

CANADA / JUDGMENT

Shuster v. Prompton Real Estate Services Inc.

2023 BCSC 1605

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1605 Shuster v. Prompton Real Estate Services Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Shuster v. Prompton Real Estate Services Inc.,

2023 BCSC 1605

Date: 20230809

Docket: S232799

Registry: Vancouver

Between:

Gary Shuster and Dana Shuster

Petitioners

And

Prompton Real Estate Services Inc. and

Director, Residential Tenancy Branch

Respondents

Before: The Honourable Madam Justice J. Hughes

On judicial review from: An order of the Residential Tenancy Branch, dated February 14, 2023 (RTB File No. 310092624).

Oral Reasons for Judgment

Counsel for the Petitioners:

A.D.A. Greer

Counsel for the Respondent, Prompton Real Estate Services Inc.:

C.A. Campbell

No other appearances at this hearing

Place and Date of Hearing:

Vancouver, B.C.

August 4, 2023

Place and Date of Judgment:

Vancouver, B.C.

August 9, 2023

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Overview

[1] This is an application for judicial review pursuant to the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241, of a decision of an Arbitrator of the Residential Tenancy Branch ("RTB") made February 14, 2023 (the "Decision") which dismissed the petitioners Gary and Dana Shuster's application for, among other relief, an order granting compensation for alleged overpayment of rent in respect of 2301 - 1228 Marinaside Crescent, Vancouver, BC.

- [2] More specifically, the petitioners dispute two rent increases, one effective January 1, 2022 pursuant to the terms of a fixed term tenancy agreement, and a second purported to be effective January 1, 2023 pursuant to Part 3 of the Residential Tenancy Act, S.B.C. 2002, c. 78 [RTA].
- [3] The respondent, Prompton Real Estate Services Inc. ("Prompton"), participated in the judicial review. The respondent, Director, Residential Tenancy Branch, provided written submissions but did not attend the hearing of the petition. As an initial matter, and by consent, the style of cause in this petition is amended to substitute "Director, Residential Tenancy Branch" in place of "Residential Tenancy Branch" as respondent.

Statutory Framework

- [4] Residential tenancy matters are governed by the RTA. Section 5 of the RTA provides that "Landlords and tenants may not avoid or contract out of this Act or the regulations" and that "Any attempt to avoid or contract out of this Act or the regulations is of no effect".
- [5] Part 3 of the RTA deals with rent increases. Section 41 provides that a landlord must not increase rent other than in accordance with that Part. Section 42 then prescribes notice and timing requirements for rent increases as follows:

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.
- [6] Section 43 of the RTA in turn provides that a landlord may only impose a rent increase only up to the amount: (a) calculated in accordance with the regulations, (b) ordered by the director on an application under ss. (3); (c) or agreed to by the tenant in writing.

Background Facts

- [7] The relevant facts are as follows:

- a) The parties entered into a written tenancy agreement dated December 21, 2020 ("Tenancy Agreement");
- b) Clause 5 of the Tenancy Agreement stated that the tenancy was for a fixed term beginning January 1, 2021 and ending December 31, 2022;
- c) Clause 5 also included the following:

A two year lease. 2nd year from January 01, 2022-December 31, 2022 is the rate of \$6500 per month with the option of a rent increase with the allotted amount by the [document cut off]

- d) Clause 7 of the Tenancy Agreement provided that the rent payable for the first year was \$5,500 and also noted "2ND YEAR \$6500 / MON".
- [8] It is undisputed that the Tenancy Agreement was entered into between the parties on these terms. It is also undisputed that the tenants paid rent in accordance with the Tenancy Agreement, namely \$5,500 per month for the first year and \$6,500 per month from January 1, 2022 onwards.
- [9] On September 22, 2022, Prompton provided a Notice of Rent Increase effective January 1, 2023 in the maximum 2% permitted by the Residential Tenancy Regulation, B.C. Reg. 477/2003 [Regulation], namely an increase of \$130 bringing the rent for January 1, 2023 onward to \$6,630 per month. The petitioners have not paid this amount. They take the position that the legality of this rent increase is dependent on the January 1, 2022 increase from \$5,500 to \$6,500 being effective. If that increase was not permissible, then the January 1, 2023 increase is over five times the permitted amount, and therefore also impermissible under the RTA and the Regulation.
- [10] The Tenancy Agreement was in the standard form, and thus also contained the standard terms, including Clause 14, which incorporates the provisions of s. 42 into the Tenancy Agreement. Clause 14 provides in relevant part as follows:

RENT INCREASE. Once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy Branch or ServiceBC office. A landlord must give a tenant 3 whole months notice, in writing, of a rent increase.

