

CANADA / JUDGMENT

Lu v. Marchand

2025 BCSC 834

COURT

Supreme Court of British Columbia

DECIDED

2 May 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 834 Lu v. Marchand

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lu v. Marchand,

2025 BCSC 834

Date: 20250502

Docket: S58450

Registry: Vernon

Between:

Duc Lu and Phuong Trinh

Petitioners

And

Lori Anne Marchand and Brandon McNaueal

Respondents

Before: The Honourable Justice Wilson

On judicial review from: A Decision and Order dated January 7, 2024 and a Review Decision dated January 22, 2024, of the Residential Tenancy Branch

(File Number 910120468)

Reasons for Judgment

Counsel for Petitioners:

R. Irving

Counsel for Respondents:

S. Dugas

Place and Date of Hearing:

Kelowna, B.C.

April 15, 2025

Place and Date of Judgment:

Kelowna, B.C.

May 2, 2025

- [1] The petitioners, Duc Lu and Phuong Trinh, apply for a judicial review of a Residential Tenancy Branch ("RTB") decision awarding the respondents, Lori Marchand and Brandon McNaeal, compensation for the Landlords' failure to have a family member move into their rental property within a reasonable period, after ending the respondents' tenancy for that purpose.
- [2] The RTB arbitrator rejected the Landlords' argument that there were extenuating circumstances, and awarded compensation to the respondents in the amount of \$17,500.
- [3] For the reasons that follow, I find that the petitioner has failed to establish that the arbitrator's decision was patently unreasonable, and the petition is dismissed.

Background

- [4] Duc Lu and Phuong Trinh (the "Landlords") were the Landlords of a rental unit located in Vernon, BC (the "Rental Home"). Lori Anne Marchand and Brandon McNaeal (the "Tenants") were the Tenants of the Rental Home.
- [5] The tenancy began on June 1, 2017, with monthly rent of \$1,350 due on the first day of the month and a security deposit of \$600.
- [6] On June 16, 2022, the Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). The Notice provided that the Landlords were ending the tenancy for their father or mother to occupy the Rental Home. The Landlords' intention was that one of the Landlords' mothers, Ms. Ly Thi Ho, ("Ms. Ho") would move into the Rental Home.
- [7] On July 18, 2022, the Tenants disputed the Notice.

[8] During the dispute hearing of November 22, 2022, the Landlords and Tenants reached a settlement agreement (the "Settlement Agreement"). The dispute arbitrator recorded the terms of the Settlement Agreement in the decision dated November 22, 2022 (the "Settlement Decision"). The Settlement Agreement included the following terms:

- a) the Tenants would vacate the Rental Home by December 31, 2022;
- b) the Tenants agreed to pay rent owing to the Landlords of \$2,700; and
- c) the Tenants shall not pay rent for the month of December 2022 as statutory compensation for the Tenants moving out pursuant to the Two Month Notice.

[9] In the Settlement Decision, in support of the Settlement Agreement and with agreement of the parties, the dispute arbitrator granted the Landlords:

- a) an Order of Possession effective 1:00 PM on December 31, 2022; and
- b) a Monetary Order of \$2,700.

[10] The Settlement Decision also provided as follows at p. 3:

Should either party violate the terms of this agreement, the tenancy agreement or the Act, it is open to the other party to take steps under the Act for an appropriate remedy.

The parties are bound by the terms of this agreement, as well as by the terms of their tenancy agreement and the Act.

[11] On December 31, 2022, the Tenants vacated the Rental Home and the tenancy ended. However, Ms. Ho did not move into the Rental Home until late August 2023, almost nine months later.

[12] On August 25, 2023, the Tenants initiated a dispute resolution proceeding seeking, among other relief, a order for compensation pursuant to s. 51 of the Residential Tenancy Act, S.B.C. 2002, c. 78 [RTA] on the basis that the Landlords' family member failed to occupy the Rental Home within a reasonable period after the effective date of the Notice (the "Dispute").

[13] On December 8, 2023, an RTB arbitrator (the "Arbitrator") conducted a dispute resolution hearing by conference call after the parties exchanged documentary evidence as required by the RTA (the "December Hearing"). The Tenants and Landlords attended the December Hearing. Richard Enns, a lawyer, attended with the Landlords. On January 7, 2024, the Arbitrator issued a written decision (the "Decision").

