

CANADA / JUDGMENT

Ludwig v. Blair

2025 BCSC 1686

COURT

Supreme Court of British Columbia

DECIDED

29 August 2025

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2025 BCSC 1686 Ludwig v. Blair

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ludwig v. Blair,

2025 BCSC 1686

Date: 20250829

Docket: L63897

Registry: Kamloops

Between:

Stephen Ludwig and Dana Foster

Petitioners

And

Natalie Blair, Tanner Derreth-Blair and Director, Residential Tenancy Branch

Respondents

Before: The Honourable Madam Justice Lyster

On judicial review from: Two orders of the Residential Tenancy Branch,

dated January 8 and 15, 2025

Reasons for Judgment

On her own behalf and on behalf of

S. Ludwig:

D. Foster

Counsel for N. Blair and T. Derreth-Blair:

B. Tancock (May 2) and

J. M. Drayton (May 20)

Place and Date of Hearing:

Kamloops, B.C.

May 2 and 20, 2025

Place and Date of Judgment:

Kamloops, B.C.

August 29, 2025

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Introduction

- [1] Dana Foster and Stephen Ludwig are tenants who live on a rural property in Walhachin, British Columbia (the "Property"), that they rent from Natalie Blair and Tanner Derreth-Blair (collectively, the "Blairs").

- [2] Ms. Foster and Mr. Ludwig seek judicial review of two decisions of the Residential Tenancy Branch ("RTB"). In the first, made January 8, 2025, the RTB granted the Blairs an order of possession, effective seven days after the order of possession was served on Ms. Foster (the "First Decision"). Mr. Ludwig applied for reconsideration of the First Decision, which was dismissed on January 15, 2025, on the basis that he had applied out of time (the "Second Decision").
- [3] The Blairs filed the order of possession in this court and a writ of possession was granted in Supreme Court File No. 063895. Pursuant to the writ of possession, a bailiff attended at the Property on January 20, 2025, changed the locks and served the writ of possession on Ms. Foster and Mr. Ludwig. Ms. Foster and Mr. Ludwig drilled out the newly installed deadbolts and re-entered the Property.
- [4] The petitioners filed the petition on January 20, 2025. They applied for short leave, which I heard on January 23, 2025. At that time, I ordered a stay of the writ of possession and the order of possession until the petition was heard, and gave some directions with respect to the petition proceeding.
- [5] On a preliminary point, the petitioners originally named the Minister of Housing and Municipal Affairs (Residential Tenancy Branch), S. Campbell, J. Casler, Ms. Blair and Mr. Derreth-Blair as respondents. They filed an amended petition on February 7, 2024, in which they removed S. Campbell and J. Casler (the two adjudicators that made the decisions under review) as respondents, and added the Director, Residential Tenancy Branch. The petitioners were correct to remove S. Campbell and J. Casler as respondents and to add the Director as respondents.
- [6] The Director of the RTB filed a response to petition on April 1, 2025. In her response, the Director correctly noted that the Minister of Housing and Municipal Affairs is not a proper respondent to this petition. I have amended the style of cause of this proceeding to remove the Minister.

Background Facts and History of the Proceedings before the RTB

Rental History

- [7] The petitioners have rented the Property from the Blairs since July 2024.
- [8] In circumstances which are in dispute, and are material to the petitioners' arguments on this judicial review, and to which I will return to later in this decision, Ms. Blair and Ms. Foster signed a Residential Tenancy Agreement (the "Agreement") with respect to the Property in early July 2024. According to the Agreement, the tenancy was for a fixed term starting July 9, 2024 and ending January 9, 2025. Thereafter, the tenancy was to continue on a month-to-month basis. The petitioners were to pay \$2,500 each month, payable on the 9th.

Ten-Day Notice to End Tenancy

- [9] Mr. Derreth-Blair served a 10 day notice to end tenancy for unpaid rent on Ms. Foster on December 29, 2024. In the 10-day notice, the Blairs claimed that the petitioners had failed to pay rent in the amount of \$2,500 that was due on December 9, 2024.
- [10] The petitioners did not pay the outstanding rent claimed within five days as required under the 10-day notice.
- [11] Mr. Derreth-Blair served a notice of direct request proceeding on Ms. Foster on January 7, 2025. Mr. Ludwig was served on January 10, 2025. A direct request proceeding was conducted without a participatory hearing, on the basis of the materials filed by the Blairs on January 7, 2025.

