the Decision dismissing the petitioner's application and granting the respondent an order for possession.
- [11] On November 9, 2025, the petitioner applied for a Review Consideration which was also dismissed.

Standard of Review

- [12] Pursuant to ss. 5.1 and 84.1 of the RTA, certain provisions of the Administrative Tribunals Act, S.B.C. 2004, c. 45 [ATA], including s. 58, apply to adjudications governed by the RTA. Specifically, s. 58(2) of the ATA sets out the standard of review applicable to decisions of the RTB:
- (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
- (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
- (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly ...
- [13] The petitioner argues that the Decision was, in various ways, both patently unreasonable and procedurally unfair.
- [14] A comprehensive summary of the legal principles relating to the patent unreasonableness standard can be found in *Hollyburn Properties Limited v. Staehli*, 2022 BCSC 28 [Hollyburn]:
- [25] As the ATA does not define patent unreasonableness as it applies to a tribunal's factual or legal findings, however, guidance regarding its meaning must be sought from the case law. In *Kong* at paras. 58-65, Madam Justice MacDonald set out a number of jurisprudential holdings which provide content to the notion of patent unreasonableness, including:
- (a) as expert tribunals are entitled to significant deference, the standard is an onerous one and their decisions can only be quashed if there is no rational or tenable line of analysis supporting them (*Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 at para. 65; *aff'd* 2009 BCCA 229);
- (b) a decision is patently unreasonable if it is openly, evidently, and clearly irrational, or unreasonable on its face, unsupported by evidence, or vitiated by failure to consider the proper factors or apply the appropriate procedures (*Gichuru v. Palmar Properties Inc.*, 2001 BCSC 827 at para. 34, citing *Lavender Co-Operative Housing Association v. Ford*, 2011 BCCA 114);
- (c) a patently unreasonable decision is one that almost borders on the absurd (*Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, 2004 SCC 23 at para. 18 and *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28);

- (d) it is a possible that a great deal of reading and thinking will be required before the problem in a patently unreasonable decision is apparent, but once its defect is identified, it can be explained simply and easily, leaving no real possibility of doubting that the decision is defective (*Yee v. Montie*, 2016 BCCA 256 at para. 22);
 - (e) the standard of patent unreasonableness also applies to the consideration of adequacy of reasons, which involves an assessment of the justification, transparency and intelligibility of the decision-making process (*Vavilov*); and
 - (f) under the RTA regime, the overriding test for adequacy of reasons is whether a reviewing court is able to understand how and why the decision was made (*Ganitano v. Yeung*, 2016 BCSC 2227 at para. 24).
- [15] Procedural fairness is comprised of two rights: the right to be heard and the right to an impartial hearing: *Crest Group Holdings Ltd. v. British Columbia (Attorney General)*, 2014 BCSC 1651 at para. 36.
- [16] In *Hollyburn*, the Court held:
- [27] With respect to procedural fairness, the ATA provides at s. 58(2)(b) that the standard of review is whether, in all of the circumstances, the tribunal acted fairly. The factors that inform the content of a tribunal's duty to provide procedural fairness are contextual and include: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the affected individuals; (4) the legitimate expectations of the person challenging the decision; and (5) the choice of procedure made by the administrative decision-maker: *Vavilov* at para. 77.

Legal Context

- [17] The respondent led evidence at the RTB hearing that she served the Notice on the petitioner so that she could move into the petitioner's unit herself.
- [18] The relevant provision of the RTA is s. 49(3) which states:
- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.
- [19] It is clear on the authorities that the "good faith" requirement imposes a two-part test. It requires the arbitrator to assess: (1) whether the landlord genuinely intended to act on the stated purpose; and (2) whether that intention was free of any dishonest or ulterior motive, whether primary or secondary: *Fraser v. 1392383 B.C. Ltd.*, 2025 BCSC 1669 at para. 111.
- [20] With regard to the second part of the good faith test, this Court held as follows in *Gichuru v. Palmar Properties Inc.*, 2011 BCSC 827:

- [55] As Taylor J. held in *Gallupe* at para. 39, if there is evidence before the decision-maker that the landlord's purpose in issuing a notice to end tenancy is to get rid of a meddlesome tenant, then that evidence raises a question of whether the landlord had a fundamentally dishonest purpose that defeats a finding of good faith.
- [56] In *Gallupe* the court also held that the onus is on the landlord to prove an absence of bad faith arising out of dishonest purpose. Further, good faith applies to both the intention to occupy and the purposes for which the intention is held: paras. 41, 42.