[14] In the Decision, the Arbitrator identified the issues to be decided as:

- a) Is the Tenant entitled to a Monetary Order for damage or loss under the RTA, regulation or tenancy agreement [for alleged illegal rent increases]?
- b) Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

- c) Is the Tenant entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?
 - d) Is the Tenant entitled to recover the filing fee for this application from the Landlord?
- [15] The Landlords bring this petition for judicial review to set aside the Decision based solely on grounds related to the issue of compensation for the Landlords failing to accomplish the stated purpose on a notice to end tenancy.
- [16] In the Decision, the Arbitrator began by identifying the grounds for the Notice and summarized the relevant evidence provided by the parties at the December Hearing. The Arbitrator noted that the Landlords affirmed that:
- a) Ms. Ho did not move into the Rental Home until late August 2023;
 - b) the Tenants left the Rental Home in a damaged condition that required extensive repairs and cleaning, which prevented Ms. Ho from moving in the rental home but provided no receipts, invoices, or breakdowns of damages to support the pictures provided by the Landlords;
 - c) the contractor hired by the Landlords finished working on the Rental Home by the end of May 2023, but the Landlords did not finish painting the Rental Home until the end of July 2023 because Mr. Lu could only paint on evenings and weekends;
 - d) the Landlords spent \$140,000 on renovations to the Rental Home; and
 - e) Ms. Ho was living in Vancouver during the renovations where she had many doctors' appointments due to ongoing health conditions and her doctor there could speak Vietnamese.
- [17] Regarding the issue of compensation to the Tenants for the Landlords failing to accomplish the stated purpose on a notice to end tenancy, the Arbitrator identified and stated the statutory basis upon which a landlord may order compensation under the RTA as follows:
- Section 51(2) OR 51.4 of the Act says that if a tenancy ends under section 49 OR 49.2 of the Act, a landlord, or purchaser if applicable, must pay the tenant 12 times the monthly rent if the reason for ending the tenancy has not been completed within a reasonable time after the effective date of the notice, or the rental unit is not used for the stated reason for at least six months.
- [18] The Arbitrator then concluded that the Tenants had established their claim for compensation related to the Notice where the Landlords did not accomplish the stated purpose or comply with ss. 51 or 51.4 of the RTA for the following reasons:

The Landlord provided insufficient evidence that Tenant caused \$140,000.00 worth of damage to the rental unit and I find it more likely that the Landlord took the opportunity created by having to do some repairs, to spend 5 months doing major renovations. I further find the Landlord taking another two months to do painting to be excessive, even if working only evenings and weekends. Neither the renovations, nor the painting, meet the standards required to be extenuating circumstances.

The alleged health issues of the Landlord's mother was supported by a list of medical appointments. However, I find the argument that she needed to be in Vancouver for medical attention because her doctor there spoke Vietnamese to not be an extenuating circumstance as, if Vernon does not have such a doctor, family members in Vernon would have been able to provided [sic] support and act as interpreters.

- [19] Accordingly, the Arbitrator ordered the Landlords compensate the Tenants in the amount of \$16,200, representing 12 times the monthly rent due during the tenancy.
- [20] Regarding the other issues raised by the parties at the December Hearing, the Arbitrator:
- a) dismissed the Tenants' application for compensation for alleged rent increases under s. 67 of the RTA;
 - b) ordered the Landlords compensate the Tenants \$1,200 for the return of their security deposit under ss. 38 and 67 of the RTA; and
 - c) allowed the Tenants' application to recover the filing fee for the application from the Landlords.
- [21] In the result, the Arbitrator granted the Tenants a Monetary Order in the amount of \$17,500 (the "Order").
- [22] On January 19, 2024, the Landlords applied for a review of the Decision under s. 79 of the RTA by way of an Application for Review Consideration based on the ground of the Decision not determining a key issue before the Arbitrator.
- [23] On January 22, 2024, the review arbitrator dismissed the review application in a written decision (the "Review Decision").
- [24] By petition filed February 23, 2024, the Landlords now apply for judicial review to set aside the Decision, the Review Decision, and the Order.

