

CANADA / JUDGMENT

Li v. Lin

2024 BCCA 419

COURT

British Columbia Court of Appeal

DECIDED

13 December 2024

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2024 BCCA 419 Li v. Lin COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Li v. Lin, 2024 BCCA 419 Date: 20241213 Docket: CA49524 Between: Xiaoyun 'Cloudia' Li Appellant (Respondent) And Meng-Tse Lawrence Lin Respondent (Petitioner) Before: The Honourable Mr. Justice Harris The Honourable Justice Iyer The Honourable Justice Gomery On appeal from: An order of the Supreme Court of British Columbia, dated November 7, 2023 (Lin v. Li, 2023 BCSC 2372, New Westminster Docket S249297). Oral Reasons for Judgment Counsel for the Appellant: Z.C. Ng J. Liu The Respondent, appearing in person: M-T. Lin Place and Date of Hearing: Vancouver, British Columbia December 13, 2024 Place and Date of Judgment: Vancouver, British Columbia December 13, 2024 Summary: Appeal of a judicial review setting aside two orders of the RTB. Held: Appeal dismissed but for reasons different from those of the chambers judge. The RTB hearing involved a breach of procedural fairness. The adjudicator adjourned the hearing stating that the hearing would reconvene and continue. Instead, the adjudicator rendered reasons without hearing further from the parties and before the hearing was completed.

- [1] HARRIS J.A.: We are all of the same view. In our opinion, there has been a failure of procedural fairness in the adjudicator's decision because the hearing was not completed. The adjudicator said at the conclusion of the hearing that the hearing was adjourned but would be reconvened. That did not happen. Instead, the adjudicator rendered the decision. We are satisfied that is the case on the basis of the recording of the hearing. We concluded we should admit and hear it for the purpose of deciding this appeal.
- [2] We are aware of the fact that the issue of procedural fairness on this basis has been advanced by the respondent from the beginning. It was one of, if not the first, issues raised in his written petition below, but that particular issue was not adjudicated and decided by the chambers judge. We, however, have reviewed the audio of the hearing, and we are of the view that there was a lack of procedural fairness in the hearing. As a result of that, the orders that were made by the chambers judge below in respect of the two orders from the Residential Tenancy Branch will remain in place. Technically, we are dismissing the appeal, but on reasons different from the reasons of the chambers judge.

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- [3] The legal effect of the chambers judgment remains in place, even though the appeal is dismissed. "The Honourable Mr. Justice Harris" "The Honourable Justice Iyer" "The Honourable Justice Gomery"
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Prepared on 26 October 2026 · Esheria