

CANADA / JUDGMENT

Malik v. Jacobs

2025 BCSC 607

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 607 Malik v. Jacobs

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Malik v. Jacobs,

2025 BCSC 607

Date: 20250402

Docket: S242413

Registry: Vancouver

Between:

Kapil Malik

Petitioner

And

Bryan Jacobs, Joey Thall, Max Abel, and Karina Kunzova

Respondents

Before: The Honourable Justice Tammen

Reasons for Judgment

Counsel for the Petitioner:

L. Muratkina

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The Respondents, appearing in person:

M. Abel

K. Kunzova

Place and Date of Hearing:

Vancouver, B.C.

January 10, 2025

Place and Date of Judgment:

Vancouver, B.C.

April 2, 2025

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Introduction and Overview

- [1] This is a petition seeking judicial review of a decision of an arbitrator acting pursuant to the provisions of the Residential Tenancy Act, S.B.C. 2002, c. 78 (the "RTA"). At issue are two compensation awards made by the arbitrator in her decision dated February 16, 2024, based on a hearing which occurred on January 19, 2024.
- [2] The petitioner owns a residential property located at 1378 East 26th Avenue, Vancouver, B.C. (the "Property"). In the autumn of 2021, the respondents Jacobs and Thall were living in the basement rental suite of the Property. The respondents Abel and Kunzova lived in the main floor rental suite. It is not disputed that, at all material times, the petitioner was the respondents' landlord.
- [3] On October 31, 2021, the petitioner served the respondents with four months' notice to end tenancy. The stated reason was that the petitioner would be demolishing the Property.

- [4] Pursuant to the notice to end tenancy, the respondents vacated the Property. The petitioner did not demolish the Property; instead, he rented to new tenants in May, 2022. The respondents filed notices of dispute with the Residential Tenancy Branch (the "RTB"), seeking compensation in the amount of 12 months' rent, pursuant to section 51 of the RTA.
- [5] All parties participated in a hearing conducted by conference call, and the arbitrator released a written decision on February 16, 2024 (the "Decision"). In her Decision, the arbitrator found in favour of the respondents and awarded compensation of \$16,596.00 to Mr. Jacobs and Mr. Thall, and \$26,400.00 to Mr. Abel and Ms. Kunzova. That is the decision subject to this application for judicial review.

Factual Background

- [6] The facts of this case are extremely straightforward. The only potentially complicating factor is the fact that each of the parties filed additional affidavits as part of the application record. However, during oral submissions, counsel for both parties advised that there would be no application to adduce fresh evidence, and thus I could disregard those affidavits. I will therefore confine my consideration of the facts and evidence to that which was before the arbitrator. As is customary in these types of cases, a senior policy analyst with the RTB has provided an affidavit appending the materials which comprised the record in that forum.
- [7] At all material times, the petitioner owned the Property in joint tenancy with his spouse, Omika Malik.
- [8] The respondents Jacobs and Thall began living in the basement suite in 2011, and paid monthly rent of \$1,383.00. The respondents Abel and Kunzova began living in the main floor suite in 2019, and paid monthly rent of \$2,200.00.
- [9] The petitioner served both sets of tenants with four months' notice to end tenancy on October 31, 2021. The reason listed on the notice to end tenancy was that the landlord was going to demolish the rental unit.
- [10] The end date for both tenancies was February 28, 2022. Neither of the pairs of tenants filed a dispute. The respondents Jacobs and Thall received one month of free rent, as required by the RTA, and vacated the basement suite at the end of February, 2022. The respondents Abel and Kunzova received one month of free rent, and pursuant to some negotiation with the petitioner, their tenancy ended on April 15, 2022.
- [11] The respondents Jacobs and Thall filed their notice of dispute with the RTB, seeking 12 months' rent as compensation, in June, 2023. Subsequent to that, the respondents Abel and Kunzova also filed a notice of dispute, seeking the same compensation, and the RTB directed that both hearings be heard together on January 19, 2024.

[12] The petitioner testified at the hearing on January 19, 2024. He stated that he and his spouse were estranged, and that she had commenced matrimonial litigation in December, 2021. On November 16, 2022, Ms. Malik caused a certificate of pending litigation ("CPL") to be registered on the title to the Property. Because of that CPL, the petitioner said he was prevented from proceeding with the demolition and redevelopment of the Property.

[13] Importantly, the petitioner never obtained a demolition permit for the Property. He either applied for or obtained various other permits between March, 2020 and August, 2022, but was never in receipt of a demolition permit. It is thus clear that the petitioner was not in compliance with the provisions of the RTA in October, 2021, when he served the four months' notice to end tenancy. The operative section of the RTA is s. 49(6)(a), which permits a landlord to end a tenancy if the landlord "has all the necessary permits and approvals required by law" and "intends in good faith" to demolish the rental unit.

