

CANADA / JUDGMENT

Li v. Ross

2025 BCSC 2509

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2509 Li v. Ross

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Li v. Ross,

2025 BCSC 2509

Date: 20251119

Docket: S251391

Registry: Vancouver

Between:

Xing Li and Jinting Wen

Petitioners

And:

Mark Ross, Eden Ross, and Linda Friesen

Respondents

Before: The Honourable Mr. Justice Brongers

On judicial review from: An order of the Residential Tenancy Branch, dated December 24, 2024
(File No. 910169555)

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:

F. Wu

Place and Date of Hearing:

Vancouver, B.C.

November 10, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 19, 2025

Introduction

- [1] This is a judicial review of a decision of a Residential Tenancy Branch arbitrator (the "Arbitrator") made pursuant to s. 51 of the Residential Tenancy Act, S.B.C. 2002, c 78 [RTA].
- [2] The proceeding before the Arbitrator was brought by tenants who were renting a house from a landlord. The tenants received a notice to end a tenancy indicating that they must leave because the landlord or his spouse was going to occupy the house. The tenants moved out, but monitored the house after they left. Based on their observations, the tenants formed the view that the house had been left vacant, contrary to the landlord's stated intention when he evicted them. The tenants then applied for compensation from the landlord under s. 51 of the RTA.
- [3] In a s. 51 RTA proceeding, the burden is on the landlord to show two things: (1) that the stated purpose for ending the tenancy was accomplished within a reasonable period; and (2) that the rental unit was used for that stated purpose for a sufficiently lengthy period (six months in this case). If the landlord does not establish both of these conditions, compensation must be paid to the tenant unless there are extenuating circumstances.
- [4] Here, the landlord claimed that his spouse did, in fact, move into the house within a few weeks after the tenants had vacated it. While acknowledging that his spouse then moved out five months later, the landlord argued that this was because she felt spied upon by the tenants and uncomfortable because of a lack of privacy.
- [5] The Arbitrator concluded that the landlord had not established either of the s. 51 RTA conditions. She also did not find that there were extenuating circumstances to excuse the landlord's non-compliance. Accordingly, the Arbitrator ordered the landlord to pay the tenants the prescribed compensation of 12 times the monthly rent that was payable under their tenancy agreement.
- [6] The landlord now seeks judicial review of the Arbitrator's decision, on both substantive and procedural fairness grounds.

Factual Background

- [7] Xing Li ("Mr. Li") owns a property (the "Property") in Delta's Tsawwassen neighbourhood. Jinting Wen ("Ms. Wen") is Mr. Li's spouse. When appropriate, these two individuals will be referenced collectively as "the Landlords."
- [8] In April 2022, Mr. Li entered into a lease agreement regarding the Property with a number of tenants, including Mark Ross ("Mr. Ross"), Eden Ross ("Ms. Ross"), and Linda Friesen ("Ms. Friesen"). Mr. Ross and Ms. Ross are spouses. Ms. Friesen is Ms. Ross' mother. When appropriate these three individuals will be referenced collectively as "the Tenants."
- [9] On February 22, 2024, Mr. Li issued the Tenants a notice to end a tenancy with an effective date of April 30, 2024. It indicates that the stated purpose of the notice was that the landlord or the landlord's spouse will be occupying the Property. The Tenants moved out of the Property in early May 2024. What occurred at the Property after that is disputed.
- [10] The Landlords claim that they were experiencing marital difficulties at the time and wanted to separate. As a result, they decided that Ms. Wen would move into the Property with their seven-year-old son ("the Child"). After cleaning the Property and making some minor repairs, Ms. Wen and the Child moved into the Property in mid-May 2024. They lived in the Property for about a month until mid-June 2024, when they travelled to China to stay with family over the summer school break. Ms. Wen and the Child returned to live at the Property in early September 2024. They then stayed at the Property until mid-October 2024, when they moved out and returned to the house they used to live in with Mr. Li.
- [11] As for the Tenants, they claim to have close family relations who live next door to the Property. As such, they were able to monitor the Property after having left it in early May 2024. The Tenants and their relations observed that other than the Landlords' sporadic maintenance visits and signs of a few household belongings, there were no indications that anyone had been actually occupying and living in the Property since the Tenants' departure.

