

CANADA / JUDGMENT

Sull v. Trevitt

2025 BCSC 1366

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1366 Sull v. Trevitt

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sull v. Trevitt,

2025 BCSC 1366

Date: 20250718

Docket: S256825

Registry: New Westminster

Between:

Mohan Sull

Petitioner

And

Thomas Trevitt and Rozette Trevitt

Respondents

Before: The Honourable Justice Chan

Reasons for Judgment

Counsel for the Petitioner:

D.A. Chodha

Counsel for the Respondents:

A. Ehteshami

Place and Date of Hearing:

Vancouver, B.C.

June 25, 2025

Place and Date of Judgment:

New Westminster, B.C.

July 18, 2025

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Introduction

- [1] Mohan Sull (the "Landlord") rented a residence in North Vancouver (the "Property") to Thomas Trevitt and Rozette Trevitt (the "Tenants") starting in 2014. The rent was \$5,650 a month.
- [2] On or about June 16, 2022, Mr. Sull entered into an oral agreement with Aldo Trinetti and Ellys Santis Cresol (the "Buyers") for the purchase of the Property. This oral agreement was an option to purchase, and a written agreement was signed on June 29, 2022. The Landlord served on the Tenants a two-month notice to end tenancy for landlord's use of the property, signed on June 17, 2022, as the Buyers intended to occupy the Property. The Tenants moved out on August 1, 2022.
- [3] The Buyers undertook extensive renovations. The city in March 2023 issued a stop-work order. The Buyers did not obtain the proper permits until May 2024. I understand the Property is still fully gutted with no one residing there currently.
- [4] The Tenants sought compensation pursuant to s. 51(2) of the Residential Tenancy Act, S.B.C. 2002, c. 78 [RTA]. On July 5, 2023, the adjudicator at the Residential Tenancy Branch (the "RTB") issued a written decision, awarding 12 months of rent to the Tenants, as the stated purpose of the notice to end tenancy was not accomplished. The Landlord was ordered to pay to the Tenants 12 months of rent totalling \$67,800, plus the \$100 filing fee.

- [5] The Landlord sought judicial review. In March 2024, Justice Gomery remitted the matter back to the RTB for redetermination. The Tenants had originally claimed \$35,000, as they were under the mistaken assumption that was the maximum allowed. Justice Gomery found the amount awarded was almost double the amount claimed, and that procedural fairness required the Landlord to be informed of this and provided an opportunity to consult with counsel.
- [6] There was a second arbitration hearing, before the same adjudicator, at the RTB in December 2024. The arbitrator again found in favour of the Tenants, and awarded them the maximum amount at that time of \$65,000 plus the \$100 filing fee.
- [7] The Landlord seeks judicial review, arguing that the adjudicator's finding that the Landlord was not entitled to issue a two-month notice to end tenancy in the circumstances of an option to purchase agreement was patently unreasonable. He also argues the adjudicator failed to consider the evidence of the extenuating circumstances that delayed the renovations, including the stop-work order and the death of one of the buyers. The Landlord also argues the adjudicator ought to have recused himself due to his prior involvement in the first hearing.

The December 2024 Decision of the RTB

- [8] The arbitrator at the RTB dealt first with the Landlord's request for recusal. The Landlord argued the matter should be heard by another arbitrator, as the arbitrator's decision from July 2023 had been set aside. The Landlord argued having the same arbitrator rehear the matter would be a breach of natural justice and procedural fairness. Though the Landlord did not argue bias, the arbitrator considered whether there was bias or a reasonable apprehension of bias. Justice Gomery's order did not require the matter be referred to a different arbitrator. The arbitrator found he need not recuse himself, as there had been no findings of bias or lack of impartiality, and because the hearing was to be heard de novo.
- [9] The arbitrator next referred to the option to purchase agreement signed by the Landlord and the Buyers on June 29, 2022. The Buyers had the option to purchase the Property over the option term running from October 1, 2022 to October 1, 2027. The Buyers were to make a down payment of \$100,000 prior to October 1, 2022, after which the Buyers were to pay \$5,800 per month in interest payments. The Buyers could make additional payments towards the purchase price. These monthly interest payments were to continue until the Buyers exercised their option to purchase the Property or the agreement came to an end. If there was an agreement to terminate the contract, the down payment and any additional payments were to be returned to the Buyers.