Standard of Review

- [25] The parties agree that the standard of review on this judicial review is patent unreasonableness. Section 84.1 of the RTA contains a privative clause for decisions or orders of the director; thus, the standard of review is determined by reference to s. 58 of the Administrative Tribunals Act, S.B.C., 2004, c. 45 [ATA]. Section 58(1) states that a finding of fact or law or an exercise of discretion of a matter that it has exclusive jurisdiction must not be interfered with unless it is patently unreasonable.
- [26] Section 58 of the ATA does not define what is patently unreasonable concerning findings of fact or law. The meaning of patent unreasonableness as it applies to findings of fact or law is explained in *Yee v. Montie*, 2016 BCCA 256:
- [21] The ATA does not define patent unreasonableness as the term applies to questions of fact or law. In *Manz v. Sundher*, 2009 BCCA 92 at para. 39, Saunders J.A. adopted the meaning of the phrase in relation to factual matters from *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80:
- [37] As the chambers judge noted, a decision is not patently unreasonable because the evidence is insufficient. It is not for the court on judicial review, or for this Court on appeal, to second guess the conclusions drawn from the evidence considered by the Appeal Division and substitute different findings of fact or inferences drawn from those facts. A court on review or appeal cannot reweigh the evidence. Only if there is no evidence to support the findings, or the decision is "openly, clearly, evidently unreasonable", can it be said to be patently unreasonable. That is not the case here.
- [22] In *Pacific Newspaper Group Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2014 BCCA 496 at paras. 39-44, this Court affirmed that the standard of patent unreasonableness is at the high end of the deference spectrum, and endorsed this description of the phrase from *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52:

a patently unreasonable defect, once identified, can be explained simply and easily, leaving no real possibility of doubting that the decision is defective. A patently unreasonable decision has been described as "clearly irrational" or "evidently not in accordance with reason". A decision that is patently unreasonable is so flawed that no amount of curial deference can justify letting it stand. [Citations omitted.]

- [27] Although the Landlords do not directly argue that the Decision contains insufficient reasons in their petition, some of their submissions regarding the patent unreasonableness of the decision touched on this issue. Accordingly, the legal principles regarding the adequacy of reasons in the residential tenancy context are worth canvassing.

[28] Decision makers in a residential tenancy context are not required to meet the standard for adequacy of reasons applied to courts. Reasons will be sufficient if they explain how and why the decision was made. The decision maker is not necessarily required to specifically address every argument advanced; that such arguments were rejected may be implicit from the outcome: see *Ganitano v. Yeung*, 2016 BCSC 2227 at paras. 21-33.

Positions of the Parties

Landlords' Position

[29] The Landlords submit that they are not the type of bad actors that the legislation is intended to penalize. They raise the following issues which they say renders the Decision patently unreasonable:

- a) the Arbitrator conflated ss. 51 and 51.4 of the RTA and did not identify which section he relied upon in his analysis;
- b) section 51 of the RTA does not apply as the tenancy ended pursuant to the Settlement Agreement, and not pursuant to the Notice;
- c) the Arbitrator failed to consider or misapprehended the evidence put before him with respect:
 - i. to the renovations; and
 - ii. Ms. Ho's health; and
- d) the Order is incongruous with the legislative intent of s. 51 of the RTA and the Arbitrator failed to consider whether it would be "unreasonable and unjust" for the Landlords to pay compensation in the circumstances.

Tenants' Position

[30] The Tenants submit that the legislative intent of the RTA is to protect the rights of tenants rather than landlords and that the Decision was not patently unreasonable as:

- a) the Settlement Agreement was a resolution of the earlier two month's notice dispute and had nothing to do with this Dispute;
- b) the Decision clearly stated the Landlords failed to accomplish the stated purpose for issuing the Notice and any conflation of ss. 51 and 51.4 of the RTA on the Arbitrator's part in the decision is a result of the Landlords' conflation at the December Hearing and the interrelatedness of the issues; and
- c) the Arbitrator properly considered and did not misapprehend the evidence put before him. Specifically, the evidence put before the Arbitrator by the Landlords justifying the extended period for Ms. Ho to move in was so sparse that it was reasonable for the Arbitrator to reject the Landlords' version of events.

Discussion

Reliance on Wrong Statutory Provision

- [31] The Landlords submit that it was a patently unreasonable error of law for the Arbitrator to conflate ss. 51 or 51.4 of the RTA in the Decision and fail to identify which section he relied upon in his analysis of extenuating circumstances.