Legal Regime

- [12] The substance of the parties' dispute is whether the Landlords are liable to pay the Tenants compensation for having ended their tenancy for a certain stated purpose, and then having failed to accomplish and carry out that purpose for a sufficient period of time.
- [13] The governing legal regime is set out at ss. 49 and 51 of the RTA. It was discussed in two relatively recent judgments of this Court: *Liang v. Pearson*, 2025 BCSC 1277, at paras. 11-16; and *Shigani v. Taylor*, 2024 BCSC 979, at paras. 17 - 20. The key aspects of the regime can be summarized as follows.
- [14] Section 49 of the RTA provides for various circumstances in which a landlord may end a tenancy. They include the situation where landlords or their close family members intend in good faith to occupy a rental unit: RTA, s. 49(3).

- [15] Section 51 of the RTA provides that certain compensation must be paid by a landlord to a tenant if a s. 49 notice to end a tenancy is issued.
- [16] At the time the notice to end a tenancy was issued in this case, s. 51(2) of the RTA required the landlord to pay the tenant an amount 12 times the monthly rent payable if the landlord cannot establish both of the following conditions:
- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice provided under s. 49; and
 - (b) the rental unit has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.
- [17] That said, s. 51(3) of the RTA also affords the arbitrator with the discretion to excuse the landlord from having to pay compensation under s. 51(2) if the arbitrator is of the opinion that extenuating circumstances prevented the landlord from meeting both of the two aforementioned conditions.
- [18] It is important to highlight that the burden of proof to establish these conditions lies on the landlord. It is not up to the tenant to prove the opposite.

The Tenants' Application to the Residential Tenancy Branch

- [19] On September 19, 2024, the Tenants commenced a dispute resolution proceeding under the RTA against Mr. Li before the Residential Tenancy Branch ("RTB"). The Tenants allege that Mr. Li did not accomplish his stated purpose in ending their tenancy, as no one was occupying the Property after they left. The Tenants sought compensation from Mr. Li in the amount of \$33,600, representing 12 months' worth of the monthly rent of \$2,800 they had been paying under their tenancy agreement, plus \$100 for their RTB filing fee.
- [20] The matter was heard by the Arbitrator on November 29, 2024. Mr. Ross and Ms. Ross attended on behalf of the Tenants. Ms. Wen attended on behalf of Mr. Li. The parties presented oral and documentary evidence. At the conclusion of the hearing, the Arbitrator took the matter under reserve.

The RTB Arbitrator's Decision

- [21] The Arbitrator's decision was issued on December 24, 2024.
- [22] After setting out the background and the evidence she found particularly relevant, the Arbitrator identified the applicable law as set out in the RTA. She then began her analysis of the parties' dispute.

[23] The Arbitrator considered first whether the Landlords had shown the existence of the s. 51(2)(a) condition, namely that they had accomplished the purpose stated in their notice to end a tenancy. That stated purpose was for the Landlords (Ms. Wen and the Child in particular) to reside in the Property. The Arbitrator answered this question in the negative, finding that the Landlords had failed to show that they ever lived in the Property at any time since the tenancy ended in April 2024.

[24] The Arbitrator noted in particular that there was no evidence that there was any clothing, food, kitchen and cooking utensils, television, or internet at the Property. There was also no evidence of any furniture other than a mattress on the floor of a bedroom, a single folding table, a chair, and a few scattered personal items. The Arbitrator wrote:

I do not find it likely that the landlord and their son lived in the rental unit for any period over perhaps a couple of nights for the purpose of gathering evidence, in an essentially empty home with very limited belongings and no furniture. The Landlord did not offer any satisfactory explanation for their lack of belongings or furniture in the rental unit they claimed to occupy.

[25] The Arbitrator then turned to the question of whether the Landlords had shown the existence of the s. 51(2)(b) condition, namely that they had used the Property for its stated purpose of residing in it for least six months. The Arbitrator also answered this question in the negative. She noted that even if she had accepted the Landlords' claim that they had moved into the Property in May 2024, and also lived there in June and September 2024, the Landlords admitted that Ms. Wen and the Child had moved out of the Property in October 2024. Accordingly, they did not reside at the Property for the requisite six months in any event.

[26] Finally, the Arbitrator considered the question of whether there were extenuating circumstances that might excuse the Landlords' non-compliance pursuant to s. 51(3) of the RTA, especially the Tenants' actions in gathering evidence for this proceeding by monitoring the Property. The Arbitrator found that the answer to this question was "no", for three reasons.