Issues

- [21] The petitioner submits that there are several ways in which the Decision was patently unreasonable and that she was not accorded procedural fairness. The petitioner submits that the arbitrator:
- a) failed to assess certain evidence on the first part of the good faith test;
 - b) failed to properly assess the second part of the good faith test, and in particular erred by ranking the respondent's motives and by failing to grapple with the evidence of ulterior motive;
 - c) failed to deal with issues of necessity and proportionality;
 - d) failed to deal with the duration of the landlord's proposed use;
 - e) incorrectly admitted hearsay evidence; and
 - f) failed to accord procedural fairness to the petitioner in relation to the conduct of the hearing.
- [22] Each of the petitioner's arguments will be addressed in turn below.

Analysis

- [23] For the reasons that follow, I find that the Decision was patently unreasonable on the basis of the second argument advanced by the petitioner--that the arbitrator failed to properly assess the second part of the good faith test, and in particular erred by ranking the respondent's motives and by failing to grapple with the evidence of ulterior motive.
- [24] Although the other arguments advanced by the petitioner are rejected, her success on the second argument means that the Decision shall be set aside.

Alleged failure to assess certain evidence on the first part of the good faith test

- [25] As indicated above, the first part of the good faith test requires the arbitrator to assess whether the landlord genuinely intended to act on the stated purpose--that is, to occupy the rental unit.

[26] In this regard, the arbitrator accepted the respondent's evidence that she had chronic leg and back pain after spending many decades working in the hotel industry and due to a fall in April 2024. The respondent submitted medical documentation showing she has been taking pain medications since that time and that she continues to suffer from leg pain.

[27] The arbitrator had regard to the respondent's evidence that she wanted to move her bedroom and most of her day-to-day living from the upstairs to the petitioner's unit so that she would have to deal with fewer stairs. The arbitrator also had regard to evidence given by the landlord's daughter Diane who attended the RTB hearing and was examined by the petitioner's advocate. Diane was in favour of her mother moving downstairs and testified about complaints made to her by the respondent about the pain in her legs and the need to carry the respondent's dog up and down the stairs.

[28] The arbitrator concluded:

I accept that the stairs would be hard to manage with a knee/leg injury at 65 years of age. I am satisfied that this would be a major motivating factor which would lead the Landlord to want to take over the space in the basement so that she can live there, while also freeing up more space upstairs for her extended family to stay.

[29] The petitioner argues that the arbitrator failed to grapple with critical evidence on this issue--that the respondent was taking daily dog walks, practicing yoga and line dancing, and doing lawn mowing and household maintenance--which she argues is "inconsistent with the alleged incapacity to manage the additional stairs".

[30] In my view, however, the petitioner's argument on this issue overstates the respondent's position. The respondent's evidence was not that she was incapable of managing the additional stairs. Rather, her evidence was that the new arrangement would "reduce the physical strain of moving upstairs, which is essential to [her] long term comfort and mobility". She did not say that she was not able to perform activities: indeed, she gave evidence that the extra space downstairs would provide her with adequate room to practice Chinese line dancing and yoga.

[31] In that context, it is my view that it was not necessary for the arbitrator to "grapple" with the evidence regarding the respondent's activities because that evidence was not "critical" as alleged by the petitioner and it was not inconsistent with the respondent's evidence regarding her medical issues. In my view, the arbitrator correctly addressed the first part of the good faith test, finding that the respondent genuinely intended to occupy the rental unit.