Statutory Scheme

- [32] The Landlords made the Notice pursuant to s. 49(3) of the RTA, which states that a landlord may end a tenancy in respect of a rental unit if a close family member of the landlord intends in good faith to occupy the rental unit.
- [33] A tenant may apply for compensation under s. 51 of the RTA if a landlord who ended their tenancy under s. 49 of the RTA has not accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice. The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under s. 49. A landlord may be excused from these requirements in extenuating circumstances: RTA s. 51(3).
- [34] Section 49.2 of the RTA allows a landlord to apply to the RTB for an order to end the tenancy and an order of possession to renovate or repair a rental unit if the necessary renovations or repairs require the rental unit to be vacant.
- [35] Section 51.4 of the RTA also provides that a tenant may apply for compensation if a landlord who ended their tenancy for renovations or repairs has not accomplished the renovations or repairs within a reasonable period after the effective date of the order. Similar to ending a tenancy for close family member's use, a landlord may be excused from the requirement to complete renovations or repairs within a reasonable period in extenuating circumstances: RTA s. 51.4(5).
- [36] Residential Tenancy Policy Guideline 50, Compensation for Ending a Tenancy, as of the date of the December Hearing, explained what is considered a reasonable period under the RTA:

A reasonable period to accomplish the stated purpose for ending a tenancy [s. 49] will vary depending on the circumstances.

The reasonable period for accomplishing repairs and renovations [s. 49.2] will typically be based on the estimate provided by the landlord.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay

the move in while that work was completed since it could be finished faster if the unit was empty.

Decision

[37] The Landlords are correct in pointing out that because they issued the Notice pursuant to s. 49 of the RTA, ss.49.2 and 51.4 do not apply. However, considering the Decision as a whole, it is clear the Arbitrator followed the statutory requirements of ss. 49 and 51 of the RTA not ss. 49.2 and 51.4. In doing so, the Arbitrator:

- a) first, considered whether the Landlords had accomplished the stated purpose of moving Ms. Ho into the home within a reasonable period; and then
- b) second, after finding they had not, considered whether there were extenuating circumstances in the form of renovations and Ms. Ho's health issues.

[38] It is not surprising the Arbitrator referred to ss. 49.2 and 51.4 given the fact that the Landlords raised unexpected renovations as an extenuating circumstance that delaying their stated purpose. Subsections 51 and 51.4 of the RTA set out identical relief and provisions for extenuating circumstances.

[39] However, the language used by the Arbitrator in deciding this issue is telling. The issue heading asks if the Tenants are entitled to "compensation for the Landlord failing to accomplish the stated purpose" of the Notice. In completing the analysis under this section, the Arbitrator states:

... a landlord, or purchaser if applicable, must pay the tenant 12 times the monthly rent if the reason for ending the tenancy has not been completed in a reasonable time after the effective date of the notice, or the rental unit is not used for the stated reason for at least six months.

... 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.

... the Tenant is entitled a Monetary Order for compensation for the Landlord failing to accomplished the stated purpose on a notice to end tenancy under section 51 or 51.4 of the Act ...

[40] Whether the landlord has completed the "stated purpose" for ending the tenancy in a reasonable period is the relevant consideration under s. 51 of the RTA in compensating a tenant for the landlord's failure to occupy the rental unit. This language is not present in ss. 49.2 or 51.4 of the RTA. In s. 51.4 the relevant consideration is whether the landlord accomplished the renovations or repairs in a reasonable period. Thus, it is clear the Arbitrator properly focused his analysis on s. 51 of the RTA, despite referring to both s. 51 and s. 51.4.