[27] First, since the Landlords never regularly occupied the Property in the first place, the Arbitrator found it unlikely that they would have "moved out" of the Property because of the Tenants' actions.

[28] Second, even if that were the case, the Arbitrator felt it was not reasonable for the Landlords to be troubled by the Tenants' actions. The Landlords knew that the Tenants' relatives lived next door and ought to have anticipated that they would have been keeping an eye on the Property to see if the Landlords were complying with their obligation to fulfill the purpose they stated to justify evicting the Tenants.

[29] Third, the Arbitrator found that the Tenants' efforts to gather evidence for this proceeding, though diligent, were not so extreme as to justify the Landlords' breach of s. 51(2) of the RTA.

- [30] Ultimately, the Arbitrator issued a monetary award of \$33,700 payable by the Landlords to the Tenants. This amount represents \$33,600 worth of compensation pursuant to s. 51 of the RTA, plus \$100 for the RTB filing fee.

The RTB Clarification and Review Decisions

- [31] The Landlords requested both a clarification and a review of the Arbitrator's decision, pursuant to s. 78 and 79 of the RTA respectively.

Clarification Decision

- [32] There were two aspects to the Landlords' clarification request. First, they wanted to know if the Arbitrator's decision was based on a finding that the Landlords had not established the s. 51(2)(a) condition (i.e. property occupation) or a finding that they had not established the s. 51(2)(b) condition (i.e. property occupation for at least six months). Second, the Landlords wanted to know if their utility bill evidence had been accepted.
- [33] The Arbitrator issued her clarification decision on January 14, 2025. She confirmed that she had found that the Landlords had not established either the s. 51(2)(a) condition or the s. 51(2)(b) condition. As for the utility bills, the Arbitrator confirmed that they were considered as evidence but that she did not find them convincing given the other evidentiary discrepancies in the Landlords' case. She noted in particular that a landlord can turn up the heat or leave on the lights to increase utility usage without necessarily living in a rental unit.

Review Decision

- [34] The Landlords also sought a review of the Arbitrator's decision, on two grounds.
- [35] The first, based on s. 79(2)(d) of the RTA, was their allegation that the Arbitrator did not determine an issue she was required to determine, namely whether the Tenants' conduct in gathering evidence for this proceeding impacted Ms. Wen's mental health so as to constitute an extenuating circumstance.
- [36] The second, based on s. 79(2)(e) of the RTA, was their similar allegation that the Arbitrator exceeded her jurisdiction when addressing the extenuating circumstances issue. The Landlords alleged that the Arbitrator had done so by improperly assessing the Landlords' argument that the Tenants' alleged trespassing on the Property had violated Ms. Wen's privacy.
- [37] An RTB adjudicator dismissed the Landlords' review application by decision dated January 8, 2025. The adjudicator was not persuaded that the Arbitrator had failed to determine any issues she was required to determine, or that the Arbitrator had exceeded her jurisdiction. The adjudicator also characterized the review request as essentially an attempt to reargue the case based on information and evidence that could have been presented at the original hearing.

The Landlords' Petition

- [38] On February 24, 2025, the Landlords filed the present petition with the Court. The petition has been brought under the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241. The petition was amended on August 18, 2025. The Landlords essentially ask that the Arbitrator's decision ordering them to pay \$33,700 to the Tenants be set aside.
- [39] The Tenants did not file a response to petition. They did, however, register with the Land Title Office a certificate of judgment in respect of the RTB decision in the amount of \$33,700. That certificate was registered on March 7, 2025.
- [40] A response to petition was filed by the Director of the RTB on March 20, 2025. It takes no position on the outcome of this proceeding, although it does contain submissions on the law that applies to judicial reviews of residential tenancy proceedings.
- [41] The petition was heard in chambers on November 10, 2025. The Landlords, now represented by counsel, were the only party to appear.
- [42] At the outset of the hearing, I indicated to counsel my surprise that the Tenants were not formally opposing the petition. I found this perplexing given the significant efforts the Tenants had apparently made to gather evidence and initiate RTB proceedings against the Landlords, as well as the registration on title they effected in respect of the \$33,700 RTB award.
- [43] Accordingly, I requested counsel for the Landlords to carefully take me through the efforts she made to serve the Tenants with the pleadings and to give them notice of the hearing. Counsel for the Landlords satisfied me that she had complied with all of the prescribed personal service requirements, and had made commendable supplementary efforts to inform the Tenants of the status of this proceeding. However, the Tenants had nevertheless given no indication of any interest in participating in it.
- [44] Out of an abundance of caution, I also directed that an attempt be made to contact the Tenants during the hearing. It was successful, and Mr. Ross briefly addressed the Court by telephone. He confirmed that the Tenants have freely chosen not to respond to this proceeding. While they are of the view that the Landlords' petition lacks any merit whatsoever, the Tenants do not want to incur the time and expense of preparing a formal response. They also do not want to risk the possibility of an adverse costs award in the event the petition is granted. This, of course, is the Tenants' right.
- [45] Having received this assurance from Mr. Ross on behalf of the Tenants, the hearing of the petition then proceeded with submissions from just counsel for the Landlords. At the end of the hearing, I took the matter under reserve until today so that I could consider these submissions and the voluminous material presented in support of the Landlords' petition.