Alleged failure to properly assess the second part of the good faith test, by ranking the respondent's motives and by failing to grapple with the evidence of ulterior motive

- [32] Although the petitioner in her written submissions argued separately that the arbitrator failed to properly assess the second branch of the good faith test, that the arbitrator erroneously ranked the respondent's motives, and that the arbitrator failed to grapple with the evidence of ulterior motive, it is my view that these arguments overlap and ought to be dealt with together.
- [33] The law with regard to these issues is set out in Fraser, wherein this Court held:
- [71] An arbitrator must therefore not only identify the issue of good faith but must also grapple with the tenant's evidence of an ulterior motive and make findings on that evidence (Aarti, at para. 39).
- [72] In applying this test, the Court of Appeal in Aarti emphasized that "good faith" requires an honest and genuine intention to follow through with the stated purpose, unaccompanied by any dishonest or ulterior motive.
- [73] Whether the honest motive is primary or secondary is immaterial; any improper motive may invalidate the notice: Aarti at paras. 37-39. Thus, even where a landlord may genuinely and honestly intend to appoint a caretaker, if the choice to situate the caretaker in a particular unit is influenced by the ulterior goal of displacing a long-term tenant paying below-market rent, the notice cannot be said to have been issued in good faith.
- [74] On judicial review, the Court must be satisfied that the arbitrator considered whether the landlord's intention reflected a genuine and honest commitment to convert the unit for the stated purpose.

[Emphasis added]

- [34] In this case, the arbitrator dealt with the petitioner's allegations of ulterior motive as follows:

The tenant stated that she has been there about 17 years, and she had a good relationship with the Landlord until the Landlord tried to raise her rent by around 42% in November of 2023. The tenant took issue with the rent increase, and subsequently agreed to pay about half that amount, but she feels the Landlord has wanted to evict her ever since. The Tenant pointed out the Landlord is likely wanting to re-rent the space, since she is only paying about half of what market rent is for that type of unit. The Tenant pointed out the Landlord's dishonest motive for ending the tenancy, and pointed to case law to support that this dishonest motive precludes the Landlord from issuing the notice in good faith, particularly given the notice was issued following a disagreement about an oversized rent increase.

- [35] The arbitrator ultimately concluded:

Although the notice to end tenancy was issued after the relationship went sideways and after the rent increase was debated, I am satisfied that there are also other related factors which may play a role in the issuance of this notice

I find the Landlord's explanation regarding her injury and her need for less stairs is compelling and supported by the evidence. I find that this, combined with her secondary need for more space to accommodate her visiting extended family, some of whom stay for long periods of time, supports her good faith intentions, and outweighs the rent increase issue which predated the predominant motivator (the landlord's leg injury).

[Emphasis added]

- [36] The petitioner advances two main arguments. First, she emphasizes the arbitrator's use of the words "outweighs" and "predominant" and submits that the arbitrator fell into error by treating the ulterior motive "as just one factor to be weighed or ranked against others". Second, she submits that the arbitrator failed to grapple with the evidence advanced by the petitioner regarding the respondent's ulterior motive.
- [37] Regarding the first argument, the Court held as follows in Gichuru:
- [58] The DRO's interpretation that a dishonest motive will not defeat good faith intent as long as that dishonest motive is not the primary motive for ending the tenancy is clearly and patently unreasonable. Dishonesty is the antithesis of good faith. A fundamentally dishonest motive or purpose for ending the tenancy would plainly preclude a finding that the landlord intended in good faith to occupy the rental unit, regardless of whether the dishonest motive ranked as a primary or secondary motive. Labelling a dishonest motive as a secondary motive does not make it any less dishonest.
- [38] This passage and para. 73 of Fraser stand for the proposition that even where a landlord may genuinely and honestly intend to occupy a unit for her own use as in this case, the notice cannot be said to have been issued in good faith if it was influenced by an ulterior or dishonest motive, regardless of whether that motive is characterized as primary or secondary.
- [39] The respondent argues that while the arbitrator's use of the words "outweighs" and "predominant" were regrettable, it is clear from the Decision, read as a whole, that the arbitrator found the respondent had a genuine good faith intention.
- [40] The respondent submits that the arbitrator did not, in their reasons, make a finding that the rent increase issue motivated the respondent to issue the Notice to the petitioner. She argues that despite the words used by the arbitrator, the arbitrator did not rank or weigh the respondent's motives; rather, the arbitrator found the respondent's explanations of why she wanted to move into the basement "compelling" and accepted those explanations as being the genuine reasons for wanting to move into the petitioner's unit.