The landlord and tenant may agree in writing to a rent increase greater than the amount permitted by the regulation.

- [11] The Arbitrator found that the amount of rent due during the fixed term was confirmed in email correspondence dated December 17, 2020, and that the parties signed the written Tenancy Agreement on December 21, 2020. Accordingly, the Arbitrator concluded that the Tenancy Agreement reflected the parties' understanding as to the amount of rent due during the fixed term: Decision at p. 3.
- [12] The Arbitrator also found that the petitioners paid rent of \$5,500 during the first year of the lease, and had paid \$6,500 per month from January 1, 2022 onwards. In this regard, the Arbitrator noted that despite raising the issue of the rent increase in a January 5, 2022 email, the petitioners took no steps to bring an application before the RTB until 10 months later, near the end of the fixed term: Decision at p. 4.

Arbitrator's Decision

- [13] The hearing proceeded by telephone with the petitioners attending on their own behalf, and a representative of the respondent property management company, Corry Buchanan, appearing on behalf of the landlords. The witnesses were affirmed, and then the Arbitrator heard from both the petitioners and the respondent's representative.
- [14] The petitioner, Gary Shuster, testified that it wasn't until sometime after the first year of the tenancy that he looked at the lease and realized it was a two-year lease. Ms. Buchanan disputed Mr. Shuster's evidence that he was not aware of the two-year lease, testifying to the December 2020 email correspondence between the petitioners and property management company, which indicated that Mr. Shuster clearly understood that the lease was for a two-year fixed term with a \$1,000 per month discounted rent of \$5,500 for the first year and \$6,500 for the second year. Ms. Buchanan also noted that the petitioners signed the Tenancy Agreement, which reflected the two-year term and agreed-upon rent for each year. In response, Mr. Shuster testified that while he did not dispute the express terms of the lease, the two-year term that was "something that [he] didn't process fully".
- [15] Nonetheless, Mr. Shuster took the position before the Arbitrator that all of Prompton's submitted facts could be taken as true, and that the issue was a question of whether this type of lease was allowed in British Columbia. As Mr. Shuster put it, "am I right on my read of the law or not".
- [16] The Arbitrator considered the documentary evidence and oral testimony provided during the hearing, and concluded that the parties had agreed to the rent increase in writing in the Tenancy Agreement, and accordingly, s. 42 of the RTA did not apply. In doing so, they reasoned in material part as follows (at pp. 3-4):

Section 43(1)(c) of the [RTA] confirms that a landlord may impose a rent increase only up to an amount agreed to by a tenant in writing.

In this case, I find that the amount of rent due during the fixed term was confirmed in an email from [Ms. Buchanan] to [Mr. Shuster] dated December 17, 2020, and that the parties signed the written tenancy agreement on December 21, 2020. I accept that the tenancy agreement reflects the parties' understanding with respect to the amount of rent due during the fixed term. I also accept that the lower rate in effect from January 1 to December 31, 2021 reflected a concession for the first year of the tenancy. I find that the rent increase was not an attempt to avoid the rent increase provisions of the [RTA].

Further, as the parties agreed to the rent increase in writing, I find that the timing and notice requirements of section 42 of the [RTA] are not engaged.

[Emphasis added.]

[17] The Arbitrator then went on to state that even if they were wrong in concluding that the rent increase complied with the RTA, then they would have applied the principle of estoppel, which they noted was alluded to in the hearing by Prompton. In this regard, the Arbitrator said this (at p. 4):

Even if I had found the increase did not comply with the rent increase provisions of the [RTA], I would have relied on the principle of estoppel, alluded to during the hearing by [Ms. Buchanan]. Estoppel is a legal principle which bars a person from asserting a legal right due to that person's action, conduct, statements, admissions, or failure to act. In this case, there is no dispute that the Tenants signed the tenancy agreement, which provided more than 12 months' notice of the increase. Further, the Tenants paid rent of \$5,500.00 per month from January 1 to December 31, 2021, and have continued to pay \$6,500.00 per month from January 1, 2022 to present. As noted above, the Tenants did not make their application to dispute the increase until November 21, 2022, near the end of the fixed term. Although the Tenants raised the issue [sic] in an email dated January 5, 2022 - roughly 10 months before the application was made - they took no action at that time. In this case, by paying the agreed-upon rent throughout the tenancy and by failing to make an application for dispute resolution within a reasonable time, I would have found that the tenants are estopped from disputing the rent increase.