First Decision

- [12] The adjudicator rendered the First Decision on January 8, 2025. There is an inconsistency in the materials with respect to that date, as the First Decision says that it is dated January 8, 2025, but refers to the fact that Mr. Ludwig was served two days later, on January 10, 2025. The inconsistency is not material to the issues on judicial review.
- [13] The First Decision states that there were three issues to be decided: (1) whether the landlord was entitled to an order for possession based on the 10-day notice; (2) whether the landlord was entitled to a monetary order for unpaid rent; and (3) whether the landlord was entitled to recover the filing fee for the application from the tenant.
- [14] The adjudicator identified a preliminary issue arising from the fact that Mr. Ludwig had not signed the Agreement. Section 12(1)(b) of the Residential Tenancy Regulation requires that a tenancy agreement be signed by the landlord and the tenant. The adjudicator stated that it is a requirement of the direct request process that the tenancy agreement be signed by the tenant. In light of Mr. Ludwig having not signed the Agreement, the adjudicator proceeded only with the portion of the application naming Ms. Foster as a respondent. The adjudicator removed Mr. Ludwig's name from the proceeding, pursuant to s. 64(3)(c) of the Residential Tenancy Act, S.B.C. 2002, c. 78 [Act].
- [15] Turning to the first issue, the adjudicator referred to s. 46 of the Act, which requires a tenant who receives a 10-day notice within five days to either pay the full amount of arrears indicated on the notice or to dispute the notice by filing an application for dispute resolution with the RTB. If the tenant does neither, they are conclusively presumed to have accepted the end of the tenancy under s. 46(5) of the Act.

- [16] The adjudicator found that Ms. Foster had not paid the \$2,500 claimed and did not dispute the notice within the 10-day period. The adjudicator, therefore, found that Ms. Foster was conclusively presumed to have accepted that the tenancy ended on January 9, 2025. The adjudicator, therefore, found that the Blairs were entitled to an order of possession. The order of possession was effective seven days after service of the order on Ms. Foster.
- [17] Turning to the second issue, the adjudicator found that the calculation of the rent owing on the direct request worksheet submitted by the Blairs did not match with the total monetary amount requested by them. The adjudicator dismissed the application for a monetary order for unpaid rent, with leave to reapply.
- [18] With respect to the third issue, the adjudicator found that the Blairs were partially successful and were, therefore, entitled to recover the filing fee from Ms. Foster.

Application for Review Consideration

- [19] The petitioners filed an application for review consideration. The application for review consideration states that the "Date document(s) received" was January 9, 2025, and that the "Date request received" was January 13, 2025. It is not clear on the face of the document if these dates were inserted by the petitioners, or whether they were automatically populated by the RTB's system. It is more probable that those dates were automatically populated by the RTB's system.
- [20] The application states "Filing late: No". Again, it is not clear if this was inserted by the petitioners, or automatically by the RTB's system.
- [21] With respect to the substance of the application, the petitioners stated that they were unable to attend the first hearing due to circumstances beyond their control. They stated that a hearing was not held, that Mr. Ludwig was not served the 10-day notice until January 9, 2025, and that Mr. Ludwig was unable to attend due to working remotely at the relevant time.
- [22] The petitioners further stated that they had new and relevant information not available at the time of the hearing. They stated that they paid the rent on January 9, 2025, and that Ms. Foster did not have the financial means to respond to the 10-day notice and could not access Mr. Ludwig's account. They also said that the Blairs "produced and submitted a fraudulent digital RTB1 contract with forged signatures".
- [23] The petitioners further stated that false information was submitted by the Blairs. They described that alleged false information as follows:

The tenants executed a paper RTB1 contract on July 9, 2025. Dana printed and signed the contract and delivered the contract in person to landlord N.B. The landlords were informed that Stephen would be away in Dawson Creek until July 18, 2024. The landlords neglected to provided the tenants with a duly executed copy of the contract within 21 days. The landlords produced four fraudulent digital contracts including the January 6, 2025, digital RTB1, submitted to obtain the Order of Possession.

[24] The petitioners also stated that a procedural error occurred in that the decision-maker was required to order the payment of rent and did not do so. They also said that the decision-maker assigned Ms. Foster sole financial responsibility without evidence or finding of fact, and that Mr. Ludwig is the sole income earner in the household. They also said that the decision-maker failed to describe the livestock and farm infrastructure and failed to take the well-being of their animals, which included five horses, chickens, dogs and cats, into account.

Review Consideration Decision (Second Decision)

[25] The arbitrator rendered the Second Decision on January 15, 2025. The arbitrator dismissed the petitioners' review application. They did so on the basis that the petitioners had failed to apply within the two-day time period stipulated by s. 80 of the Act. The arbitrator held that the petitioners received the First Decision on January 9, 2025, and filed their review application on January 13, 2025, four days later. The arbitrator held that the application was not filed in time, and dismissed it in accordance with section H of RTB Policy Guideline 24.