- [41] In my view, however, this argument invites the Court to ignore the plain words used by the arbitrator and to read in words that do not appear in the Decision. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, instructs that it is not permissible for this Court to fashion its own reasons to buttress the administrative decision:
- [96] Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome.
- [42] In my view, it is not open to this Court to ignore the arbitrator's use of the words "outweighs" and "predominant" and to substitute other words in their place. The meaning of those words is plain. I conclude that the Decision is flawed in that the arbitrator found that the respondent's good faith motive outweighed her ulterior motive, and that it was the predominant motive compared to her ulterior motive. As in *Gichuru*, those findings were erroneous in law and patently unreasonable.
- [43] The respondent's second main argument regarding the second part of the good faith test is that the arbitrator failed to grapple with the respondent's evidence regarding ulterior motive.
- [44] As indicated above, the petitioner gave evidence that in November 2023 the respondent sought to raise her rent to \$1,400 per month and that when the petitioner refused, citing the legal limit, the respondent became angry. Afterwards, the relationship between the parties deteriorated. In December 2023, the petitioner ultimately agreed to a 23% increase, effective March 2024. On or about September 7, 2024, the respondent served the Notice.
- [45] The Decision recites the petitioner's evidence on this issue but does not grapple with that evidence at all. Although, on its face, the evidence suggests that the rent dispute and the deterioration in the parties' relationship could well have been a factor in the respondent's decision to issue the Notice, the Decision does not provide any insight into why the arbitrator appears not to have given credence to the petitioner's evidence on this issue. The arbitrator simply stated that the respondent's explanation regarding her injury and her need for less stairs was "compelling and supported by the evidence" and outweighed the rent increase issue.
- [46] As stated in *Fraser*:
- [124] The failure to consider relevant and directly conflicting evidence constitutes a serious omission. Adequate reasons require an adjudicator to grapple with the broader factual matrix, weighing the evidence and applying it to the legal test in a way that permits

meaningful review. As emphasized in *Aarti*, the second element of the good faith test requires an inquiry into whether the landlord's intention was free of any dishonest or ulterior motive. The arbitrator's reasons did not address that question. Instead, the affidavit and contract were said to "speak for themselves," without engaging with contradictory documentary evidence or assessing whether the evidence suggested an improper purpose. As confirmed in *Vavilov* at paras. 126-128, reasons must do more than summarize evidence and state a conclusion; they must demonstrate how the evidence was assessed and why one version was preferred over another. Because the arbitrator failed to undertake this second part of the test, the decision cannot be said to rest on a meaningful application of the statutory standard.

[Emphasis added]

[47] In my view, this passage is apposite to the situation in this case. On this point, the Decision does little more than summarize evidence and state a conclusion. It does not demonstrate why the respondent's evidence as to her motives and intention were preferred over the petitioner's evidence that suggested an ulterior motive. Accordingly, on this issue, this Court is unable to understand how and why the arbitrator's finding was made, and for that additional reason the Decision is patently unreasonable.

Alleged failure to deal with issues of necessity and proportionality

[48] In the petitioner's written submissions, she argues that the jurisprudence establishes that eviction for a landlord's use can only be justified where the proposed occupation is "genuine, necessary and proportionate". She argues that her eviction was neither necessary nor proportionate because the second basement unit, occupied by another tenant, was the "more suitable" of the two, and because the respondent would not be making use of the "whole" of the petitioner's unit as she would need only one of the two bedrooms.