[Emphasis added.]

[18] In the result, the Arbitrator concluded that the increase in rent during the fixed term was agreed to by the tenants in writing as permitted by the RTA, and dismissed the petitioners' request for a monetary order for the alleged overpayment of rent, without leave to reapply: Decision at p. 4.

[19] The Arbitrator also concluded that the September 2022 Notice of Rent Increase increasing the rent to \$6,630 effective January 1, 2023 was effective and complied with the RTA. Accordingly, they dismissed the petitioners' application to dispute that Notice: Decision at p. 4.

Standard of Review

[20] Pursuant to ss. 5.1 and 84.1 of the RTA, the standard of review on this application is prescribed by s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 [ATA]. Section 58 provides as follows:

58 (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.

- (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,
 - (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
 - (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
- (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.

[21] Thus, pursuant to s. 58(2)(a) of the ATA, findings of fact or law, or exercise of discretion by dispute resolution officers in respect of matters within their exclusive jurisdiction, are reviewable on a standard of patent unreasonableness. A helpful summary of the meaning of patent unreasonableness is set out in *Hollyburn Properties Limited v. Staehli*, 2022 BCSC 28 at para. 25 [Hollyburn Properties]:

[25] As the ATA does not define patent unreasonableness as it applies to a tribunal's factual or legal findings, however, guidance regarding its meaning must be sought from the case law. In *Kong* [Kong v. Lee, 2021 BCSC 606] at paras. 58-65, Madam Justice MacDonald set out a number of jurisprudential holdings which provide content to the notion of patent unreasonableness, including:

- a) as expert tribunals are entitled to significant deference, the standard is an onerous one and their decisions can only be quashed if there is no rational or tenable line of analysis supporting them (*Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 at para. 65; *aff'd* 2009 BCCA 229);
 - b) a decision is patently unreasonable if it is openly, evidently, and clearly irrational, or unreasonable on its face, unsupported by evidence, or vitiated by failure to consider the proper factors or apply the appropriate procedures (*Gichuru v. Palmar Properties Inc.*, 2001 BCSC 827 at para. 34, citing *Lavender Co-Operative Housing Association v. Ford*, 2011 BCCA 114);
 - c) 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 and *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28);
 - d) it is a possible that a great deal of reading and thinking will be required before the problem in a patently unreasonable decision is apparent, but once its defect is identified, it can be explained simply and easily, leaving no real possibility of doubting that the decision is defective (*Yee v. Montie*, 2016 BCCA 256 at para. 22);
 - e) the standard of patent unreasonableness also applies to the consideration of adequacy of reasons, which involves an assessment of the justification, transparency and intelligibility of the decision-making process (*Vavilov*); and
 - f) under the RTA regime, the overriding test for adequacy of reasons is whether a reviewing court is able to understand how and why the decision was made (*Ganitano v. Yeung*, 2016 BCSC 2227 at para. 24).
- [22] Expert tribunals such as the RTB are entitled to significant deference, and the patently unreasonable standard is thus an onerous one. A decision will only be quashed where there is "no rational or tenable line of analysis" supporting it: *Kong v. Lee*, 2021 BCSC 606 at para. 58, citing *Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 at para. 65, *aff'd* 2009 BCCA 229.
- [23] The Court owes no deference to administrative decision-makers on questions of procedural fairness, but must ensure that a decision was made fairly: *Nova-BioRubber Green Technologies Inc. v. Investment Agriculture Foundation British Columbia*, 2022 BCCA 247 at para. 71, citing *Seaspan Ferries Corporation v. British Columbia Ferry Services Inc.*, 2013 BCCA 55 at para. 52.
- [24] The standard of review to be applied to matters of procedural fairness arising from an RTB decision is thus whether, in all of the circumstances, the decision maker acted fairly: *ATA*, s. 58(2)(b); *Kong* at para. 66; *Hollyburn Properties* at para. 27, citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 77 [*Vavilov*].

Decision

[25] The petitioner frames the issue on this judicial review as whether a landlord may opt out of the mandatory notice requirements of s. 42 of the RTA. The petitioner says the mandatory notice requirements must be given prior to any rent increase and cannot be avoided for any reason, even where--as here--the amount of rent to be paid has been agreed to in writing in a fixed term tenancy agreement. In the petitioner's submission, the Decision is patently unreasonable in concluding that s. 42 did not apply.

