

CANADA / JUDGMENT

Pollard v. 1400971 BC Ltd.

2025 BCSC 789

COURT

Supreme Court of British Columbia

DECIDED

28 April 2025

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2025 BCSC 789 Pollard v. 1400971 BC Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pollard v. 1400971 BC Ltd.,

2025 BCSC 789

Date: 20250428

Docket: S63601

Registry: Kamloops

Between:

Julie Anne Pollard, a.k.a. Julie Anne Vankoll

Petitioner

And

1400971 BC Ltd.

Respondent

Before: The Honourable Justice B. Smith

On judicial review from: A decision of the Residential Tenancy Branch Arbitrator, dated September 1, 2024 (Pollard v. 1400971 BC Ltd., File No. 910155189).

Reasons for Judgment

Counsel for the Petitioner:

C. Gray

Self-represented appearing in person on behalf of the Respondent:

W. Lin

Place and Date of Hearing:

Kamloops, B.C.

November 19 & December 18, 2024

and February 26, 2025

Place and Date of Judgment:

Kamloops, B.C.

April 28, 2025

Introduction

- [1] The petitioner tenant applies for judicial review of a Residential Tenancy Branch arbitrator's (the "Arbitrator") decision affirming the respondent landlord's notice to end a manufactured home site tenancy. The petitioner contends that the hearing conducted by the Arbitrator was procedurally unfair and that the Arbitrator's subsequent decision was patently unreasonable.

Factual Background

- [2] The petitioner, Julie Anne Pollard, a.k.a. Julie Anne Vankoll (the "Petitioner") lives in a manufactured home (the "Home") on a manufactured home site (the "Site") at the Eldorado Trailer Park (the "Park") in Merritt. The Petitioner owns the Home. The respondent, 1400971 BC Ltd. (the "Respondent") owns the Park. The Petitioner leases the Site from the Respondent.
- [3] Joey Green and Renae Green are employed by the Respondent as managers and caretakers of the Park. For ease of reference, I will refer to them as Joey and Renae. Joey and Renae were at all material times acting as agents of the Respondent. William Lin ("Mr. Lin") is a Director of the Respondent.
- [4] On May 26, 2024, the Respondent served the Petitioner with a One Month Notice to End Tenancy for Cause, effective June 30, 2024, (the "Notice"). The indicated grounds for the Notice were that the Petitioner had seriously jeopardized the health, safety or lawful right of another occupant or the Respondent; and had seriously jeopardized the Respondent's property. The Notice was issued as a result of an incident which occurred on May 11, 2024 (the "Incident"). It is undisputed that the Incident occurred. As described in the Notice, the Incident involved a physical altercation in which the Petitioner allegedly assaulted and injured Joey after he attended at the Site to turn off an outdoor water valve in an attempt to stop a water leak the Petitioner had reported to Mr. Lin earlier that day.

[5] On May 31, 2024, the Petitioner disputed the Notice.

[6] On June 27, 2024, the Arbitrator conducted a hearing by conference call (the "June Hearing"). The June Hearing was attended by the Petitioner, Mr. Lin for the Respondent, and Renae. As indicated in the Arbitrator's interim decision following the June Hearing:

At the commencement of the hearing, the Tenant stated she received the Landlord's evidence on June 20, 2024, which was one day less than the 7 days prescribed prior to the hearing. The tenant stated she had not had an opportunity to review the Landlord's evidence and to consult with her lawyer.

[7] The Arbitrator reasoned that: "The Tenant's review of the evidence will provide her a fair opportunity to prepare and be heard at the hearing". The Arbitrator adjourned the June Hearing, but made four orders, including that:

2. I order this adjournment is not an opportunity for either party to submit any additional evidence, with the exception of the Tenant providing a copy of the One Month Notice issued May 26, 2024, that was served to the Tenant and is the subject of this proceeding, emailing it to the Landlord, and thereafter providing a copy of the Notice and copy of the email to the Landlord to the RTB;

[Emphasis in original.]

[8] The matter was rescheduled for August 27, 2024.

[9] On August 27, 2024, an Arbitrator conducted a hearing by conference call (the "August Hearing"). The August Hearing was attended by the Petitioner, Mr. Lin for the Respondent, and Joey and Renae. On September 1, 2024, the Arbitrator issued a written decision (the "Decision").

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

- should the Notice be cancelled? If not, is the Petitioner entitled to an Order of Possession;
- is the Petitioner entitled to an order to suspend or set conditions on the Respondent's right to enter the Site;
- is the Petitioner entitled to recover the filing fee for the application from the Respondent?

[11] The Arbitrator began by identifying the grounds for the Notice, and describing the Incident and the evidence at the hearing, including differences in the various accounts.