[26] In reaching this conclusion, the arbitrator "noted for clarity" that the tenancy ended by conclusive presumption, and that Mr. Ludwig did not dispute service of the 10-day notice on Ms. Foster in their application for review consideration.

Analysis

Which decision(s) are the subject of this judicial review? On what standard of review?

[27] The court must identify which decision or decisions of the RTB are the subject of this judicial review.

[28] In this case, I find that both decisions are subject to judicial review, with respect to different issues. The First Decision is subject to review with respect to the substance of the adjudicator's decision. Pursuant to s. 5.1 of the Act and s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 [ATA], the applicable standard of review of the substance of the First Decision is patent unreasonableness. As stated in *Yee v. Montie*, 2016 BCCA 256 at paras. 21-22, a patently unreasonable decision is one in which the result borders on the absurd.

[29] The Second Decision is subject to review of the arbitrator's decision to dismiss the review application on the basis it was filed late. In their amended petition, the petitioners did not specify the legal basis on which they sought review of that decision.

[30] The decision to dismiss the application because it was filed late was a discretionary one. Section 58(3) of the ATA defines "patently unreasonable" with respect to a discretionary decision as follows:

- (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the 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.

[31] Alternatively, the petitioners' arguments with respect to the Second Decision could be framed as an alleged breach of procedural fairness. Pursuant to s. 58(2)(b) of the ATA, questions of procedural fairness must be reviewed on a standard of fairness. Assessing the applicable level of procedural fairness requires a "contextual approach" that looks at the decision being made in its statutory, institutional and social context: *Baker v. Canada* (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 at para. 22.

The Nature of Judicial Review

[32] The role of the court on judicial review is aptly described as follows in the response to petition of the Director:

The role of the Court on judicial review is to ensure that a statutory decision-maker or tribunal acted within the authority bestowed upon it by the Legislature. The role of the Court on judicial review is not to hear new evidence or argument or to decide or re-decide the case; it is simply to ensure that the tribunal (1) acted within its jurisdiction by deciding what it was directed to decide by its constituent legislation; and (2) did not lose jurisdiction by failing to provide a fair hearing or by rendering a decision outside the degree of deference owed by the reviewing court.

[33] The nature of the role of the court on judicial review has important implications for the scope of the evidence the court may consider. This was described by Justice Horsman, then of this court, in *Alfier v. Sunnyside Villas Society*, 2021 BCSC 212 at para. 30:

[30] The limited role of the court on judicial review also explains the limits on the court's ability to consider evidence beyond the record that was before the statutory decision maker in the first instance. The admission of extra-record evidence risks usurping the role of the tribunal, and thereby undermining legislative choices. New evidence may be admitted in exceptional cases to show a lack of jurisdiction, a denial of natural justice, or to establish that there was no evidence for a material finding: *Duhamel v. Financial Institutions Commission*, 2018 BCSC 962 at para. 21. In some cases, new evidence may be admitted to provide the court with general background where a judicial review is procedurally and factual complex and there is a large volume of material to synthesize: *British Columbia*

(Assistant Water Manager) v. Chisholm, 2020 BCSC 545 at para. 12.

- [34] The record of proceedings before the RTB was helpfully provided to the court by way of an affidavit made by Lisa Clout, Senior Policy Analyst at the RTB.
- [35] In the case at bar, both parties sought to introduce and rely upon a great deal of evidence that did not form part of the record before the RTB. Much of it related to events after I ordered the stay in January 2025. By and large, that material is irrelevant and inadmissible to the issues now before the court, and I have disregarded it.
- [36] The first exception relates to evidence provided by both parties with respect to the signing of the Agreement, as that evidence is relevant to and necessary to the court's consideration of the petitioners' argument that the First Decision was based on fraudulent documentation submitted by Ms. Blair.
- [37] The second exception relates to evidence provided by the petitioners with respect to their argument that they attempted to file the review consideration application within the two-day time limit, and that they relied upon representations made by an RTB employee that they could file their application outside of the two-day time limit. In this regard, the Director included in Ms. Clout's affidavit all relevant records pertaining to communications between the RTB and the petitioners. This is an example of new evidence being admissible for the purposes of considering an alleged denial of procedural fairness.

Review of the First Decision

- [38] The First Decision was made in response to the Blairs serving a 10-day notice to end tenancy for unpaid rent on Ms. Foster. Section 26(1) of the Act addresses a tenant's obligation to pay rent in the following terms:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

- [39] When rent is not paid, the landlord may issue a 10-day notice pursuant to s. 46(1) of the Act. On service of a 10-day notice, the tenant has five days in which to either pay the outstanding rent or dispute the notice by applying for dispute resolution. If the tenant does neither, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. As described in *Ganitano v. Metro Vancouver Housing Corporation*, 2014 BCCA 10 at paras. 41-44, this is a form of statutory forfeiture, and the tenancy ends by operation of law.

