

CANADA / JUDGMENT

Ryan v. Mole Hill Community Housing Society

2021 BCSC 1668

COURT

Supreme Court of British Columbia

DECIDED

25 June 2021

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2021 BCSC 1668 Ryan v. Mole Hill Community Housing Society IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Ryan v. Mole Hill Community Housing Society, 2021 BCSC 1668 Date: 20210625 Docket: S209128 Registry: Vancouver Between: Phillip Ryan Petitioner And Mole Hill Community Housing Society Respondent Before: The Honourable Madam Justice Iyer On judicial review from: An order of the Residential Tenancy Branch, dated July 7, 2020 and August 17, 2020 (No. 310000988) Oral Reasons for Judgment In Chambers Counsel for Petitioner: K. Love Counsel for Respondent: T.A. Cox Place and Date of Hearing: Vancouver, B.C. June 25, 2021 Place and Date of Judgment: Vancouver, B.C. June 25, 2021

INTRODUCTION

- [1] The petitioner, Mr. Ryan, seeks judicial review of a decision made by an arbitrator of the Residential Tenancy Branch ("RTB") denying his application for reimbursement of an alleged overpayment of rent. The Decision was issued on July 7, 2020, and the correction was issued on August 17, 2020. I will refer to it as the "Decision."
- [2] Mr. Ryan has been a tenant of a unit in a complex operated by the respondent, Mole Hill Community Housing Society, since 2018. Mole Hill offers subsidized housing.
- [3] When Mr. Ryan moved in he signed a tenancy agreement and a BC Housing application for rent subsidy. Initially, his rent was \$510 a month. From February 1, 2020 forwards, Mole Hill increased the petitioner's rent to \$1,530 per month. Mr. Ryan paid the increased amount but applied to the RTB for reimbursement on the basis that his rent was \$510 a month.
- [4] By virtue of s. 5.1 of the Residential Tenancy Act, and s. 58 of the Administrative Tribunals Act, the standard of review to be applied by this court is very deferential. A decision of the RTB must not be set aside unless it is patently unreasonable.

- [5] As the Supreme Court of Canada discussed recently in *Vavilov*, an unreasonable decision is one that is unintelligible, lacks transparency or is unjustifiable. This is also a useful way of considering whether a decision is patently unreasonable, as is evident from the number of cases discussing the patently unreasonable standard under the Administrative Tribunals Act.
- [6] It is well established that absent exceptional circumstances, the evidence considered on judicial review must be confined to the record before the tribunal whose decision is the subject of review.
- [7] As there are no exceptional circumstances here, I decline to consider the additional evidence tendered by Mole Hill. While it is evident from the submissions of both parties that they have been involved in other litigation, that is not of particular relevance here. THE DECISION
- [8] The arbitrator defined the issues as whether Mr. Ryan was entitled to reimbursement of an overpayment of rent, and a determination of his current rate of rent.
- [9] The arbitrator summarized the evidence and submissions of each party, noting that Mr. Ryan relied on clauses 3 and 18 of the tenancy agreement, which Mr. Ryan interpreted as establishing his rent as \$510 per month. In relevant part, those clauses state:
3. Rent
- (a) The rent for the rental unit is \$510 per month. The rent will be adjusted from time to time in accordance with our operating agreement with BC Housing.
18. Rent
- (a) The rent for the rental unit is \$551 per month. The tenant is responsible for the full rent as stated above or the tenant rent contribution (30 percent of gross income) if eligible for a rent subsidy.
- [10] The arbitrator noted that Mole Hill relied on clauses of the tenancy agreement providing that the \$510 a month was adjustable based on subsidized housing rules that provide for rent increases where a tenant is no longer entitled to a rent subsidy. The arbitrator described Mole Hill's argument as follows: The landlord also argued that the rent indicated on the signed tenancy agreement is in reference to the subsidized rent amount of \$510. The landlord refers to the submitted copy of a BC Housing application for rent subsidy. The landlord argues that this document was completed by the landlord's agent and the tenant on January 26, 2018, the same date as that of the signed tenancy agreement. The landlord argues that in part 4 of this document, the economic rent is stated as \$1,156, rent of \$510, \$40 for other charges, \$551 as the total rent contribution by the tenant and a rent subsidy calculated as \$646.

- [11] In his analysis of this issue, the arbitrator reasoned as follows: I accept the affirmed evidence of both parties and find on a balance of probabilities that the tenant has failed to establish a claim for compensation of \$2,040 for an overpayment of rent. A review of the signed tenancy agreement does provide for rent of \$510. However, I find that the tenant entered into a signed tenancy agreement with the landlord which operates under the provincial housing program. The tenant also completed and signed a BC Housing application for rent subsidy on the same date of January 26, 2018. In this document it is clear that the tenancy involves a rent subsidy. Calculations provided in part 4 of that document show that the economic rent was \$1,156, tenant's total rent contribution was \$551, and that there was a rent subsidy of \$646. On this basis, I find that the tenant has failed to provide sufficient evidence that there was an overpayment of rent. The tenant's monetary claim is dismissed.
- [12] That addressed the issue regarding reimbursement of rent Mr. Ryan had already paid. On the question of Mr. Ryan's rent going forward, the arbitrator acceded to Mole Hill's argument that he did not have jurisdiction to determine that matter, writing: On the issue of a finding regarding the tenant's current rent rate, I find that I do not have jurisdiction for this matter. The landlord operates under the guidance of BC Housing and tenant rent contributions are determined in keeping with their guidelines. This portion of the tenant's application is dismissed. DISCUSSION
- [13] With respect to the overpayment issue, Mr. Ryan and Mole Hill both advanced possible interpretations of the relevant clauses of the tenancy agreement. The arbitrator preferred Mole Hill's interpretation and gave intelligible and transparent reasons for doing so based on the evidence before the tribunal. The conclusion followed logically from the analysis. The Decision was not patently unreasonable in this respect.
- [14] With respect to the second issue, the arbitrator's reasoning is sparse. The petitioner argues, with some force, that it is logically inconsistent for a decision maker to say they have the power to decide whether there has been an overpayment of rent, which implicitly entails a determination of what the rent was, and also to say that they have no power to determine the "tenant's current rent rate." However, as Vavilov and many other cases have directed, a review in court must treat the Decision as a whole and must refrain from holding administrative tribunals to judicial standards of reasoning.
- [15] Applying this approach, I do not understand the arbitrator to be questioning their jurisdiction to determine the rental rate for the purposes of a past overpayment which they had just exercised. Rather, I read the arbitrator as saying that the RTB does not have jurisdiction to determine a rental rate going forward because of the variation provisions in the tenancy agreement that reference BC Housing guidelines. An RTB arbitrator does not have jurisdiction to establish a rental rate that would preclude or supersede operation of these provisions. I note that s. 2 of the Residential Tenancy Regulation exempts from the rental increase restrictions in the Act any rental units whose rent is related to a tenant's income.

[16] I find that the Decision was not patently unreasonable in this respect. In conclusion, the petition is dismissed. That concludes my reasons.

[17] Is there anything further?

[18] CNSL K. LOVE: Nothing, My Lady.

[19] CNSL T. COX: Nothing further, My Lady.

[20] THE COURT: Thank you. "Iyer J."

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Prepared on 27 October 2026 · Esheria