[10] The arbitrator referenced the letter written by one of the Buyers dated November 25, 2024, noting that her spouse, the other Buyer, died on May 28, 2024. The Buyer referenced the extensive renovations to the Property, which started in September 2022, and the stop-work order issued by the city in March 2023. The Landlord remains on title of the Property. The Buyer indicated she intends to exercise the option and complete the purchase of the Property.

[11] The arbitrator set out the Landlord's two arguments:

- 1) that the tenancy ended pursuant to s. 44(1)(c) of the RTA, based on a mutual agreement to end tenancy set out in clause 18 of the tenancy agreement, which states the "tenant and owner both agree to give 2 full calendar months written notice, when they plan to end the lease"; and
- 2) this was a bona fide purchase and if there is any liability, it is against the Buyers.

[12] The arbitrator found no merit in the Landlord's argument that the tenancy was ended pursuant to a mutual agreement as per clause 18 of the lease. Under the RTA, landlords are restricted in circumstances in which they can serve a notice to end tenancy. The circumstances which allow a landlord to end tenancy are set out in the RTA at ss. 46 (non payment of rent), 47 (cause), 48 (end of employment with landlord), 49 (landlord's use of property), 49.1 (tenant ceases to qualify for the rental unit), or as permitted by order of the Residential Tenancy Branch under s. 49.2 (for landlord's renovations or repairs).

[13] The arbitrator found that as clause 18 provides that the Landlord can end the tenancy without reason, it is contrary to the RTA and is void and of no effect: RTA, s. 5. Further, on the evidence, the arbitrator found it was not a tenancy ended by mutual agreement, but by a two-month notice issued pursuant to s. 49(5). The arbitrator found at p. 9:

To take the view that the tenancy ended by mutual agreement would be a significant misapprehension of the facts as it relates to why this tenancy ended, being that it did so after the Landlord signed and served the Two Month Notice.

[14] With respect to the Landlord's second argument, that any liability should be on the Buyers, the arbitrator found the Buyers did not meet the definition of purchasers within the meaning of s. 49 of the RTA, as the Buyers had not agreed to purchase at least half of the full reversionary interest in the Property. The Buyers have not exercised their option to purchase, which is not mandatory under the terms of the agreement. The arbitrator at p. 10 found:

Even if I am wrong on this point, and the Buyers can be considered as purchasers within the meaning of s.49(1) of the Act, the sale set out in the option purchase agreement cannot be considered as unconditional as required under s.49(5) of the Act. The purchase option agreement is premised on the Buyers exercising their option to purchase the property within the specified term. In other words, the agreement has at its core a condition being the Buyers exercising the option to purchase the property. Until that occurs, the sale cannot be considered unconditional.

- [15] The arbitrator found that in those circumstances, the Landlord was not entitled to provide a two-month notice to end tenancy pursuant to s. 49(5) of the RTA, as there was no unconditional sale of the property. The arbitrator found the Tenants were entitled to compensation pursuant to s. 51(2) of the RTA, as the purpose of that section is to compensate tenants who have had their tenancies ended without proper grounds.
- [16] The arbitrator found the Buyers were not responsible for the improper two-month notice, and that the Landlord should bear the responsibility. It was the Landlord who completed the form for the two-month notice and served it on the Tenants, which brought about the end of the tenancy. The arbitrator emphasized that the wrongful act was not that the Buyers had not occupied the Property, but rather that the Tenants ought not to have had their tenancy terminated in the first place.