[14] The arbitrator delivered written reasons on February 16, 2024. The crux of the matter was the interpretation and application of s. 51 of the RTA. The operative portions of s. 51 are ss. 51(2) and 51(3), which read:

51(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;
 - (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose, beginning within a reasonable period after the effective date of the notice, for at least the following period of time, as applicable:
 - (i) if a period is not prescribed under subparagraph (ii), 12 months;
 - (ii) a prescribed period, which prescribed period must be at least 6 months.
- (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from
- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
 - (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose, beginning within a reasonable period after the effective date of the notice, for at least the following period of time, as applicable:

- (i) if a period is not prescribed under subparagraph (ii), 12 months;
- (ii) a prescribed period, which prescribed period must be at least 6 months.

[15] Clearly, in this case, ss. 51(2)(a) and 51(3)(a) applied. That is because the purpose specified was demolition, which is covered by s. 49(6)(a). Thus, the focus of the inquiry was directed at whether:

- 1) The landlord had accomplished the demolition within a reasonable time after the effective date of the notice; and,
- 2) If not, whether extenuating circumstances prevented the landlord from so doing.

[16] The "Analysis" section of the Decision spans pages 5 and 6. Page 5 addresses the issue of failure to accomplish the demolition within a reasonable time. Page 6 considers the question of extenuating circumstances.

[17] The arbitrator found that the stated purpose of demolition was not accomplished within a reasonable time after the effective date of notice, February 28, 2022, and that the petitioner had failed to establish that extenuating circumstances prevented him from accomplishing the demolition.

Issues and Analysis

[18] The petitioner submits that the arbitrator made two errors, which individually and cumulatively render the Decision patently unreasonable. Specifically, the petitioner submits that the arbitrator:

- 1) Misapplied s. 51(2) of the RTA, by repeatedly stating that the petitioner must establish accomplishment of the stated purpose for which notice was given within 6 months of the effective date of notice.
- 2) Failed to give adequate reasons for the decision that the petitioner had not accomplished the demolition within a reasonable time and that there were no extenuating circumstances which prevented him from so doing.

[19] The parties agree that the standard of review is patent unreasonableness. That is so because of the combined effect of sections 5.1 and 84.1 of the RTA, and s. 58(2)(a) of the Administrative Tribunals Act, S.B.C. 2004, c. 45 ("ATA"). Section 58 is one of the sections of the ATA incorporated into the RTA pursuant to s. 5.1 of the RTA.

[20] Section 58(2)(a) of the ATA reads:

58(2) In a judicial review proceeding relating to expert tribunals under subsection (1)

- (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable

- [21] Section 84.1 of the RTA is a privative clause which confers exclusive decision-making jurisdiction in the director of the RTB, and purports to insulate such decisions from judicial review.
- [22] The standard of patent unreasonableness is highly deferential and very onerous. Comparatively recently, the Court of Appeal said this about that standard of review, in *The Owners, Strata Plan BCS 3407 v. Emmerton*, 2024 BCCA 354:
- [10] There are many descriptions of "patent unreasonableness". In *Maung v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCCA 371 at para. 42, this Court described a patently unreasonable decision as one in which the decision "is so flawed that no amount of curial deference can justify letting it" stand: citing *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52. Patent unreasonableness has been described as the most deferential standard of review known to Canadian law: *The College of Physicians and Surgeons of British Columbia v. The Health Professionals Review Board*, 2022 BCCA 10 at para. 130, leave to appeal to SCC ref'd 40106 (24 November 2022).
- [23] A patently unreasonable decision is one that almost borders on the absurd: *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, 2004 SCC 23 at para. 18.
- [24] Where, as here, the tribunal is required to give reasons for the decision, and the petitioner impugns the adequacy of those reasons, the reviewing judge should consider the reasons as a whole, to assess the justification, transparency and intelligibility within the decision-making process: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 86.
- [25] In *Ganitano v. Yeung*, 2016 BCSC 2227, Griffin J., then a judge of this Court, noted that "the overriding test for adequacy is whether a reviewing court is able to understand how and why the decision was made": para. 24.
- [26] More recently, in *Hollyburn Properties Limited v. Staehli*, 2022 BCSC 28, in discussing the interrelationship between the standard of patent unreasonableness and sufficiency of reasons in the context of a judicial review from an RTB decision, Brongers J. held as follows:
- [26] In sum, the standard of review that applies to the substance of the Arbitrator's decision in the case at bar is patent unreasonableness. It is an onerous standard, and her decision will not be set aside unless the Arbitrator's reasons are so defective that it is not possible for the reviewing court to understand why the Arbitrator concluded as she did.
- [27] With those principles in mind, I turn to the issues raised in this proceeding.
- Was the Decision patently unreasonable?
- [28] The primary basis on which the petitioner submits the Decision is patently unreasonable is that the arbitrator erred in law by applying s. 51(2)(b) incorrectly. The issue is the repeated references in the Decision to six months in the "Analysis" section, at page 5. There is no

doubt that the only obligation on a landlord who ends a tenancy for the stated purpose of demolition is to accomplish the demolition within a reasonable period after the effective date of notice. That is because demolition is expressly exempted from the requirement in s. 51(2)(b) that the Property must be used for the stated purpose for at least six months. The six-month requirement applies, for example, in circumstances where notice is given for the stated purpose of having a close family member reside in the property. In such cases, the family member must move into the rental unit within a reasonable period of time and occupy it for at least six months.