[12] The Arbitrator identified and stated the statutory basis upon which a landlord may issue a Notice to End Tenancy for Cause to a tenant, concluded the Petitioner's dispute application had been filed in time, and that the Notice complied with the Manufactured Home Park Tenancy Act, S.B.C. 2002, c. 77.1 ["MHPTA"] s. 40. The Arbitrator correctly noted that the Respondent bore the burden of proof that there were sufficient grounds to issue the Notice. The Arbitrator found that the Respondent "submitted sufficient evidence that corroborated

(Joey's and Renae's) rendition of events concerning their efforts to shut down the water valve" and that Renae "credibly testified that the Tenant told them to leave her property (which the Tenant also admitted) and photographic evidence substantiates her testimony the Tenant grabbed (Joey's) arm". The Arbitrator found that this "constitutes a physical assault on another person, regardless of the resultant harm or injury sustained by the other person". The Arbitrator found that Joey's and Renae's version of events was corroborated by the evidence of one of the Petitioner's neighbours. The Arbitrator correctly noted that the failure of law enforcement to act did not "vitate its occurrence". The Arbitrator found that the evidence established the Petitioner grabbed Joey's arm and "pushed him down or away from the water shut-off valve after she had contacted the (Respondent) to report the water leak. The Arbitrator found that the Petitioner provided "no evidence to support her position that (Joey and Renae) could not have performed this task and that she was authorized to use physical force to stop (Joey) from completing the task".

[13] The Arbitrator concluded:

I find the Landlord has provided sufficient evidence to establish, on a balance of probabilities, the Tenant physically assaulted the Landlord's park manager/caretaker J.G. which formed the grounds for the Landlord's issuance of the One Month Notice on May 26, 2024.

For the above reasons, the Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 40 of the Act is dismissed, without leave to apply.

[14] Having found the tenancy to have ended, the Arbitrator made no findings on the Petitioner's claim to suspend or set conditions on the Respondent's right to enter the Site. The Arbitrator also dismissed the Petitioner's application to recover the filing fee for the application from the Respondent.

[15] On September 4, 2024, the Petitioner applied for a review of the Decision by way of an Application for Review Consideration (the "Review Application").

[16] On September 6, 2024, a different arbitrator dismissed the Review Application.

[17] By Petition filed September 25, 2024, the Petitioner now applies for judicial review.

Standard of Review

[18] Section 58(2)(b) of the Administrative Tribunals Act, S.B.C., 2004, c. 45 [ATA], states that questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all the circumstances, the tribunal acted fairly. Assessing the level of procedural fairness required in a given tribunal process requires a "contextual approach" that looks to the decision being made and its statutory, institutional and social context: *Baker v. Canada (Minister of Citizenship and Immigration)*, at para. 22.

- [19] Section 77.1 of the MHPTA contains a privative clause, so the standard of review is determined by reference to s. 58 of the ATA. It is undisputed that the standard of review is patent unreasonableness. Section 58 of the ATA does not define what is "patently unreasonable" concerning findings of fact or law.
- [20] Regarding the meaning of patent unreasonableness as the term applies to findings of fact or law, in *Yee v. Montie*, 2016 BCCA 256, where at paras. 21-22 the court said:
- [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.]

See also *Hollyburn Properties Limited v. Staehli*, 2022 BCSC 28 at paras. 24-26; *Li v. British Columbia (Residential Tenancy Director)*, 2024 BCCA 202 at paras. 30-32.

Positions of the Parties

Petitioner's Position

- [21] The Petitioner submits that the August Hearing lacked procedural fairness and that the Decision is patently unreasonable.

Procedural Fairness

[22] Concerning procedural fairness, the Petitioner says that the Hearing was procedurally unfair for two reasons: first, because contrary to one of the Arbitrator's orders at the June Hearing, the Arbitrator relied on a photograph depicting Joey's hospital band (the "Photograph") as well as a copy of a physician's note which Joey obtained about two weeks after the Incident (the "Note"), even though neither the Photograph nor the Note had been served on the Petitioner before the Hearing; and second, that the Arbitrator improperly allowed Joey to attend the Hearing despite not being present at the June Hearing. The Petitioner submits this violated a common law rule of natural justice, namely the principle of audi alteram partem.

Patent Unreasonableness

[23] Concerning patent unreasonableness, the Petitioner says that the Decision was patently unreasonable because of the Arbitrator's finding that what the Petitioner characterizes as her "de minimis contact" with Joey satisfies the definition of conduct "seriously jeopardizing the health and safety of the Landlord's agent".

Respondent's Position

[24] The Respondent submits that the Petitioner is attempting to have the court reweigh the evidence or make findings of fact different to those which were made by the Arbitrator. The Respondent submits the court must give deference to the Arbitrator's findings of fact, and that the petition should be dismissed.

Discussion

Procedural Unfairness

[25] The August Hearing was not procedurally unfair.