[26] Within this context, the petitioner advances three grounds of review:

- a) The Arbitrator failed to consider mandatory statutory provisions in concluding that s. 42 did not apply to the rent increase set out in the Tenancy Agreement;
- b) The Arbitrator exceeded their jurisdiction in applying equitable principles--namely, the doctrine of estoppel--to avoid the mandatory statutory language and requirements of s. 42; and
- c) The petitioners were denied procedural fairness when the Arbitrator applied the doctrine of estoppel on their own motion and without notice to the petitioners or opportunity for them to respond.

[27] The first two grounds are reviewed on the patent unreasonableness standard. The third ground requires me to consider whether the Arbitrator acted fairly.

[28] However, in oral submissions, the petitioners modified their second ground of review. They conceded that the Arbitrator has the jurisdiction to apply the doctrine of estoppel, but submitted that the Arbitrator erred in doing so in the present circumstances.

[29] The petitioners do not challenge any of the findings of fact that underpin the Decision. The petitioners also abandoned a fourth ground of review, namely that the Decision relied on irrelevant factors: the pre-contractual email correspondence between the parties, and the petitioners' payment of the increased rent.

Ground 1 - Is the Decision patently unreasonable because the Arbitrator failed to consider mandatory statutory requirements in concluding s. 42 did not apply

[30] In the petitioner's submission, ss. 41 and 43 of the RTA require notice to be given even where--as here--a rent increase is agreed to in writing in a fixed term tenancy agreement. If this were not the case, say the petitioners, then it would create a "loophole" that would incentivize "landlords to pressure tenants to execute agreements to escape the supervision of the [RTB]", thereby also negating s. 5 of the RTA.

[31] The petitioners thus submit that the Decision was patently unreasonable because the Arbitrator failed to consider the mandatory statutory requirements of Part 3 of the RTA, in concluding that the rent increase was agreed to in writing in the Tenancy Agreement and s. 42 therefore did not apply. I do not agree.

- [32] Patent unreasonableness is the most deferential standard. A decision may be patently unreasonable if it is openly, evidently, and clearly irrational, or unreasonable on its face, unsupported by evidence, or vitiated by failure to consider the proper factors. None of these factors apply here.
- [33] To the contrary, there is, in my view, a rational and tenable line of analysis supporting the Decision, and the Arbitrator considered the relevant sections of the RTA in concluding that s. 42 did not apply in the circumstances before them, namely where the rent increase was agreed to in writing in a fixed term tenancy agreement. In my view, the Arbitrator's conclusion that the timing and notice requirements of s. 42 were not engaged--as the parties had agreed to the rent increase in writing--is a rational conclusion that was available to them on the evidence and within the applicable statutory framework. Any holding to the contrary, would permit s. 42 to operate to negate the clear and unambiguous terms of the Tenancy Agreement regarding the amount of rent to be paid.
- [34] Put differently, it was reasonable for the Arbitrator to have determined that a rent increase that was agreed to in writing at the outset of a fixed term tenancy agreement did not attract the timing or notice requirements of s. 42 of the RTA, and ought to be treated differently than rent increases unilaterally imposed by a landlord at the end of a fixed term tenancy or in the course of an ongoing month to month tenancy. This is consistent with clause 14 of the Tenancy Agreement, which the petitioners accept, and it incorporates s. 42 of the RTA. That clause indicates that the timing and notice requirements of s. 42 are engaged where a landlord imposes a rent increase "after the date that the existing rent was established". Here, the existing rent for each year of the two-year fixed term tenancy was established in the Tenancy Agreement.
- [35] In my view, to conclude otherwise would be inconsistent with s. 14 of the RTA. Section 14(2) provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and the tenant agree to the amendment. However, s. 14(3) states that the requirement for agreement does not apply to a rent increase in accordance with Part 3 of the RTA. The RTA thus draws a distinction between mutually agreed upon contractual terms in a tenancy agreement regarding rent payable, and unilateral rent increases by a landlord in the course of an ongoing tenancy that are not mutually agreed to in writing and thus engage Part 3 of the RTA.
- [36] Moreover, as the Arbitrator found, the petitioners signed the Tenancy Agreement which provided more than 12 months notice of the increase for the second year's rent: Decision at p. 4. The function and purpose of the timing and notice requirements of s. 42 was thus fulfilled by the Tenancy Agreement itself--the petitioners had in excess of three months notice of the rent increase they had agreed to in writing when they signed the Tenancy Agreement in December 2020. In such circumstances, any further notice would serve no rational purpose.