Issues and Analytical Framework

- [46] The Landlords have challenged the Arbitrator's decision on the following grounds.
- [47] First, they submit that the Arbitrator's assessment of whether the Landlords occupied the Property was substantively flawed.
- [48] Second, they submit that the Landlords were denied procedural fairness with respect to the issue of extenuating circumstances.
- [49] Third, they submit that the Arbitrator's assessment of extenuating circumstances was substantively flawed.
- [50] Fourth, they submit that the Arbitrator's reasons were inadequate.
- [51] After a brief discussion of the scope of this judicial review and the applicable standard of review, I will address each of the four issues raised by the Landlords in turn.

Analysis

Scope of Judicial Review

- [52] As a preliminary matter, counsel for the Landlords clarified that the only decision that is being challenged in this petition is the Arbitrator's original decision dated December 24, 2024. The Landlords are not challenging the RTB adjudicator's review decision dated January 8, 2025. I agree that since the review decision did not consider the merits of the parties' dispute, it is the Arbitrator's original decision which is to be judicially reviewed: *Bedwell Bay Construction v. Ball*, 2022 BCSC 559, at paras. 29-34.

Standard of Review

- [53] By operation of ss. 5.1 and 84.1 of the RTA, the applicable standard of review is prescribed by s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 [ATA].
- [54] Section 58(2)(a) of the ATA provides that findings of fact, findings of law, and exercises of discretion by administrative tribunals are reviewable on a standard of patent unreasonableness.
- [55] While s. 58(3) of the ATA defines patent unreasonableness for discretionary decisions, the ATA does not define this notion for reviews of a tribunal's factual or legal findings. Guidance in that regard must be drawn from the case law.
- [56] In *Hollyburn Properties Limited v. Staehli*, 2022 BCSC 28 [Hollyburn], at para. 25, I distilled those principles based upon a summary set out in *Kong v. Lee*, 2021 BCSC 606, at paras. 58-65 in these terms:

- (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.*, 2011 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).
- [57] The standard of review that applies to matters of procedural fairness is prescribed by s. 58(2) (b) of the ATA. It is whether, in all of the circumstances, the decision-maker acted fairly.
- [58] Finally, it is also important for the court to use a "reasons first" approach when conducting patent unreasonableness judicial review. This means that the reviewing court begins its analysis with the reasons of the decision-maker. The court must not start with its own perception of the merits, as doing so creates a risk that the court might inadvertently try to decide the issue itself. This is what is known as "disguised correctness review". The Supreme Court of Canada held in *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras. 58-63 that such review is not permitted when the standard is reasonableness. Obviously, it is also forbidden when the even more deferential standard of patent unreasonableness applies.