The Standard of Review

- [17] The role of the court on judicial review is to ensure that a statutory decision-maker or tribunal did not overstep its legal authority (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 28) and did not fail to provide a fair hearing (*PHS Community Services Society v. Swait*, 2018 BCSC 824 at para. 88). The role of the court on judicial review is not to hear new evidence or argument or to re-decide the case: *PHS Community Services Society* at para. 76.
- [18] As the RTA contains a privative clause at s. 84.1, the standard of review for a decision of the RTB is the patently unreasonable standard: RTA, s. 5.1; *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 58 [ATA]. Section 58(3) of the ATA defines "patently unreasonable" with respect to a discretionary decision as a decision: (a) exercised arbitrarily or in bad faith; (b) exercised for an improper purpose; (c) based entirely or predominantly on irrelevant factors; or (d) that fails to take statutory requirements into account.
- [19] As that term applies to questions of fact or law, a patently unreasonable decision has been described in the following way in *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

[Emphasis added.]

- [20] The patently unreasonable standard is the most deferential standard of review. The approach to reviewing decisions must not be a "line-by-line treasure hunt for error": PHS Community Services Society at para. 45, quoting Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd., 2013 SCC 34 at para. 54. It applies to findings of fact or law or an exercise of discretion by the RTB. The Court in Speckling at para. 33 described a "patently unreasonable" decision as one that is "openly, clearly, evidently unreasonable". The Supreme Court of Canada described a result that is patently unreasonable as one "that must almost border on the absurd": Voice Construction Ltd. v. Construction and General Workers' Union, Local 92, 2004 SCC 23 at para. 18.
- [21] The standard of review applicable to issues of procedural fairness is "best described as 'simply a standard of fairness': Seaspan Ferries Corporation v. British Columbia Ferry Services Inc., 2013 BCCA 55 at para. 52. Issues with procedural fairness are assessed on whether the tribunal acted fairly: Gichuru v. Law Society of BC, 2010 BCCA 543 at para. 29. The fairness standard, considered in "all of the circumstances", is set out in s. 58(2)(b) of the ATA.
- [22] Procedural fairness comprises the right to be heard and the right to an impartial hearing. The nature and extent of the duty to act fairly may vary with the administrative body. Some of the factors to be considered in assessing fairness are summarized in Therrien (Re), 2001 SCC 35 at para. 82:

82 Essentially, the duty to act fairly has two components: the right to be heard (the audi alteram partem rule) and the right to an impartial hearing (the nemo iudex in sua causa rule). The nature and extent of the duty may vary with the specific context and the various fact situations dealt with by the administrative body, as well as the nature of the disputes it must resolve: [citations omitted]. Thus, in Baker, supra, at paras. 23-28, L'Heureux-Dubé J. specifically pointed out that several factors have been recognized in the jurisprudence as relevant to determining what is required by the duty of procedural fairness in a given set of circumstances. While she did not provide a comprehensive list of such factors, she referred to: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) respect for the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures

- [23] 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), [1999] 2 S.C.R. 817, 1999 CanLII 699 (SCC) at para. 22. In proceedings before the RTB, this Court has found the informal hearing structure with hearings by telephone influence what procedural

steps are required to accord with the duty of fairness: PHS Community Services Society at para. 88, partially citing Baker at para. 22.

Did the decision of the arbitrator not to recuse himself lead to an unfair hearing?

- [24] The arbitrator found there was no reason to recuse himself based on procedural fairness concerns or an apprehension of bias. The order remitting the matter to the RTB did not specify it needed to be heard by a different arbitrator. The arbitrator considered that it was the Director of the RTB who assigned him to hear the dispute. The arbitrator considered the RTB's policy guideline on bias and conflicts of interest, and found that he did not have any financial or personal interest in the matter. The arbitrator referenced the policy guideline which sets out that the fact the arbitrator may have previously denied an application by one of the parties does not support a claim of bias.
- [25] In my view, the arbitrator's decision not to recuse himself did not lead to an unfair hearing. As the arbitrator noted, it was a hearing de novo, based on the evidence adduced at the second hearing. There is no evidence to find there was any procedural unfairness at that hearing. The sole fact that the matter was heard by the same arbitrator, without more, does not make the hearing unfair.

Was the decision of the arbitrator patently unreasonable?