- [40] In the case at bar, the 10-day notice was served on Ms. Foster on December 29, 2024, and she did not pay the outstanding rent or dispute the notice by applying for dispute resolution within the five-day period.
- [41] In their response to petition, the Director describes the direct request procedure which a landlord may request in these circumstances:
7. Section 55(2)(b) of the RTA permits a landlord to request an Order of Possession for a rental unit where an NTET has been issued to the tenant and the tenant has not disputed the notice. In these circumstances, the conclusive presumption applies, and the tenancy ends by operation of law. Section 55(4) permits the Director to grant the landlord an Order of Possession without any further dispute resolution process, meaning no participatory hearing is required.
 8. Where a tenant does not dispute a 10-Day NTET for Unpaid Rent or Utilities, the landlord has the option of requesting an Order of Possession through the RTB's Direct Request process, which is outlined in Policy Guideline 39. The landlord who applies must provide certain documents that prove that a tenancy existed and a 10-Day NTET for Unpaid Rent or Utilities was properly served on the tenant,
 9. After application for Direct Request is received, the RTB will issue the landlord a Notice of Dispute Resolution Proceeding. This document, along with the documents supporting the application must be served on the tenant. The landlord must then provide proof of service of the notice package on the tenant to the RTB.
 10. At this point, the application is reviewed by an RTB Arbitrator who may:
 - a. issue an Order of Possession to the landlord (with or without a monetary order);
 - b. adjourn the matter to a participatory hearing;
 - c. dismiss the application with leave to reapply; or
 - d. dismiss the application without leave to reapply.
 11. The Direct Request process occurs entirely ex parte and in writing unless the arbitrator determines a participatory hearing is necessary. The purpose of the Direct Request process is to establish that the tenancy in issue has ended through operation of the conclusive presumption.
- [42] Ms. Foster states in her first affidavit, made January 20, 2025, that Mr. Ludwig was working in remote locations and she was not able to access his bank account to pay the \$100 application fee to dispute the notice. That evidence was not before the adjudicator who made the First Decision, as the Blairs' application proceeded by way of a direct request proceeding on the basis of the Blairs' evidence alone.

- [43] I do not believe that the petitioners allege that it was a breach of procedural fairness for the RTB to proceed by way of the direct request process. I am not aware of any basis upon which Ms. Foster's evidence with respect to the reasons why she did not apply for dispute resolution within the five-day period would be admissible on this application for judicial review. But if it were admissible, it would not, in my view, provide any basis upon which the First Decision could be brought into question. Ms. Foster does not say that she does not have a bank account of her own, nor does she indicate that she attempted to find any other means to pay the \$100 filing fee in Mr. Ludwig's absence. On the evidence she has provided, I do not accept that Ms. Foster could not have found the means to pay the \$100 filing fee and file an application for dispute resolution within the five-day period.
- [44] Further, as stated by the Court of Appeal in *Ganitano*, "it would be anomalous to allow a tenant to call in aid the equitable jurisdiction of the courts to reinstate a tenancy he or she is 'conclusively presumed to have accepted' is at an end". The 10-day notice provides clear and explicit instructions about the right to dispute the notice within five days and the consequences of failing to do so. As stated in *Mvano v. Affordable Housing Charitable Association*, 2024 BCSC 1014 at para. 55:
- [55] In these circumstances, notwithstanding the grave importance of the decision being made, it cannot be said that a tenant could reasonably or legitimately expect that they could fail to file a dispute within the time limit but avoid the expressly stated consequences; namely, being presumed to accept that the tenancy is ending and having to move out within ten days of receipt of the Eviction Notice.
- [45] The adjudicator was entitled to hold the non-participatory hearing requested by the Blairs.
- [46] I turn to a consideration of the petitioners' arguments about the substance of the First Decision. I will start by noting two arguments that were initially advanced by the petitioners, but abandoned by them at hearing.
- [47] First, in her first affidavit, Ms. Foster stated that the First Decision was reviewable on an error of law, because s. 55 of the Act requires the decision-maker to grant an order for the payment of rent when granting an order of possession for non-payment of rent. Ms. Foster abandoned this argument at hearing. This was an appropriate concession. Section 55(4) provides that the Director may grant an order of possession and grant an order requiring payment of the rent. Neither is mandatory. The adjudicator was not statutorily required to make an order for payment of rent in addition to the order of possession.
- [48] Second, in their amended petition, the petitioners sought an order for damages in the amount of \$50,000 arising from their "violent partial eviction" from the Property. In their response to petition, the Director correctly submitted that the court does not have jurisdiction to award damages in an application for judicial review: *Holujuch v. Residential Tenancy Branch*, 2020 BCSC 227 at para. 15. Having had the benefit of reviewing the Director's response, the petitioners properly withdrew their request for damages.