Issue 1: The Arbitrator's Assessment of the Landlords' Occupancy

- [59] The Landlords' primary argument in support of their application for judicial review is that the Arbitrator ignored and misapprehended the evidence regarding the Landlords' occupancy of the Property. They say that her failure to properly assess this evidence led the Arbitrator to erroneously conclude that the Landlords had failed to show occupancy for the purposes of s. 51(2)(a) of the RTA.
- [60] In support of their argument, the Landlords rely in particular on this Court's decision in *Sefcikova v. Orca Realty Inc.*, 2024 BCSC 697. They note that, in this case, the Court found that the landlord had established occupancy even though it was intermittent, and argue that the Arbitrator ought to have made the same finding here.
- [61] The Landlords also highlight certain evidence that Ms. Wen presented at the hearing before the Arbitrator, which the Landlords submit ought to have been accepted as persuasive proof of occupancy. That evidence included some photographs of personal items inside the house, as well as photographs showing the Child reading in a bed, dining at a table with guests, and having his hair blow dried. The Arbitrator's failure to explain expressly why this evidence did not show occupancy is also said to be a reviewable error.
- [62] I do not agree with these submissions.
- [63] First, *Sefcikova* was not a petition for judicial review of an RTB decision. It was an application for summary trial in which the Court conducted its own first instance assessment of whether a particular landlord had established the s. 51(2) RTA conditions on a particular set of facts. I cannot do this here, and I am obviously not bound by the *Sefcikova* precedent to find in favour of the Landlords in this case. Instead, my role is to judicially review the Arbitrator's first instance determination with the high of degree of deference the Legislature requires me to apply by operation of s. 58(2)(a) of the ATA. I can only interfere with the Arbitrator's assessment of the s. 51(2) RTA conditions if it is patently unreasonable.
- [64] Secondly, it is trite law that an administrative decision-maker need not expressly reference each piece of evidence adduced or explicitly mention every argument made, so long as the reviewing court is able to understand how and why a decision was made: *Lin v. Li*, 2025 BCSC 2169, at para. 60.
- [65] Thirdly, and most importantly, when reviewing the Arbitrator's reasons, I have no difficulty with understanding the basis upon which she concluded that the Landlords failed to establish that Ms. Wen and the Child ever actually lived at the Property. Now, it is true that the Landlords presented some evidence that arguably shows that Ms. Wen and the Child were present at the house at certain times. However, there was also competing evidence from the Tenants that arguably shows apparent inactivity at the Property. This included evidence of the minimal extent to which garbage and recycling were put out for collection, lengthy periods when the house was dark, and the lack of regular vehicular or pedestrian traffic. The reasons show that both the Landlords' and the Tenants' documentary and

testimonial evidence were considered and assessed by the Arbitrator on a balance of probabilities, while properly recognizing that the Landlords bore the burden of proof.

[66] In my view, these reasons are sufficient to justify the Arbitrator's conclusion that the Landlords had not established occupancy of the Property as required by s. 51(2)(a) of the RTA, when assessed on a patent unreasonableness standard. In particular, the reasons are not evidently or clearly irrational, nor do they lack an evidentiary foundation. Accordingly, it is not open to me to set this conclusion aside, even if I might have decided the matter differently had I been hearing this case at first instance.

[67] The Landlords' first ground for seeking judicial review is therefore rejected.

Issue 2: Procedural Fairness Regarding Extenuating Circumstances

[68] The Landlords' secondary basis for challenging the Arbitrator's decision is an alleged denial of procedural fairness. It concerns the issue of whether there were extenuating circumstances that might excuse the Landlords' failure to comply with s. 51(2) of the RTA, as per s. 51(3) of the RTA.

[69] The Landlords' argument is based on the following comments that the Arbitrator made at the outset of the November 29, 2024 hearing, as follows:

THE ARBITRATOR: Okay. All right. So like I said, the landlord is going to testify first. The reason for this is that the landlord has the burden of proof. Even though the tenant is the applicant, the landlord is the one who has to prove that they have used the rental unit for the reason that they put on their two-month notice and that they have used it within a reasonable period after the tenancy ended.

Now, tenant, you did make this application a little bit prematurely. We haven't passed the six-months time period yet, so if your application is not successful, you may be able to re-apply if you think that the landlord has moved out before the six-month period has elapsed.

If your claim is successful in terms of the first part of the requirements, which is that the landlord used the rental unit within a reasonable period, then you will not be able to apply again about the six month part. It would be over and done with. Does that make sense?

MS. E. ROSS: Yeah, we understand.

THE ARBITRATOR: Okay. So I'm not determining today whether or not the landlord has lived there long enough. I'm only determining if the landlord moved in and started using it for the stated purpose within a reasonable period of time after May 4th, 2024.

[70] The Landlords submit that this statement indicates that the Arbitrator had an initial intention to only determine whether they had established the s. 51(2)(a) occupancy condition, that is to say, to examine whether Ms. Wen and the Child had moved into the Property within a reasonable period of time after the notice to end tenancy was issued. However, when the Arbitrator rendered her decision on December 24, 2024, she also

determined whether s. 51(3) extenuating circumstances were present and concluded that there were none.