[49] In this regard, she cites *Fraser* as well as the decisions of this Court in *Potherat v. Slobodian*, 2021 BCSC 1536 and *Blouin v. Stamp*, 2021 BCSC 411. In my view, however, the jurisprudence does not go so far as the petitioner suggests.

[50] *Potherat* concerns the duration requirement for landlord's use found in the residential tenancy policy guideline 2A, entitled "Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member" (the "Guideline").

[51] *Blouin* establishes that a landlord cannot satisfy the statutory requirement to occupy a rental unit under the RTA by merely taking over a portion of the unit while renting out the remainder. There is no suggestion that this is what the respondent intends to do in this case.

[52] Where the tenant has raised an ulterior motive, the availability of alternatives is a factor that may support the finding of a mixed motive: *Fraser* at para. 129. However, in *Fraser*, there were vacant units into which the caretaker could have moved. In the case at bar, the second basement suite in the subject property was occupied at the time of the RTB hearing.

[53] No authority was brought to my attention for the proposition that if a landlord has a genuine intention to occupy one of two suites in her home, she must choose the one with the rent closest to the market rate and is precluded from choosing the one with below-market rent.

[54] The petitioner also submits that leaving a unit vacant or using it inconsistently with a genuine residential purpose contravenes the RTA. Those general principles are not disputed but they do not apply in this case. The respondent's evidence is that she wishes to use the second bedroom in the petitioner's unit for practicing Chinese line dancing and yoga. The petitioner has cited no authority for the proposition that these are not genuine residential purposes.

[55] Indeed, the Guideline contemplates the issuance of a Notice to End Tenancy for Landlord's Use for purposes that might be viewed as recreational, and not strictly necessary. It states:

For example, if a landlord owns a house, lives on the upper floor and rents out the basement, the landlord can end the tenancy if the landlord plans to use the basement as a second living room. Another example is that the landlord could end a tenancy in the carriage home behind their house to turn it into their fitness studio.

[56] For the reasons stated, I am unable to find that the Decision is patently unreasonable because it fails to deal adequately with issues of necessity and proportionality.

Alleged failure to address duration

[57] The Guideline provides that in order to validly deliver a Four Month Notice to End Tenancy for Landlord's Use, the landlord must intend to occupy the rental unit for at least twelve months.

[58] On this issue, the petitioner argues that the arbitrator "failed to investigate whether the landlord's alleged injury would have persisted for the requisite twelve month period" or when or for how long visits from extended family members would occur. The petitioner argues that the arbitrator failed to expressly address this issue in the Decision, and that the arbitrator was obligated to make an evidence-based finding on this statutory requirement.

[59] However, the petitioner did not raise this issue at the hearing and there was no suggestion that the respondent might occupy the basement suite for a limited time and then move back upstairs. Although the petitioner argues that the respondent's leg injury might be a temporary limitation, it is clear from the nature of the other reasons--her struggles in carrying her 15-year-old dog up the stairs and freeing up more space upstairs for her extended family to stay--that they were not limited in time.

[60] I am unable to find that the Decision is patently unreasonable because it fails to deal adequately with the expected duration of the landlord's use.

Alleged hearsay evidence

- [61] The petitioner argues that the arbitrator's reliance on an unsworn, written statement of the respondent, which the petitioner characterizes as hearsay, was inappropriate. It cites decisions made in proceedings before this Court for the proposition that in order to satisfy necessity for the purpose of admitting hearsay, the party adducing the evidence must prove that hearsay is the only available means of putting that evidence before the court.
- [62] No authority has been provided to me to support the proposition that such a strict standard applies before the RTB. Indeed, that proposition is belied by s. 75 of the RTA which states that the director may admit oral or written testimony as evidence whether or not it would be admissible under the laws of evidence:

Rules of evidence do not apply

75 The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be

- (a) necessary and appropriate, and
- (b) relevant to the dispute resolution proceeding.