- [49] I turn to the heart of the petitioners' challenge to the First Decision, which is that it was fraudulently obtained by the Blairs submitting a rental agreement with forged signatures.
- [50] As set out in their amended petition, the petitioners submit the following with respect to the rental agreement:
18. On July 9, 2024, petitioner Dana Foster (D.F.), printed and signed the RTB1 contract in blue ink pen.
 19. On July 9, 2024, petitioner D.F., served the signed contract in person to respondent Natalie Blair, at her home located at 6098 Deadman Vidette Rd.
 20. On July 9, 2024, D.F. sent a text to N.B, that her co-tenant Stephen Ludwig, will be away for 9 days and he can provide his signature then.
 21. The respondent (landlords) neglected to collect the missing signatures, copy the executed contract and serve it to the tenants within 21 days.
 22. The petitioners did not receive a duly executed copy of the July 9, 2024, RTB1 contract, subject to ARTICLE 15. Respondents N.B. and T.D.B, neglected to promptly collect the signatures of T.B. and S.L, and did not promptly serve a copy of the RTB1 within 21 days.
- []
25. On December 10, 2024, the petitioners received an email containing a forged digital RTB1 contract from respondent N.B. The forged RTB1 included an incorrect security deposit, forged initials on page 2, and page 6 was missing entirely.
 26. On December 29, 2024, the petitioners received another email containing a 2nd forged digital RTB1 contract from respondents N.B. and T.B. This version included removal of the forged initials of D.F. on page 2 and page 6, was missing entirely.
 27. On January 2, 2025, the petitioners received an email containing a 3rd forged digital RTB1 contract from N.B., with the security deposit \$1250 on page 3, removed initials on page 2 and page 6, was a scan from the July 9, 2024 RTB1 contract served to N.B. by D.F.
 28. On January 6, 2025, the landlords created a fourth version of the forged digital RTB1 contract and submitted that contract with their application for an Order of Possession.
 29. The January 6, 2025, fraudulent RTB1, contained the forged signature of petitioner D.F. and respondent T.D.B. It also contained an amendment made by N.B. on page 3, including a new set of initials and the date of the security deposit was missing. On page 6, respondent N.B. forged a digital date. D.F. signed the date in handwriting on the July 9, 2024, RTB1 contract.

- [51] Ms. Blair responded to these allegations in her first affidavit. She says that she sent a copy of a proposed agreement to Ms. Foster by email on July 8, 2024. Ms. Foster responded on July 9 by email stating that she had printed and signed the agreement, and that Mr. Ludwig would not be home for possibly nine days. She said she would bring the agreement and scan it. Ms. Blair says that Ms. Foster returned the agreement to her on July 9, 2024. Ms. Foster initialled the agreement and executed it, dating her signature as July 9, 2024.
- [52] Ms. Blair says that when she received the original agreement from Ms. Foster, Mr. Derreth-Blair's digital signature, which was included in the version she sent Ms. Foster, was missing. She says that after she discussed this with Mr. Derreth-Blair, she believes he executed the original agreement immediately after Ms. Foster returned it to them.
- [53] Ms. Blair says that the original agreement provided for a fixed term tenancy from July 9, 2024 to January 9, 2025, with rent of \$2,500 payable on the 9th day of each month. It was silent with respect to security deposit and pet damage deposit.
- [54] On December 10, 2024, Ms. Blair wrote a text to Ms. Foster to communicate that they did not wish to extend the agreement past January 9, 2025:

Hey Dana. Not sure if Steve has communicated our convo to you, we've been messaging you both as we follow the rent. Unfortunately we are not feeling comfortable extending the contract beyond January seeing as the remaining rent has not been paid by the date you outlined again. We would have been more open to it but are feeling frustrated and concerned with the lack of communication, dates are mentioned and then pass with no notice of needing further extensions. As I'm sure you know we have bills to pay too, and our small businesses is a labour of love and by no means a cash cow. I understand you have been dealing with a lot, and we have tried to be lax in lieu of that, but we would have appreciated some professionalism and clearer communication about rent so that we could have budgeted and scheduled ourselves accordingly.

- [55] Ms. Foster replied by text that same day as follows:

Thank you Natalie.

I am clear with your notice and intention.

Yes-I agree we should have communicated our circumstances prior to our agreed rental deadlines.

I do not dispute the late rental payments.

I do no consent to allegations of intentional unprofessional conduct That is certainly your right to interpret it as such.

I am sorry this transpired and we were not more clear when our circumstances changed.

We will be sending another rental payment Friday morning.