[26] This court has held that the informal hearing structure of the Residential Tenancy Branch, the relaxed rules of evidence, and the telephone hearings used by arbitrators all influence what procedural steps are required to accord with the duty of procedural fairness: PHS Community Services Society v. Swait, 2018 BCSC 824 at para. 88; see also Lee v. Wedekind, 2022 BCSC 1855 at paras. 98-110.

[27] This court has explained the scope of procedural fairness in Crest Group Holdings Ltd. v. British Columbia (Attorney General), 2014 BCSC 1651 at para. 36:

[36] Procedural fairness is comprised of two rights: the right to be heard, and the right to an impartial hearing. The content of procedural fairness goes to the manner in which the decision-maker went about making his decision: Therrien (Re), 2001 SCC 35, [2001] 2 S.C.R. 3 at para. 82; Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour), 2003 SCC 29, [2003] 1 S.C.R. 539 at para. 102.

The Photograph and The Note

[28] It is undisputed that the evidence at the August Hearing included the Photograph and the Note. It is also undisputed that neither the Photograph nor the Note had been provided to the Petitioner or submitted to the Residential Tenancy Branch by the time of the June Hearing.

[29] I have not been provided with a transcript of the August Hearing so I do not know what, if anything, was said about the admissibility of either the Photograph or the Note.

[30] The Arbitrator referred to the Photograph and the Note only once, in a paragraph in the "Background and Evidence" section of the Decision:

(Joey) went to the emergency room (a photograph of the hospital-issued identification on his wrist was provided in evidence). (Renaë) testified (Joey) stated the injury to his arm was caused by the Tenant grabbing (Joey's) arm with such force as to damage the surrounding muscle and nerves. She stated hospital emergency personnel stated time was required for healing the injury (one month to 6 weeks) and prescribed anti-inflammatory medication. The Landlord also submitted a copy of (Joey's) physician's note whom he later followed up with approximately two weeks later. (Joey) testified the note was obtained for employment purposes.

[Emphasis added.]

[31] The Arbitrator made no mention of either the Photograph or the Note in the "Analysis" section, or elsewhere in the Decision. I infer from the Arbitrator's single references to the Photograph and the Note that the Arbitrator did not consider the evidence of either to be material to the central issue, namely whether the Petitioner assaulted Joey, and whether that supported the issuance of the Notice. The Photograph and the Note are material to the question of the consequences of the Petitioner's behaviour, but neither were a precondition to a finding that the Petitioner assaulted Joey.

[32] In fact, the Arbitrator directly states at page 5 of the Decision that the Petitioner grabbing Joey's arm "constitutes a physical assault on another person, regardless of the resultant harm or injury sustained by the other person." This demonstrates that the Photograph and Note had no bearing on the relevant conclusion reached by the Arbitrator.

Joey's Attendance at the August Hearing

[33] It is undisputed that Joey attended the August Hearing.

[34] The Petitioner's claim that the Arbitrator improperly allowed Joey to attend the Hearing despite not being present at the June Hearing has no basis in the evidence, apart from a conclusory statement in her affidavit that she believes that to be the case.

[35] As with the Photograph and the Note, because I have not been provided with a transcript of the August Hearing I do not know what, if anything, was said about Joey's attendance or the fact that he gave evidence.

[36] The Arbitrator's interim order stated that either party may not "submit additional evidence". I find that, properly interpreted, the Arbitrator's interim order concerning no additional evidence referred only to submitting further physical evidence, and did not apply to Joey's attendance at the August Hearing.

Limited time for submissions

[37] The Petitioner's claim that she was not afforded full opportunity to present her case has no basis in the evidence, apart from a conclusory statement in her affidavit that she believes that to be the case.

Conclusion

[38] There was no procedural unfairness.

[39] Considering all the circumstances, the Arbitrator acted fairly. There was no dispute about whether the Petitioner intentionally made physical contact with Joey during the Incident. The central issue was whether the Petitioner's actions in doing so were assaultive in nature, or legally justified, or so trifling as to be captured by the maxim *de minimus non curat lex*. None of the hearing procedures conducted by the Arbitrator prevented the Respondent from being heard on this issue and there was no unfairness in how the Arbitrator went about making the Decision.

Patent Unreasonableness

[40] The Arbitrator's Decision was not patently unreasonable.

[41] When the Decision is read and considered as a whole, it is clear that the Arbitrator was satisfied that the evidence at the August Hearing established on a balance of probabilities that the Petitioner assaulted Joey. The Arbitrator plainly says as much in the Decision.