- [63] Further, there is some authority for the proposition that hearsay is generally admissible before the RTB: *Maxwell v. Mo*, 2023 BCSC 493 at para. 12.
- [64] It is to be emphasized that the dispute resolution process under the RTA is intended to be a relatively informal and expeditious procedure, and hearings are generally short in duration: *Chen v. Hung*, 2022 BCSC 894 at para. 45. In my view, given the limited time available for the RTB to hear this case, it was appropriate and efficient to permit the parties to rely on written statements upon which they could be questioned by the other side.
- [65] In any event, in this case, the document in question was not hearsay in the ordinary sense. It was a statement of the respondent that she was available to speak about. Any prejudice to the petitioner arising from its admission was mitigated by the fact that the respondent could have been examined by the petitioner or her advocate regarding the contents of the statement.
- [66] I conclude that the petitioner's rights to procedural fairness were not violated by the admission of the respondent's written statement.

Procedural objections regarding the conduct of the hearing

- [67] It is clear on the authorities that a high degree of procedural fairness is required in an RTB hearing: *Bedwell Bay Construction v. Ball*, 2022 BCSC 559 [Bedwell Bay] at para. 55.

- [68] It is also clear on the authorities that while a tribunal with discretionary power to determine its own hearing process may have the authority to impose reasonable time limits on examinations in-chief, cross-examinations, re-examinations and submissions in the interest of efficiency and proportionality, it may do so only in a manner that accords with the duty of procedural fairness: *Al-Sudani v. Ghavami*, 2023 BCSC 2280 at para. 31.
- [69] In this case, the petitioner alleges that the arbitrator unfairly truncated the presentation of her case, and that the arbitrator interrupted relevant testimony.
- [70] The petitioner relies on *Bedwell Bay* wherein the petitioner was incorrectly required to present its case first and was denied both an opportunity to cross-examine and a right of reply. In those circumstances, this Court held that the petitioner was wholly deprived of the opportunity to fully and fairly present its case.
- [71] The petitioner also relies on *Al-Sudani*, wherein the tenant was the last witness called at the hearing. While his direct examination was ongoing, the arbitrator ruled that the time available for his direct examination was concluded.
- [72] However, the case at bar, in my view, is distinguishable from the cases relied upon by the petitioner. In this case, the advocate for the petitioner examined both witnesses called by the respondent. He had an opportunity to examine the respondent but did not seek to do so. During his submissions, he raised the petitioner's argument that she was being evicted for financial gain, he recounted the history between the parties concerning the rent increases, and he responded to key points in the respondent's evidence.
- [73] Although the arbitrator suggested at the outset of the petitioner's submissions that the arbitrator did not need to have the advocate read out the documentation and that the arbitrator would look at the documents after the hearing, the advocate was not cut off during his submissions. Rather, at the end of his submissions, the advocate stopped without prompting, and said "Mr. Arbitrator, I think that concludes my statement for now".
- [74] Following that statement, the arbitrator turned to the issue of potential settlement. At one point in that settlement process, the petitioner interjected and sought to adduce further evidence but, in my view, the arbitrator was not required to interrupt the settlement process to resume the taking of evidence, and his decision to redirect the discussion back to potential settlement was not a breach of procedural fairness. The advocate had already presented the petitioner's key arguments to the arbitrator on the petitioner's behalf.
- [75] I conclude that the petitioner's rights to procedural fairness were not violated by the arbitrator's conduct of the hearing.

Remedy and Conclusion

- [76] I have concluded that the arbitrator failed to properly assess the second part of the good faith test, in that they impermissibly ranked the respondent's motives and failed to grapple with the evidence of ulterior motive. In light of this conclusion, the petition is allowed, and the Decision is set aside.
- [77] The petitioner's application to dispute the Notice is to be reconsidered by the Director of the RTB or a delegate in light of these reasons.
- [78] Although the result of the petition favoured the petitioner, she raised several arguments that were rejected. Further, this matter has not been finally disposed of, as the RTB must re-assess the dispute anew in light of these reasons. For these reasons, I have concluded that there shall be no costs of this judicial review payable to any party.

"Loo J."

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