- [37] Nor did the Arbitrator fail to consider s. 5 of the RTA. While the Arbitrator did not refer to s. 5 specifically, they turned their mind to this issue of whether the rent increase was an attempt to avoid the rent increase provisions of the RTA--which is what s. 5 expressly prohibits. The Arbitrator concluded that the lower rent during the first year of the fixed term tenancy reflected a concession on the part of the landlord, which Ms. Buchanan testified was given on account of the uncertainty in the rental market occasioned by COVID-19. As such, the Arbitrator concluded that the rent increase in the second year of the fixed term Tenancy Agreement was not an attempt to avoid the rent increase provisions of the RTA: Decision at p. 3. This conclusion is not openly, evidently, and clearly irrational, or unreasonable on its face, nor is it unsupported by evidence, or vitiated by failure to consider the proper factors.
- [38] The substantive effect of the petitioners' position--as articulated to the Arbitrator--is that multi-year fixed term leases that contain rent increases in excess of those permitted by the Regulation are not permitted by the RTA because parties cannot agree in advance to anything that circumvents the RTA. The petitioners point to no provision of the RTA precluding multi-year fixed-term tenancy agreements or any other provision limiting the ability of a landlord and tenant to agree at the outset of a tenancy to staggered rental increases over the course of a fixed-term tenancy agreement. Indeed, "rent" is defined in s. 1 of the RTA as meaning "money paid or agreed to be paid, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit " (emphasis added). Here, the rent agreed to be paid was that set out in the Tenancy Agreement, namely \$5,500 for the first year and \$6,500 for the second year of the tenancy.
- [39] A patently unreasonable decision is one that borders on the absurd. The Decision does not border on the absurd. Rather, acceding to petitioners' argument would give rise to absurdity in that it would permit the petitioners to resile from the contractual rent they agreed to pay over the course of the fixed term tenancy when they signed the Tenancy Agreement. This would in turn deprive the landlord of the agree-upon bargain made between the parties as reflected in the Tenancy Agreement.
- [40] Finally, while the Decision is succinct, I am nonetheless able to understand how and why the Decision was made, and discern that the Arbitrator turned their mind to the applicable provisions of the RTA in including that s. 42 did not apply to the facts before them. Regardless, and in any event, the petitioners do not raise insufficiency of reasons as a ground of review.
- [41] In the result, the Decision is not patently unreasonable on account of the Arbitrator failing to consider and apply the mandatory and statutory provisions of the RTA.

Ground 2 - Is the Decision patently unreasonable because the Arbitrator exceeded their jurisdiction by applying the doctrine of estoppel

- [42] The second ground of review advanced by the petitioners is that the Arbitrator exceeded their jurisdiction by applying equitable principles, namely the doctrine of estoppel. However, the petitioners conceded in their oral submissions that the Arbitrator does have the jurisdiction to apply the doctrine of estoppel, effectively abandoning the contention that the Decision was patently unreasonable because the Arbitrator exceeded their jurisdiction.
- [43] This concession is properly made in light of the applicable legal authorities: see e.g. *LaBrie v. Liu*, 2021 BCSC 2486 at paras. 52-57, where a decision was found to be patently unreasonable where an Arbitrator failed to consider equitable estoppel in considering whether a tenancy could be terminated on account of late payment of rent.
- [44] However, the petitioners maintain that the Arbitrator erred in applying the doctrine of estoppel in the circumstances before them. In this regard, the Arbitrator concluded that even if they were wrong in concluding that the January 1, 2022 rent increase complied with the RTA, they nonetheless would have found that the petitioners were estopped from disputing the rent increase because they paid the agreed-upon rent throughout the tenancy and failed to make an application for dispute resolution within a reasonable time.
- [45] In response to this ground of review, the respondent submits that it would be "patently absurd" for the RTA to be construed so as to require formal notice of a rent increase to be provided in accordance with s. 42 in circumstances where a tenant has already signed a fixed term tenancy agreement that expressly incorporates the agreed-upon rent increase. Put differently, the respondent says that it would be patently unreasonable not to apply estoppel on the facts as found by the Arbitrator, given that the petitioners paid a reduced, below-market rent during the first year of the fixed term tenancy. I agree.
- [46] As noted above, a contrary finding would, in my view, create an unreasonable interpretation of the RTA that would have it operate to permit the petitioners to avoid their contractual obligations under the Tenancy Agreement in respect of a fundamental term thereof, namely the amount of rent to be paid during the fixed term tenancy. This result--not the Arbitrator's alternative conclusion that the petitioners would be estopped from disputing the rent increase they agreed to in the Tenancy Agreement--would offend public policy and thus create an absurd and thus patently unreasonable result. This case is simply not akin to the circumstances of *Idle-O Apartments Inc. v. Charlyn Investments Ltd.*, 2013 BCSC 2158, a decision relied on by the petitioners. The present circumstances do not create a situation where it would be contrary to the policy of the RTA to require the petitioners to abide by their contractual commitments as reflected in the clear and unambiguous terms of the Tenancy Agreement.
- [47] Moreover, so long as the analysis of a tribunal sets out at least one logical basis for the outcome, that is sufficient to render the chain of reasoning and outcome reasonable: *International Longshore and Warehouse Union - Canada, Local 400 v. Ledcor Resources & Transportation Limited Partnership*, 2021 BCSC 2077 at para. 43, citing *Miller v. Union of British Columbia Performers*, 2021 BCSC 1054 at para. 104. *Vavilov* is to the same effect as