- [71] Counsel for the Landlords submits that since the Arbitrator apparently decided mid-way through the hearing that it was necessary to also decide the extenuating circumstances issue, the Arbitrator was required to alert Ms. Wen so that she would know the revised case she had to meet. This is alleged to be a denial of procedural fairness.
- [72] Having reflected upon this argument, I conclude that it is unfounded, for three reasons.
- [73] First, the assertion that Ms. Wen did not know the case she had to meet as a result of the Arbitrator's initial comment is unsupported by the evidence in the petition record. While Ms. Wen made two affidavits, neither mention any procedural fairness concerns about what the Arbitrator said at the hearing, or the fact that the Arbitrator's decision addressed the issue of extenuating circumstances.
- [74] Second, there is no indication that the Landlords ever had any intention of advancing an extenuating circumstances argument in respect of the s. 51(2)(a) occupancy condition, let alone that they had any evidence which could conceivably substantiate such an argument. Instead, their position was always that Ms. Wen and the Child did, in fact, move into and started living at the property in mid-May 2024 and that, except for the summer holiday period when they were in China, they continued to live at the property until mid-October 2024 when they moved out. The Landlords never took the position that they did not move into the Property because of extenuating circumstances.
- [75] Third, the Landlords did, in fact, present evidence and argument with respect to extenuating circumstances. However, this was done only in relation to the s. 51(2)(b) "sufficient duration of occupancy" condition. Specifically, Ms. Wen testified that she and the Child moved out of the house in October 2024 after she received the Tenants' RTB application material. It included photographs taken by the Tenants of the Property which made her feel scared and unsafe because she felt that she was being monitored. Accordingly, it is apparent that the Arbitrator understood that the Landlords were arguing that Ms. Wen and the Child's departure from the Property in October 2024 - which was five months after they allegedly moved in and one month shy of the six-month period then required by s. 51(2)(b) of the RTA - should be excused under s. 51(3) because of extenuating circumstances caused by the Tenants' surveillance. Understandably, the Arbitrator then dealt with this argument in her reasons for decision. While the Landlords may disagree with the Arbitrator's rejection of that argument, this does not mean that they were denied procedural fairness.
- [76] In sum, I do not accept that the Arbitrator's comment at the outset of the hearing about its limited scope amounted to a denial of the Landlords' right to procedural fairness. Rather, it is clear that the Arbitrator revised her understanding of the hearing's scope once she heard the testimony of the parties, particularly when Ms. Wen claimed to have "moved out" of the Property. While it may have been preferable for the Arbitrator to have then clarified verbally

that she would be determining both the s. 51(2)(a) and the s. 51(2)(b) issues, including whether there were extenuating circumstances, I do not find this is to be a denial of procedural fairness. This is particularly the case since there is no convincing evidence that the Landlords would have presented their case any differently had the Arbitrator provided this clarification at the hearing itself.

[77] The Landlords' second ground for seeking judicial review is therefore rejected.

Issue 3: Arbitrator's Assessment of Extenuating Circumstances

[78] The tertiary argument advanced by the Landlords is with respect to the Arbitrator's substantive rejection of their argument that there were extenuating circumstances excusing the fact that Ms. Wen and the Child did not remain at the Property for at least six months after having moved there in May 2024. The Landlords submit that this conclusion was flawed given the evidence Ms. Wen presented of her reaction to learning that the Tenants were monitoring the Property. They say that this evidence showed that Ms. Wen had developed intense feelings of anxiety and insomnia, which justified her early departure from the Property. They argue that the Arbitrator wrongly failed to accept this evidence and conclude pursuant to s. 51(3) of the RTA that the Landlords ought not to pay any s. 51(2) compensation to the Tenants.

[79] As a preliminary comment, I note that this argument is effectively moot given my earlier conclusion that the Arbitrator's s. 51(2)(a) determination that the Landlords never actually occupied the Property is not patently unreasonable. The Landlords have not advanced an "extenuating circumstances" argument with respect to this issue, nor have they identified any evidence to support one. Instead, the Landlords' extenuating circumstances argument is made only in respect of the s. 51(2)(b) issue, that is to say whether Ms. Wen and the Child were justified in leaving the Property prior to having occupied it for six months. As such, even if the Arbitrator may have erred in her assessment of this argument, it would have no bearing on the validity of her primary finding that Ms. Wen and the Child never moved into and occupied the Property in the first place as required by s. 51(2)(a). Since the Landlords must establish compliance with both the s. 51(2)(a) and the s. 51(2)(b) conditions, the Arbitrator's decision would still be upheld on judicial review in any case.

