

CANADA / JUDGMENT

Lin v. Li

2023 BCSC 2372

COURT

Supreme Court of British Columbia

DECIDED

7 November 2023

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2023 BCSC 2372 Lin v. Li IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Lin v. Li, 2023 BCSC 2372 Date: 20231107 Docket: S249297 Registry: New Westminster Between: Meng-Tse Lin Plaintiff And Xiaoyun Li Defendant Corrected Judgment: The front page of the judgment was corrected on February 12, 2024. Before: The Honourable Justice Edelman On judicial review from: Residential Tenancy Branch Oral Reasons for Judgment In Chambers Appearing on their own behalf: M. Lin Counsel for Xiaoyun Li: Z. Ng Place and Date of Trial/Hearing: New Westminster, B.C. November 7, 2023 Place and Date of Judgment: New Westminster, B.C. November 7, 2023

- [1] This is an application by the tenant, Mr. Lin, for judicial review of a decision of the Residential Tenancy Branch dismissing his application for cancellation of notices, making an order for possession and ordering him to pay \$1,641 to the respondent landlord, Ms. Li.
- [2] The relevant background is rather straightforward and is set out in the decision under review. Mr. Lin filed his application with the Residential Tenancy Branch on December 10th in relation to two notices. The first was a two-month notice to end tenancy for the landlord's use of the property, and the second was to dispute the ten-day notice to end the tenancy for unpaid rent or utilities. Following that, the landlord filed another application. There were two further notices that were served on Mr. Lin. I understand the third one would have been on January 4, 2023, and the fourth one on April 3rd of 2023. The decision of the adjudicator sets out some of the background with respect to the payment of rent. There was a substantial record before him including communications about rent payment and other items. This included two charts or tables that set out the dates of payment and the payments received as well as the balance of the rent owing that were produced by Ms. Li. One of those tables was reproduced in the adjudicator's decision at page five and sets out the amounts owing.
- [3] What was unclear to me in reviewing the decision when this matter originally was heard before me on October 30th, was why the amount owing had jumped by some \$1,347 on February 4th of 2023, despite there appearing to have been a payment of the amount of the rent, which was \$822. We reconvened today so that I could hear from Ms. Li's counsel. Ms. Li's counsel took me through the record in some detail and also provided me with the

COVID-19 repayment plans and related measures in the Residential Tenancy policy guideline. It would appear that the \$1,347 was included in the chart as a result of a notice that was given to Mr. Lin on January 4th. On January 4th, it would appear a notice for a repayment plan under Form RTB-14 was served on Mr. Lin, which purported to require him to pay the full amount of arrears from the COVID period, in particular April, May, and June of 2020. The amounts that were alleged to be in arrears were some \$1,347, and the full amount was demanded, or rather there was a repayment plan that was served on him that required him to pay the full amount on February 4th, which is the date that appears in the chart. I was taken through the RTB repayment plan and the Residential Tenancy policy guideline by counsel. Counsel concedes that the February 4th date would appear to have been in error even on his own reading of the guideline, which would not have required payment until March 1st.

- [4] I am conscious that a decision of the Residential Tenancy Branch is to be reviewed on a standard of patent unreasonableness as it relates to findings of fact, law, or exercise of discretion within its exclusive jurisdiction as set out in Section 58 of the Administrative Tribunals Act. However, as the Supreme Court has directed in Vavilov and subsequent cases that in assessing the reasonableness of a decision one begins with the reasons.
- [5] In this case, there is no indication that I was able to discern nor did counsel take me to any indication that the adjudicator was at all conscious or aware that these amounts were the result of a purported demand for rent from three years prior and were not related to ongoing outstanding amounts that related to the dates in question. There is not a single reference, whether it be to the repayment plan, the policy guideline with respect to repayment plans, or even a reference to the year 2020 that I am able to discern in the decision with respect to these payments. Ultimately, the arbitrator orders the full amount to be paid without any consideration of that amount, and there simply are not reasons provided. The lack of reasons clearly does not meet the reasonableness standard as set out by the Supreme Court in Vavilov. In my view, the order is patently unreasonable.
- [6] The question is one of remedy. Counsel for Ms. Li has suggested that this matter would not need to be sent back and that I would simply deduct the \$1,347 and uphold the rest of the order. The problem that I see with that is that the adjudicator himself on page eight of his decision had amended the application at the hearing stage in order to include the rent owing at the time of the application, and therefore the decision appears to have been made on the amended application and not on the original application. As the order is made on the basis of the amended application, to go back and unamend or to amend the application in this Court I see as being somewhat problematic.
- [7] More importantly, I do not accept that it is clear on the face of the decision that the analysis around the amounts paid and the amounts outstanding would not have or could not have affected the rest of the order. In particular, as there was a finding made with respect to Mr. Lin's version of the facts, it is simply unclear whether the understanding around these amounts might have affected the adjudicator's understanding of Mr. Lin's version of the

facts. It is not the role of this Court to make such findings, and I do not find that the record before me or the decision that needs to be rendered is so clear that it is one of the narrow range of cases referred to in *Mobil Oil* in which this Court would direct a particular decision to be made or make the decision itself. Therefore, in my view, the appropriate remedy in this case is for the decision to be quashed and the matter to be returned to the Residential Tenancy Branch to be decided afresh. [Discussion with parties]

- [8] THE PLAINTIFF: It is. I'm just wondering if it also includes the other orders I sought in the official petition, which was that the -- Number 4 -- if it's remitted back to the RTB, that the petitioner applies for an order to assign a different decisionmaker and also, Number 5, costs associated with this decision.
- [9] THE COURT: With respect to an order about the decisionmaker, I am going to leave that to the RTB to decide as to whether a new decisionmaker would be assigned in the circumstances. It is not a situation where I found bias, or made findings about other concerns raised. Those are not the issues that I am addressing in my decision. So, I will not be making that order.
- [10] With respect to costs, Mr. Lin has been successful in this application, and therefore should have his costs. So, the petitioner will have the costs of the application. "The Honourable Justice Edelmann"

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