[42] Commencing at the third unnumbered paragraph in the Analysis section of the Decision the Arbitrator said:

The Landlord submitted sufficient evidence that corroborated the park managers'/caretakers' rendition of events concerning their efforts to shut-down the water valve. R.G. credibly testified that the Tenant told them to leave her property (which the Tenant also admitted) and photographic evidence substantiates her testimony the Tenant grabbed J.G.'s arm. This constitutes a physical assault on another person, regardless of the resultant harm or injury sustained by the other person. The Tenant's neighbour's statement corroborates the testimony proffered by the Landlord during the hearing. Although local law enforcement may have declined to pursue the complaint, this does not vitiate its occurrence. The evidence establishes the Tenant grabbed J.G.'s arm and pushed him down or away from the water shut-off valve after she had contacted the Landlord to report the water leak. The Tenant provided no evidence to support her position that the Landlord's caretaker(s) could not have performed this task and she was authorized to use physical force to stop him from completing the task.

I find the Landlord has provided sufficient evidence to establish, on a balance of probabilities, the Tenant physically assaulted the Landlord's park manager/caretaker J.G. which formed the grounds for the Landlord's issuance of the One Month Notice on May 26, 2024.

For the above reasons, the Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 40 of the Act is dismissed, without leave to reapply.

[43] The Arbitrator clearly found that:

- the Petitioner assaulted Joey by grabbing his arm and pushing him down or away from the water shut-off valve;
- the Petitioner provided no evidence of legal justification for the assault; and
- it was the Petitioner's assaultive behaviour which formed the grounds for the Notice.

[44] Decision-makers in a residential tenancy context are not required to meet the standard for adequacy of reasons applied to courts: *Ganitano v. Yeung*, 2016 BCSC 2227 [Ganitano] at para. 24. For reasons to be sufficient, they must: (1) set out the legal test; (2) set out findings of fact and the evidence upon which those findings were made; and (3) apply the test to those facts in a way that makes clear how the final decision was reached: *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232 at para. 35. Put simply, the question is whether a reviewing court can understand how and why the decision was made. The "legal test" in a dispute resolution proceeding will often be straightforward and expressed in plain language terms and may involve whether a party has led sufficient evidence to support a finding of fact: *Khan v. Shore*, 2015 BCSC 830 at para. 43. The Director is not necessarily required to address arguments that are legally irrelevant, or may do so implicitly: see, e.g., *Ganitano* at para. 33.

De Minimus Non Curat Lex

[45] The Petitioner wrongly characterizes the Petitioner's assault on Joey as "de minimus contact".

[46] The maxim *de minimus non curat lex* means that the law does not concern itself with trifles. Activity such as which gave rise to the issuance of the Notice can hardly be characterized as a trifle. An assault is a serious criminal offence, involving the unlawful application of force to another person, directly or indirectly: *Criminal Code*, R.S.C. 1985, c. C-46 [Code], s. 265. If prosecuted by indictment, assault simpliciter is punishable by up to five (5) years imprisonment: Code, s. 266. The more serious offence of assault causing bodily harm, is punishable by up to ten (10) years imprisonment: Code, s. 267. In addition to being a serious criminal offence, an assault can also meet the definition of the tort of battery.

[47] Here the evidence established on a balance of probabilities that the Petitioner unlawfully applied force to the Respondent's employee, Joey, who was simply doing his job. The Petitioner's actions were clearly more than "de minimus contact". The maxim *de minimus*

non curat lex has no application in these circumstances. Being assaultive in nature, and outside the de minimus range, the Petitioner's actions clearly had the potential of seriously jeopardizing Joey's health and safety. The Arbitrator was correct to characterize the Petitioner's actions as a physical assault. Considering the Decision as a whole, it is clear the Arbitrator found that the assault fell within the scope of scope of s. 40(1)(c) of a serious interference, unreasonable disturbance, or jeopardization of the health or safety or lawful right or interest of the Respondent. It was not patently unreasonable for the Arbitrator to find that the assault formed the grounds of the Respondent's issuance of the One Month Notice.

30 days to Vacate

[48] This argument is moot. The Arbitrator's order has been stayed well beyond the 30 days ordered in the Decision. Regardless, the exercise of the Arbitrator's discretion to choose the date for an Order of Possession was not patently unreasonable: see *Morse v. Crystal River Court Ltd.*, 2021 BCSC 1868 at paras. 51-55.

The Tort of Battery

[49] There is no need to resort to an analysis of the whether the elements of the tort of battery are established. As discussed above, the main issue before the Arbitrator was the validity of the Notice, based on s. 40 of the MHPTA and whether the Incident interfered, disturbed, or jeopardized the Respondent. It was not necessary for the Arbitrator to consider the tort of battery to decide upon this issue.

Conclusion

[50] The Petitioner has failed to establish either that the August Hearing was procedurally unfair or that the Decision was patently unreasonable. Accordingly, the petition is dismissed.

[51] The stay of the Order of Possession is lifted, effective immediately.

[52] The Respondent is entitled to its costs.

"B. Smith J."

SMITH J.

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