Review Decision

- [41] The Landlords point to the Review Decision as further evidence of a conflation between the provisions. In the Review Decision the review arbitrator references s. 51.4 of the RTA and holds that the Arbitrator did not miss a claim or legal issue because the Arbitrator:
- a) found that the Landlords did not finish the repairs or renovation within a reasonable time after the Tenants vacated the Rental Home; and
 - b) addressed extenuating circumstances.
- [42] It is apparent that the review arbitrator interpreted the Decision as the Arbitrator finding that the Landlords were required to establish that they finished the repairs or renovations within a reasonable period after the Tenants vacated the property under s. 51.4 of the RTA. In doing so, the review arbitrator erred where the original Arbitrator did not.
- [43] Which decision is properly the subject of this judicial review depends on the grounds of judicial review advanced by the petitioner. If the alleged error can be considered on an internal review, then a person must first exhaust the internal review process, and it is the review decision that is the subject of a judicial review, albeit with the original decision forming part of the "contextual matrix": *Martin v. Barnett*, 2015 BCSC 426 at paras. 15-25. The original decision is subject of judicial review if the alleged error could not be internally reviewed and determined. The Landlords exhausted the internal review process through the Review Decision and submit that the Review decision did not address the merits of the underlying application. In this case, it is the original Decision that is properly the subject of this judicial review.

Settlement Agreement

- [44] The Landlords submit that because the Tenants agreed to end the tenancy by consent pursuant to the Settlement Agreement, the Arbitrator erred in law by relying on s. 51 of the RTA as a basis for the Landlords to pay compensation to the Tenants.
- [45] An Arbitrator may assist parties to settle their dispute (RTA s. 63) and if the parties resolve their dispute by agreement at a dispute resolution proceeding, the arbitrator may record the agreement in the form of a decision or order (RTA s. 64.2).
- [46] The Landlords provide no authority to support their position outside of a technical reading of the section 51(2) RTA which states:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement unless the landlord or purchaser, as applicable, establishes that both of the following conditions are met:

(a)the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice; . . .

[47] The Landlords argue that because the tenancy ended pursuant to a settlement agreement and not technically through a notice to end a tenancy under s. 49 [landlord's use of property], s. 51(2) does not apply to them. This argument must fail for three main reasons.

[48] First, it ignores the reality of the situation. In this case, the Landlords provided the notice to the Tenants required under ss. 49(2) and (3) of the RTA. The Tenants then disputed the Notice and the parties proceeded to a dispute hearing where they came to a facilitated settlement agreement. In fact, one of the terms of the Settlement Agreement expressly states that, "The Landlord agreed that the tenant shall not pay rent for the month of December 2022 as statutory compensation for the tenant moving out pursuant to a Two Month Notice" [emphasis added]. Even under a strict, technical, interpretation of the relevant provisions of the RTA, the Settlement Agreement simply modifies the effective date of the Notice.

[49] Second, if the Landlords' argument were to succeed, it would lead to an absurd result. Legislation is to be interpreted in an expansive view, while considering the purpose of the provision and the statutory scheme. If the Landlords' interpretation of s. 51 were correct, parties who take a reasonable approach to dispute resolution under the RTA by coming to a settlement agreement after initiating a dispute would no longer be entitled to the protections and relief provided by the RTA. Absent express language stating otherwise, an interpretation of s. 51(2) that leads to such an absurd result must be rejected.

[50] Third, the Settlement Decision expressly provides that the Tenants may apply for compensation under the RTA if the Landlords do not comply with the RTA. As stated above, the Settlement Decision expressly states that should either party violate the terms of the Settlement Agreement, the tenancy agreement, or the RTA, it is open to the other party to take steps under the RTA for an appropriate remedy. The Landlords' failure to have their family member move into the Rental Home in a reasonable period as determined by the Arbitrator constitutes a violation of the RTA that entitles the Tenants to take steps under the RTA for an appropriate remedy, that being compensation under s. 51. As stated in the Settlement Decision, the parties are bound by the terms of the Settlement Agreement, as well as by the terms of their tenancy agreement and the RTA.

[51] Accordingly, it was not patently unreasonable for the Arbitrator to treat the tenancy agreement as ending pursuant to the Notice and award the Tenants compensation as contemplated in provision s. 51(2) after the parties settled the initial dispute.