- [29] The only obligation on the petitioner was to accomplish the stated purpose, i.e. demolition, within a reasonable period of time. That should have been the focus of the arbitrator's analysis of the issue.
- [30] Unfortunately, the arbitrator misstated the obligation on the landlord in the introductory paragraph of the Analysis, stating that "the Landlord must prove that they accomplished the stated purpose for ending the tenancy under section 49 for at least six months." In the next paragraph, the arbitrator stated both parts of the test in s. 51(2), including the six-month requirement, failing to note the demolition exemption. Then, in the next paragraph, the arbitrator made erroneous findings concerning a "six-month end date" of October 15, 2022.
- [31] However, in the concluding paragraph on this issue, the arbitrator said this:
- Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenants have established their claim for compensation related to a notice to end tenancy where the Landlord did not accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice.
- [32] Thereafter, the arbitrator considered the issue of "extenuating circumstances."
- [33] The above-quoted paragraph of the Decision, the ultimate finding of the arbitrator on the issue, is legally correct. Unfortunately, the arbitrator set out the reasons for her finding that the demolition was not accomplished within a reasonable period under the "extenuating circumstances" section of the Decision. At page 6, the arbitrator stated the petitioner had sufficient time between the end of the respondents' tenancies and the placement of the CPL to accomplish the demolition if he had done his due diligence.
- [34] While the arbitrator should have provided these reasons under the first part of her analysis, i.e. under the s. 51(2)(a) assessment, the reasons were nevertheless provided and sufficient.
- [35] The earlier references to six months thus played no central role in the ultimate decision of the arbitrator. The repeated references to six months are confusing, and clearly erroneous, but, in my view, they do not render the decision as a whole patently unreasonable.

- [36] At the end of the day, the arbitrator applied the statute correctly and did not hold the petitioner to the higher standard noted in the introductory paragraph of the decision's Analysis section. The six-month requirement, erroneously referred to, did not feature in the conclusion reached by the arbitrator.
- [37] Nor can that conclusion otherwise be considered unreasonable. As noted, this was not a case where, for instance, the demolition was completed more than six months after the effective date of notice. The demolition was never completed. Thus, subject to persuading the arbitrator there were extenuating circumstances, the petitioner was liable to pay compensation pursuant to s. 51 of the RTA.

Extenuating Circumstances

- [38] The issue of extenuating circumstances is addressed at page 6 of the Decision. It was during this discussion that the arbitrator also considered what a "reasonable period" is for accomplishing the stated purpose for ending the tenancy, here demolition. There was good reason for doing so, in that the circumstances relied on by the petitioner did not arise until some months after the termination of the tenancy.
- [39] The basic timeline was straightforward: the home was vacant after April 15, 2022, when Mr. Abel and Ms. Kunzova moved out, and the CPL was registered on November 16, 2022. The arbitrator found that the petitioner had sufficient time within that interval "to demolish the residential property if he had done his due diligence." That finding is unassailable.
- [40] As noted by the arbitrator, the petitioner did not explain why he failed to complete the development permit and sewer/water connection permit process. He never obtained a demolition permit. Thus, he was never in compliance with the RTA, s. 49(6), which required that he have all necessary permits prior to ending the tenancy.
- [41] After noting the salient facts, which were not in dispute, the arbitrator concluded that the petitioner had not proven that an extenuating circumstance prevented him from demolishing the property within a reasonable period after the effective date of notice. I cannot find that the reasons for that conclusion were inadequate. No more needed to be said. The stated reasons for the ultimate conclusion are transparent and entirely rational. The reviewing Court is easily able to understand the basis, and underlying reasons, for the decision. It is abundantly clear both how and why the decision was made.

Conclusion

[42] In conclusion, I am not persuaded that the errors in relation to the six-month requirement are central to the Decision, and those errors do not materially affect the result. Nor am I persuaded that the reasons for the Decision are inadequate. The reasons are brief, as befits a matter where the basic facts are extremely straightforward and not much is in dispute. The reasons are adequate to permit review, and I, as the reviewing judge, am able to understand the underlying rationale for the decision.

[43] For those reasons, the petition is dismissed.

[44] The respondents are entitled to costs of this proceeding against the petitioner at Scale B.

"Tammen J."

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