All the rent will be paid.

Yes, we have been facing unusually difficult time in our circumstances.

Again, I apologize for putting you both in these circumstances it was not intended

- [56] Ms. Foster requested a copy of the rental agreement, to which Ms. Blair responded, providing what appear to be two copies of the agreement, one digital and a scanned copy of the signed agreement. On December 11, 2024, Ms. Foster texted Ms. Blair to inform her that they had paid \$1,250 and not \$750 as a damage deposit. Ms. Blair replied stating that she could amend that and that "I did pop it in to the digital ones as that's what was written on the physical for some reason". Ms. Foster replied "no worries".
- [57] On December 29, 2024, Ms. Foster emailed Ms. Blair, requesting a copy of the agreement that "includes your signatures and the correct damage deposit, and a copy of the eviction notice". Ms. Foster replied by email that same date, stating "as requested here is the paper trail of the now formal 10 day RTB30 and security deposit amendment of the tenancy agreement". On January 2, 2025, she delivered the amended original agreement to Ms. Foster by email.
- [58] In her first affidavit, Ms. Foster explains that:
24. For the sake of convenience, I consolidated all versions of the Original RTA when I sent the January 2, 2025, version to the petitioner, Dana Foster. I did not change any material terms. I added the damage deposit amount and initialed it with the date I added that amendment to p. 3. I also copied the petitioner, Dana Foster's, signature and applied it to the new amended residential tenancy agreement. I did not do this with the intent to defraud or mislead the petitioners. It was my honest intention consolidate the version of the Original RTA. In hindsight I appreciate I probably should not have done this, or, in the alternative, I should have made it clear to the petitioner, Dana Foster, I had copied her signature from the Original RTA at the time I sent the amended residential tenancy agreement to her.
- [59] This is a confusing chain of events. Ultimately, however, there is no disagreement about the material terms of the Agreement. The differences between the various versions that were created are not relevant to the grounds upon which the Blairs served the 10-day notice and obtained the order of possession. Nor is there any doubt that both Ms. Foster and Ms. Blair signed the Agreement. As found by the adjudicator in the First Decision, Ms. Foster was obliged to pay the monthly rent of \$2,500. She was served on December 29, 2024. She did not either pay the arrears claimed or dispute the 10-day notice within five days. As a result, Ms. Foster was conclusively presumed, pursuant to s. 46(5) of the Act, to have accepted that the tenancy ended on the effective date of the 10-day notice.

[60] Further, the evidence is clear that, as a matter of fact, the petitioners failed to pay their rent in full and on time. Ms. Foster acknowledged as much in her communications with Ms. Bair. In her December 10, 2024 email, Ms. Foster stated that she "did not dispute the late rental payments". On January 3, 2025, Ms. Blair emailed a rent spreadsheet to Ms. Foster. Ms. Foster responded, saying that "Yes you have errors, similar to the error of not accounting for the \$1250 damage deposit. We owe you \$2100".

[61] When the parties appeared before me on January 23, 2025 in the short leave application, the petitioners submitted that there was no past due rent at that time. The following exchange occurred:

The Court: How can it be your position that your rent was paid on time. I've seen texts where you're apologizing for not paying the rent on time.

The Petitioner Foster: I apologize. I apologize for that. I misspoke. The rent has been paid.

The Court: So you say you don't owe any rent at this point.

The Petitioner Foster: No we do not.

[62] It is not possible for me to determine precisely how much rent the petitioners owed on the materials before me, nor is it necessary for me to do so. What is clear, as acknowledged in Ms. Foster's various communications, is that they did not pay all the rent they owed prior to the order of possession being obtained, and they did not pay their rent on time.

[63] As Ms. Blair said in her affidavit, in hindsight, she should not have made the consolidated version of the Agreement, or if she did, she should have made what she was doing clear to Ms. Foster. The creation of multiple versions of the same agreement is almost guaranteed to lead to confusion and potentially mistrust, especially in circumstances such as these. To say the least, this was not a business-like way to deal with the Agreement. However, there is no evidence that would support that Ms. Blair intended to defraud anyone, and in particular no evidence that she intended to obtain the order of possession by fraudulent means.

[64] I conclude that the petitioners have not established any fraud or forgery on the part of Ms. Blair. Nothing about the manner in which the rental Agreement was dealt with by Ms. Blair renders the First Decision patently unreasonable or otherwise brings it into legal question.

Review of the Second Decision

[65] The petitioners' application for review consideration was dismissed on the basis that it was not filed on time.

[66] Section 80(1)(a) of the Act provides that a party must make an application for review within two days of receiving a copy of the decision if the decision relates to a notice to end tenancy or an order of possession. The adjudicator held that the two-day time period applied in this case because the First Decision related to an order of possession by the landlord for the non-payment of rent.