the Supreme Court emphasized throughout that a reviewing court must determine whether the decision "as a whole" is reasonable: see e.g. Vavilov at paras. 15, 99, 122. Similarly, in *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, the court held as follows with respect to reasonableness review:

- [55] A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere (see *Southam*, at para. 56). This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling (see *Southam*, at para. 79).
- [56] This does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision remembering that the issue under review does not compel one specific result. Moreover, a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole.

[Emphasis added.]

- [48] In the result, even if I am wrong in concluding that the Arbitrator's alternative conclusion regarding estoppel is not patently unreasonable, my determination with respect to the first ground of review is sufficient to support a finding that the Decision is not patently unreasonable such that judicial intervention is unwarranted.

Ground 3 - Was the Decision procedurally unfair because the Arbitrator applied doctrine of estoppel without notice to the petitioners or affording them the opportunity to respond?

- [49] The petitioners submit that the Decision was procedurally unfair because the Arbitrator applied the doctrine of estoppel on their own motion without the parties raising it. Relying on *Chishuan Housing Society v. Silver*, 2021 BCSC 1074 at para. 67, they assert that the Decision should be set aside because they were denied the ability to make submissions and lead evidence on the issue of estoppel.
- [50] I disagree. First, while not identified expressly as such, the transcript of proceedings supports the Arbitrator's comment that the principle of estoppel was alluded to by Ms. Buchanan at the hearing and demonstrates that the facts underlying the application of the doctrine of estoppel were raised by the parties. By way of example, Ms. Buchanan testified that the rent increase was agreed to by the parties in the context of negotiations in which the landlord agreed to give the petitioners discounted rent for the first year of the lease in exchange for an increase to market rent in the second year. As such, Ms. Buchanan

submitted that having agreed to the rent set out in the Tenancy Agreement, they should be bound by that agreement. This was not disputed by Mr. Shuster, who testified that the petitioners paid the contractual rent of \$6,500 during the second year of the tenancy.

- [51] In the circumstances, I am not satisfied that any unfairness arose from the Arbitrator failing to identify the doctrine of estoppel as a legal concept by name to the parties and invite further submissions on that point prior to applying it--as an alternative finding only--in the Decision. I agree with the respondent that doing so would have been of little utility to the self-represented parties, particularly in the context of an RTB telephone hearing. As this Court has recognized, the informal hearing structure of the RTB, the relaxed rules of evidence, and the telephone hearings used by arbitrators all influence the procedural steps required to accord with the duty of procedural fairness: *PHS Community Services Society v. Swait*, 2018 BCSC 824 at para. 88.
- [52] Second, the petitioners were not denied the ability to lead evidence on the underlying issue. Rather, they conceded that they signed the Tenancy Agreement and paid the rent as set out therein from January 1, 2022 onwards. Indeed, the petitioners do not identify any additional evidence they say ought to have been adduced before the Arbitrator on this point. To the contrary, the petitioners took the position that all of the respondent's submitted facts could be taken as true, and that the issue was a question of whether this type of lease was allowed in British Columbia.
- [53] Accordingly, I find that the Arbitrator acted fairly, and the petitioners were not denied procedural fairness.

Conclusion

- [54] In the result, I conclude that considered as a whole, the Decision is not patently unreasonable, and the RTB proceedings were procedurally fair.
- [55] The petition is dismissed.
- [56] The respondent, Prompton, is entitled to its costs, payable at Scale B. No costs are awarded for or against the Director, Residential Tenancy Branch.

"Hughes J."

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