Misapprehension of the evidence

- [52] The Landlords submit that the Arbitrator failed to consider and misapprehended evidence put before him at the December Hearing regarding the renovations of the Rental Home and Ms. Ho's health.
- [53] The Landlords submit that the Arbitrator misapprehended the evidence regarding renovations to the Rental Home by finding the Landlords:
- a) did not provide receipts, invoices, or breakdowns of damages to the Rental Home caused by the Tenants; and
 - b) provided insufficient evidence that the Tenants caused \$140,000 worth of damage to the Rental Home.
- [54] They also argue the Arbitrator failed to consider that, outside of the renovations due to damage caused by the Respondents, additional renovations were needed to make the Rental Home livable for Ms. Ho, which delayed her moving into the Rental Home.
- [55] Turning to the evidence of Ms. Ho's medical circumstances, the Landlords submit that the Arbitrator misapprehended the evidence when rejecting the submission that Ms. Ho needed to be in Vancouver because her doctor there spoke Vietnamese.
- [56] While it is true that the Arbitrator did not perfectly summarize the evidence and positions of the Landlords in the Decision, the consideration of the evidence regarding the renovations or medical evidence was not patently unreasonable.
- [57] The evidence before the Arbitrator on the renovations and Ms. Ho's medical appointments consisted of the following materials and dates:
- December 31, 2022, tenancy ends and Tenants' move out of Rental Home;
 - January 11, 2023, invoice to remove scrap wood, metal, and rubbish from rear shed area - \$444;
 - January 15, 2023, Landlords return to British Columbia;
 - January 30, 2023, RDNO wood waste receipts - \$24;
 - February 6, 2023, Kal Tire invoice six tires - \$83.33;
 - March 8, 2023, Ms. Ho general surgery appointment;
 - March 20, 2023, RDNO wood waste and refuse receipts - \$23.50;
 - April 21, 2023, Ms. Ho general surgery appointment;
 - April 27, 2023, Ms. Ho family medicine appointment;
 - April 28, 2023, Ms. Ho medical microbiology appointment;
 - May 10, 2023, estimate for repair of damaged area - \$4,375.25;

- May 22, 2023, Ms. Ho family medicine appointment;
- June 2, to June 29, 2023, seven Ms. Ho medical appointments (six family medicine and one medical microbiology);
- July 22, 2023, carpet work order \$1,409.71; and
- June and July 2023, Landlords affirm they painted the house on evenings and weekends during this time.
- late August 2023, Ms. Ho moves into Rental Home; and
- October 17, 2023, Ms. Ho family medicine appointment with Vancouver doctor via teleconference while in Vernon.

[58] The Landlords also provided various photographs of the state of the home after the Tenants moved out of the property. Although they display a general sense of disrepair and uncleanliness at the Rental Home, I note that it is difficult to draw any specific conclusions with respect to the damage done to the Rental Home due to the quality of the photographs.

[59] The Arbitrator's analysis of the evidence must be considered in relation to the statutory requirements of ss. 51(2) and 51(3) of the RTA. Section 51(2) required the Arbitrator to assess whether Ms. Ho moved into the Rental Home in a reasonable time after the effective date of the Notice. Section 51(3) entitled the Arbitrator to excuse the Landlords from the requirements of s. 51(2) where there were extenuating circumstances.

[60] It is clear the Arbitrator found that Ms. Ho did not move into the Rental Home within a reasonable period of time. It is also clear the Arbitrator did not consider the evidence of the renovations or medical appointments to meet the standards required to be extenuating circumstances.

[61] Regarding the evidence supporting the renovations, the Landlords' lawyer at the hearing affirmed that the renovations cost \$140,000 to complete. However, the quotes for work submitted by the Landlords, as evidenced in the timeline above, provide damage estimates substantially lower than this amount, certainly no more than \$10,000. There was also no evidence before the Arbitrator to support the Landlords' further contention that the remainder of the renovations to the Rental Home were necessary to make the home livable for Ms. Ho. The Landlords did not submit quotes, invoices, receipts, or otherwise, to show what renovations were done in this respect.

[62] The Arbitrator's statement that "[n]o receipts, invoices or breakdowns of damages was provided" may not have been wholly accurate, but the evidence before the Arbitrator in this respect was so limited the statement was not a patently unreasonable mischaracterization of the evidence that renders the Decision defective.