- [67] Ms. Foster received the First Decision on January 9, 2025. The adjudicator held that the application was not filed until January 13, 2025, four days later. They further held that Ms. Foster therefore failed to apply within two days of receiving the First Decision. On that basis, the adjudicator dismissed the application in accordance with section H of RTB Policy Guideline 24. Section H sets out the time limits for applications for review unless an extension of time is granted.
- [68] The adjudicator noted that the tenancy ended by conclusive presumption, and that Ms. Foster did not dispute service of the 10-day notice on December 9, 2024. They, therefore, found that it was not appropriate for them to consider potentially extending the time period in accordance with RTB Policy Guideline 36. Guideline 36 provides that an arbitrator may extend a time limit only in exceptional circumstances. Section H of Guideline 24 provides that even where exceptional circumstances exist, the Director may still decide not to exercise their discretion to accept the application late.
- [69] In their amended petition, the petitioners pleaded the following regarding the circumstances surrounding filing the review application:
52. At 10:20 am, on January 10, 2025, S.L. paid a \$100 application fee to apply for an RTB dispute resolution process and the application was submitted and received with supporting evidence files.
 53. At 12:12 pm, S.L. received notice the Dispute Resolution Application was denied.
 54. At 2:03 pm, on January 10, 2025, S.L. received notice of the \$50 payment receipt for the Application for Review Request.
 55. Petitioner S.L. was unable to complete the application for review by the end of the business day, January 10, 2025, due to technical problems with uploading evidence files.
 56. On January 13, 2025, S.L. contacted the RTB at 11:01 am to inquire about the review application issues and the RTB representative stated its fine to submit the application on the 13th, as it was the second business day allowed for the review. The representative did not state the application was too late and she directed S.L. to submit the application.
- [70] Mr. Ludwig filed his first affidavit in this proceeding on April 26, 2025. He did not provide any evidence about the circumstances surrounding filing the review application. Ms. Foster filed two affidavits in this proceeding, on January 20, 2025 and April 24, 2025. In her January 20, 2025 affidavit, she said that at 2:03 pm on January 10, 2025, Mr. Ludwig paid the \$50 fee to submit an application for review consideration. She further said that the application was not completed until Monday, January 13, 2024, due to technical issues with the online application site and submitting files for evidence. She said that the two extra days was related to a misunderstanding about two business days or two calendar days, and as tenants they required more than two days to provide a comprehensive application with supporting evidence. Ms. Foster provided no additional evidence about filing the review application in her April 24, 2025 affidavit.

- [71] Crucially, in none of their affidavits did the petitioners provide any evidence about the alleged conversation with a RTB representative on January 13, 2025, in which that person allegedly stated it was fine to submit the application on the 13th, as it was the second business day, and directed Mr. Ludwig to submit the application, as pleaded in their amended petition.
- [72] In the absence of any evidence to substantiate that pleading, any argument that the petitioners relied upon erroneous advice from the RTB fails.
- [73] I recognize that the petitioners are representing themselves in this proceeding. The same was true in proceedings between the petitioners and the Ministry of Forests, Lands, Natural Resource Operations and Rural Development before Madam Justice Sharma. Those proceedings resulted in three decisions. In the last of the trilogy, indexed as *Foster v. British Columbia* (Ministry of Forests, Lands, Natural Resource Operations and Rural Development), 2024 BCSC 2462, at para. 3, Sharma J. referred to the second decision, indexed as 2024 BCSC 2408, where she had written the following:
- [7] The Province prepared an application record for the hearing originally set for July 31, 2024. It contained 16 affidavits filed by the Province and two affidavits--one of which was not filed at that time--by the plaintiffs. One of the reasons for the plaintiffs' application for an adjournment on July 31 was their failure to provide to the Province the affidavits they wanted to rely on at the hearing to be included in the appeal record.
- [8] When I adjourned this matter, I also made a number of procedural orders, which were designed to make it easier for the plaintiffs to ensure that all of their previously filed affidavits to which they wanted to refer would be available at the continuation of the hearing. This has resulted in the filing of supplementary materials, specifically, six additional affidavits from the plaintiffs, of which two were unfiled. The plaintiffs also wanted to refer to a completely new affidavit made on October 7, 2024, which was unfiled. The Province included one additional affidavit, which attached correspondence relating to the exchange of material for this hearing.
- [9] Despite the deadline I set for July 31, 2024, and the extraordinary process the Court afforded the plaintiffs to ease their ability to have their material included in the record, three of the affidavits were not provided to the Province in time. Additionally, the plaintiffs produced an affidavit on the day of the hearing, notwithstanding that there was to be no new affidavits.
- [10] The plaintiffs are representing themselves in this litigation. I am mindful of this Court's obligation to ensure that self-represented litigants are not prejudiced in the hearing by reason only that they do not have a lawyer, which amounts to affording them some measure of leniency. At the same time, taking that approach must not impair in any way my overriding duty to maintain neutrality and ensure a fair hearing for both parties. Nor does that approach relieve the parties representing themselves from complying with the Supreme Court Civil Rules and the law.