[80] That said, even if this argument was not moot and I had to address it on its merits, I would conclude that it, too, is unfounded.

[81] The Arbitrator's authority under s. 51(3) of the RTA to excuse non-compliance with s. 51(2) of the RTA is discretionary. By virtue of s. 58(3) of the ATA, such discretionary decisions can only be set aside on judicial review if the arbitrator's 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.

- [82] None of these four conditions are present in the case at bar. To the contrary, the reasons of the Arbitrator show that she took into account the requirements of s. 51(3) of the RTA when exercising her discretion and did not do so arbitrarily, in bad faith, for an improper purpose, or based on irrelevant factors.
- [83] Accordingly, the Court cannot interfere with the Arbitrator's exercise of her discretion even if the Court might have exercised it differently if it had the jurisdiction to do so at first instance, which, of course, it does not.
- [84] The Landlords' third ground for seeking judicial review is therefore rejected.

Issue 4: Adequacy of Arbitrator's Reasons

- [85] The fourth and final argument advanced by the Landlords is that the Arbitrator's reasons are inadequate as they fail to inform the Landlords how and why her decision was made.
- [86] In particular, the Landlords assert that the Arbitrator rejected virtually all of the Landlords' evidence but did not clearly explain why. The Landlords also take issue with an alleged inconsistency in the Arbitrator's discussion of their evidence regarding the amount of furniture that was moved into the property. They highlight especially the following passages from the Arbitrator's reasons:

The Landlord brought only minimal furniture, including a queen-sized bed, clothing, kitchen and bedroom essentials, a table and chair, a microwave, and toys for their son.

[]

I find that the lack of any furniture or evidence of any substantial amount of personal belongings in the rental unit, as established by the evidence provided by both parties, is indicative that the Landlord does not regularly reside at or occupy the rental unit. The Landlord has one mattress on the floor of a bedroom, a single folding table and chair, and a few scattered personal items.

- [87] In the Landlords' submission, these deficient reasons render the Arbitrator's decision both procedurally unfair and patently unreasonable. On my assessment of the reasons, however, I do not share the Landlords' perspective.
- [88] With respect to procedural fairness, as noted by counsel for the Landlords, our Court of Appeal has noted that a RTB arbitrator's failure to provide adequate reasons may constitute a denial of procedural fairness: *Middlegate Development Ltd. v. Acosta*, 2023 BCCA 459, at paras. 47-48. However, such a criticism cannot reasonably be made of the Arbitrator's reasons in this case. As I have already noted, they contain sufficient detail to demonstrate that the Arbitrator grappled with the evidence presented before her, and show how and why she applied the applicable law to the facts as she found them. I do not accept that these reasons are so inadequate that they denied the Landlords their procedural right to understand why the decision was made.

- [89] It is also true that if the reasons of a RTB arbitrator do not permit a reviewing court to understand how the arbitrator reached a particular conclusion, it must be held to be patently unreasonable. An example of such a situation is the one that was considered in *Hollyburn* at paras. 35-44. However, the reasons given by the Arbitrator in the case at bar are not similarly deficient.
- [90] Furthermore, I do not agree that the arguably imprecise manner in which the Arbitrator drafted her reasons in relation to the furniture evidence reveals reviewable error.
- [91] As was noted in *Hollyburn* at para. 33, written reasons given by administrative decision-makers must not be assessed against a standard of perfection: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 91. The RTB is less formal than the courts, and arbitrators are expected to render their decisions within shorter periods of time. This can sometimes result in arbitrators' reasons being less refined than what might be preferred. When this happens, this does not mean that the decision must then necessarily be set aside and sent back to the arbitrator to write further and better reasons.
- [92] I also reiterate that it is trite law that decision-makers need not identify everything they considered, explain each of their findings, or detail each aspect of their reasoning process: *R. v. Kardan*, 2024 BCCA 56, citing *R. v. R.E.M.*, 2008 SCC 51, at para. 91. So long as the foundations for the decision are discernible from the reasons when looked at in the context of the record before the decision-maker, those reasons will pass muster for the purposes of a judicial review.
- [93] The Landlords' fourth ground for seeking judicial review is therefore rejected as well.

Conclusion and Disposition

- [94] For all of these reasons, the Landlords' petition is dismissed.
- [95] As the Tenants did not respond to this petition and the RTB is not seeking a costs award, no costs are payable by or to any of the parties.

"Brongers J."

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