- [63] Based on the lack of evidence before the Arbitrator on what the renovations were and why they were necessary, it was open to the Arbitrator to conclude that the Landlords were taking an opportunity created by the Notice to complete major renovations that do not meet the definition of an extenuating circumstance.
- [64] Similarly, the Arbitrator did not accept the Landlords' evidence to support the extenuating circumstance that Ms. Ho's health issues prevented her from moving to Vernon. Ms. Ho does not speak English. The Landlords' evidence was that one of the reasons the medical appointments, related to Ms. Ho's recent surgery and other health issues, needed to be completed in Vancouver was that her doctor is a Vietnamese speaker. The other evidence the Landlords provided to support their position that Ms. Ho did not move into the Rental Home due to her health issues was a list of her medical appointments. This consisted of a screenshot of a Provincial Health Gateway page that listed the dates, categories, and doctors for her medical appointments.
- [65] It is noteworthy that Ms. Ho attended one of these medical appointments from Vernon via teleconference after she moved into the Rental Home. The Landlords provided no further evidence that Ms. Ho needed to reside in Vancouver for her medical appointments. Finally, the evidence shows that Ms. Ho had no medical appointments in July or August that would have required her to continue living in Vancouver. Based on the extremely limited evidence before the Arbitrator that Ms. Ho's move into the Rental Home was delayed due to her health issues during the relevant period, it was open for the Arbitrator to conclude they did not constitute an extenuating circumstance.
- [66] The Landlords' suggestion that the Arbitrator should have asked to hear from Ms. Ho about her health issues at the December Hearing is also unfounded. Although the Arbitrator has broad discretion to direct hearing processes, the onus remains on the parties to put their evidence before the tribunal. The Landlords' lawyer said that Ms. Ho was available if the Arbitrator wanted to hear from her, but the lawyer took no steps to call her as a witness. The Arbitrator made no direction preventing the Landlords from calling Ms. Ho as a witness at the December Hearing.
- [67] In fact, the Arbitrator asked if the Landlords had additional evidence they wanted him to look at regarding Ms. Ho's medical issues as extenuating circumstances. This provided the Landlords ample opportunity to call Ms. Ho into the December Hearing to provide evidence, which they did not do.
- [68] This is not a case where the Arbitrator failed to appreciate the Landlords' evidence or misapprehended that evidence. Rather, the Arbitrator did not accept the Landlords' evidence and arguments. The onus was on the Landlords to provide sufficient evidence to support their claims on the balance of probabilities that the renovations and medical appointments were extenuating circumstances that prevented Ms. Ho from moving into the Rental Home in a reasonable time. The Arbitrator considered the evidence and determined they were not. It is not the role of the court on a judicial review to reweigh the evidence

before the Arbitrator. The Arbitrator's findings were grounded in the evidence, and as such, cannot be said to be patently unreasonable.

Legislative intent

- [69] The Landlords argue s. 51 of the RTA is intended to punish landlords who act in bad faith and disingenuously use the legislation to remove tenants, and that the Decision is contrary to the legislative purpose. They rely on the Hansard debates of April 16 and 17, 2018, during the Second and Third Readings of Bill 12 - Tenancy Statutes Amendment Act, 2018, S.B.C. 2018, C. 11, for this proposition. They also point to Section H of Residential Tenancy Policy Guideline 50 before the Arbitrator in 2023, relating to "extenuating circumstances", which states that landlord may be excused from paying compensation where it would be "unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control."
- [70] The Landlords submit that it was an error for the Arbitrator to fail to consider whether it would be "unreasonable and unjust" for the Petitioners to pay compensation in the circumstances.
- [71] I accept that the legislative intent of s. 51 is to punish landlords who act in bad faith when evicting tenants, and I also accept that a landlord may be excused from paying compensation where it would be unreasonable and unjust due to extenuating circumstances, as provided under s. 51(3).
- [72] From my review of the Decision as a whole, this is not a case where the Arbitrator failed to either properly interpret or to appreciate the purpose of the legislation. Rather, the Arbitrator did not accept the Landlords' explanations.
- [73] Contrary to the submissions advanced on behalf of the Landlords, the Arbitrator found that Ms. Ho did not move into the Rental Home in a reasonable time, and that there were not extenuating circumstances that prevented her from doing so. In so finding, the Arbitrator did not accept that either the magnitude of the renovations to the Rental Home, or Ms. Ho's health issues, prevented her from moving in until late August 2023. Instead, the Arbitrator concluded that it was more likely that the Landlords took advantage of the opportunity to spend five months doing major renovations, and a further two months of painting. As discussed previously, these are findings the Arbitrator was entitled to reach based on the evidence before him.
- [74] The Landlords rely on the Court of Appeal in *Athwal v. Johnson*, 2023 BCCA 460, for the proposition that a claim for compensation under s. 51 of the RTA was not intended to capture them. Specifically, the Court said the following at para. 73:

- [73] if the appellants' renovations in this case were indeed necessary, but were delayed for reasons outside of their control, it may also be said that the applicable provisions in the RTA were not intended to capture the appellants. A claim for compensation under s. 51 has both a compensatory and a punitive, or deterrent, nature. The quantum of compensation will often be significant, and requires careful consideration of whether the landlord's actions warrant such a remedy.
- [75] Athwal involved the appeal of an application for judicial review where it was alleged that the hearing was procedurally unfair because the appellant had not received particulars of the respondents' claim. The Court of Appeal allowed the appeal on the basis that the chambers judge had erred by finding that he could not determine what the appellants had received at the RTB hearing and by rigidly applying the principle that a procedural fairness issue can not be raised for the first time on judicial review.
- [76] The Court of Appeal went on to find at para. 73 as follows:
- [73] I do not say this to make any pronouncement about the merits of the underlying action, but rather to say that in these circumstances, the evidence before the arbitrator was manifestly insufficient to decide whether the appellants failed to comply with the stated purpose in the Two-Month Notice within a reasonable amount of time and there were no extenuating circumstances.
- [77] This case is distinguishable from Athwal. In this case, the Arbitrator considered the evidence and determined that the Landlords failed to comply with the stated purpose in the Notice within a reasonable time and there were no extenuating circumstances, concluding that the renovations were not necessary and were not delayed for reasons outside of the Landlords' control. There was no procedural fairness issue leading to insufficient evidence before the Arbitrator.
- [78] Moreover, although Hansard evidence on the legislative intent behind statutory provisions may be useful to determining the purpose of or resolving ambiguities in legislation, it is an error of law for an arbitrator to fetter their discretion by only relying on policy directions when considering an individual's case: Athwal at para. 74. The Arbitrator properly focused on the relevant statutory requirements and the evidence in making the Decision.
- [79] The case of Maasanen v. Furtado, 2023 BCCA 193, is also distinguishable on this basis. Justice Stromberg-Stein, writing for the majority in Athwal (and in Maasanen), describes the facts of Maasanen as follows:
- [71] In Maasanen, the facts were similar. A landlord issued a Notice to End Tenancy pursuant to s. 49(3) of the RTA. The tenants vacated the rental unit, and the landlord sought to complete renovations, which were ultimately delayed. The tenants brought a claim for compensation under s. 51 alleging that the landlord had not complied with the stated purpose for ending the tenancy. The RTB arbitrator granted the tenants' claim and issued a monetary order equivalent to 12 months' rent.

- [72] The RTB order was overturned on judicial review because the arbitrator had failed to consider evidence of extenuating circumstances. The chambers judge declined to remit the matter back to the RTB for reconsideration. This Court upheld the chambers judge's decision on appeal. As I noted, in the circumstances of that case, the chambers judge properly exercised her remedial discretion not to remit the matter back to the RTB because the RTA provisions at issue could not possibly have been intended to capture the landlord. A reconsideration of the issue could lead to only one result: Maasanen at para. 29.
- [80] The Court of Appeal's comments at para. 29 of Maasanen that "the legislation cannot possibly have intended to capture this landlord on these facts" must be viewed in the context of the decision. The facts included uncontroverted evidence of extenuating circumstances that the arbitrator ignored. By doing so, the arbitrator failed to apply the law of s. 51(3) of the RTA, which was a patently unreasonable error.
- [81] In this case the Arbitrator considered the evidence in support of the argument of extenuating circumstances and found it insufficient. The conclusion that the Landlords' evidence did not suffice for extenuating circumstances was a decision the Arbitrator was entitled to make on the evidence. Regardless of whether another presider would reach the same conclusion or not, I am unable to find that such a conclusion was patently unreasonable.

Conclusion

- [82] The Landlords have failed to establish that the Decision was patently unreasonable. Accordingly, the petition is dismissed.

- [83] The respondents are entitled to their costs at Scale B.

"Wilson J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/08/2025BCSC0834.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/lu-v-marchand-2025>

Prepared on 28 October 2026 · Esheria