[74] The significance of this passage for the case at bar is twofold: (1) the petitioners are not unfamiliar with procedure in this court; and (2) they are subject to the same rules as every other litigant. In the case at bar, the petitioners had every opportunity to provide all evidence that they wished to in this court. In none of their three affidavits did they provide evidence about the alleged representations from the unidentified RTB representative.

[75] In evidence exhibited to Ms. Clout's affidavit, the Director provided audit notes related to this file. Those notes indicate the following:

TT S.L. CALLED INFO LINE SAID HE PAID \$50 FOR THE REV CON BUT COULDN'T FINISH THE APP, HE WAS ABLE TO GET INTO REV CON OVER THE PHONE, HE ALSO FILED ANOTHER REG APP BY MISTAKE AND DISCUSSED REQUESTING REFUND.

[Name redacted] Jan 13, 2025 12:14 PM

[76] This note does not contain any reference to Mr. Ludwig being told it was fine to submit the application two days late.

[77] I find that the petitioners' pleadings about any representations being made to them by a RTB representative are unproven on the admissible evidence before me.

[78] Further, in the pleadings and evidence they did provide, the petitioners were inconsistent with respect to the events surrounding the filing of the review application and the reasons it was late. Notably, Mr. Ludwig, the person who apparently filed the review application, gave no evidence about the events in question. Ms. Foster's evidence would, therefore, appear to be hearsay. In their amended affidavit, the petitioners pleaded that Mr. Ludwig was unable to complete the application for review on January 10, 2025 due to technical problems. In her January 20, 2025 affidavit, Ms. Foster said that, in addition to technical problems, the delay was related to a misunderstanding about two business days or two calendar days.

[79] The petitioners were given clear written instructions by the RTB about what they needed to do if they wanted to have the First Decision reviewed. The petitioners filed a dispute resolution application at approximately 10:20 am on January 10, 2025. In that application they stated that they wanted to dispute a 10 day notice to end tenancy. At 12:12 pm January 10, 2025, an information officer emailed Mr. Ludwig. In that email the officer told him that a new dispute application cannot cancel an order of possession. The officer told him that "To have this order reconsidered, (deadline to apply is up to 2 days after the decision is received) you would have to file for review consideration for the landlord "

[80] In her affidavit, Ms. Foster said that as tenants they needed more than two days to submit the application. This submission overlooks the fact that it is the Act that creates the two-day time limit. Neither the RTB nor this court on judicial review can ignore what the Legislature has decreed to be the relevant time limit.

- [81] Based on the foregoing, and with due consideration for the admissible evidence provided beyond the record before the RTB, I conclude that the adjudicator did not breach procedural fairness in deciding to dismiss the review application on the basis it was filed late. It was filed late, and none of the extrinsic evidence provides any basis upon which I could conclude that the decision to dismiss the review application on the basis of it being filed late was procedurally unfair.
- [82] I turn to a consideration of whether it was a patently unreasonable exercise of discretion for the adjudicator to dismiss the review application for being filed late. In the Second Decision, the adjudicator made the not patently unreasonable, and indeed correct, finding that the application was filed late. The adjudicator referenced s. 79 of the Act, which sets out the grounds upon which a party may request that a decision be reviewed, and the grounds upon which the petitioners relied. As I read the Second Decision, the adjudicator was of the view that the fact this tenancy ended by conclusive presumption rendered it inappropriate for them to consider potentially extending the time period for applying. While Mr. Ludwig was the applicant for review, the adjudicator noted that he did not dispute that Ms. Foster was served on December 29, 2024 with the 10-day notice.
- [83] Given the statutory context, the nature of the decision the petitioners' sought to review, and the applicable deferential standard of review, I find that the adjudicator's decision not to consider potentially extending the time limit for applying was not patently unreasonable.

Conclusion

- [84] I have found that the petitioners have failed to provide any basis upon which either the First Decision or Second Decision should be interfered with by this court on judicial review.
- [85] I, therefore, dismiss the petition, as amended. The stay of the writ of possession and order for possession are lifted, effective seven days from the date of this decision.
- [86] The Blairs are entitled to their costs as against the petitioners. No costs are awarded for or against the Director.

"L.M. Lyster J."

LYSTER J.

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Prepared on 29 October 2026 · Esheria