- [26] The arbitrator dismissed the Landlord's argument that he was justified in ending the tenancy pursuant to clause 18 of the tenancy agreement, which states the "tenant and owner both agree to give 2 full calendar months written notice, when they plan to end the lease". The landlord argued s. 44(1)(c) of the RTA allowed for the parties to end a tenancy on mutual agreement. The Landlord relied on s. 44(1)(c) of the RTA, which states a tenancy can be ended if "the landlord and tenant agree in writing to end the tenancy". The Landlord argues clause 18 falls under s. 44(1)(c): the landlord and tenant had agreed at the time of signing the lease that the tenancy could be ended by either party providing two months' written notice.
- [27] The arbitrator found clause 18 was an impermissible opting out of the mandatory provisions of the RTA, which restrict the circumstances in which a landlord can end a tenancy. Pursuant to the RTA, a landlord cannot end a tenancy by providing two months' written notice for any reason. A landlord can only end a tenancy in the limited circumstances enumerated in the statute. Further, the arbitrator found on the evidence, the landlord did not end the tenancy pursuant to s. 44(1)(c) of the RTA; the two-month notice provided to the Tenants specified it was for purchaser's use pursuant to s. 49(5) of the RTA.
- [28] In my view, the arbitrator's findings that the Landlord was not justified in relying on clause 18 of the tenancy agreement to end the tenancy is not patently unreasonable. The arbitrator referenced the sections in the RTA which set out the circumstances in which a landlord can end a tenancy (detailed at para. 12 of these reasons): ss. 46–49, and 49.1, or as permitted by order of the RTB under s. 49.2. None of these provisions allow a landlord to end a tenancy simply on providing two months' written notice. The arbitrator referenced s. 5 of the RTA,

which states that landlords and tenants may not contract out of the RTA and that any attempt to avoid or contract out of the RTA is of no effect. The arbitrator found that clause 18 was an attempt by the parties to increase the circumstances by which the landlord can end the tenancy, which was impermissible due to s. 5 of the RTA.

- [29] Further, the arbitrator found on the evidence the landlord did not end the tenancy pursuant to s. 44(1)(c) of the RTA, as the notice provided to the tenants was a s. 49 notice to end tenancy. I do not find these conclusions are patently unreasonable. There is a basis in the evidence to draw these conclusions. In my view, s. 44(1)(c) of the RTA refers to situations where both the landlord and the tenant agree to end the tenancy at the time the tenancy ended. The section does not apply to terms in a lease to end the tenancy by agreement that are inserted at the beginning of the tenancy. These terms may or may not be valid, depending on if they comply with the RTA. In any event, the language of clause 18 only speaks to notice and not any agreement to end the tenancy. There is no evidence the Tenants agreed to end the tenancy in this case. The evidence is the Tenants were provided the two-month notice pursuant to s. 49 of the RTA, did not dispute it, and moved out. That is a very different situation than a mutual agreement to end a tenancy.
- [30] The Landlord's second argument focuses on the arbitrator's findings that the Buyers are not responsible to pay the compensation to the Tenants. The Landlord argues the arbitrator not considering placing the liability on the Buyers in these circumstances is patently unreasonable, as the Buyers had possession of the Property and did not occupy it. The Landlord argues he has no control over the Property and he ought not to be held liable.
- [31] In my view, the arbitrator's finding that the Landlord should compensate the Tenants is not patently unreasonable. Pursuant to the RTA, the Landlord was not entitled to provide the two-month notice to end tenancy, as there was no unconditional sale of the Property as required under the RTA. Section 49(5) sets out the circumstances in which a landlord or a purchaser can provide notice to end a tenancy after a sale of the property:

Landlord's notice: landlord's use of property

49 (1) In this section:

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit

[32] The agreement to sell the Property is an option purchase agreement. The Buyers have an option to purchase the Property which they can exercise during a five-year period, from 2022 to 2027. In my view, the arbitrator's finding that the Landlord was not entitled to end the tenancy as all the conditions on which the sale depends have not been satisfied is not patently unreasonable. As the arbitrator noted, if the option is never exercised, the tenancy agreement would have been needlessly terminated. In these circumstances, the arbitrator's finding that the Tenants should be compensated as they were provided with an improper notice to end tenancy is not patently unreasonable. His finding that the Landlord should bear the responsibility is not openly, clearly and evidently unreasonable. The arbitrator considered the policy objectives of the RTA, the need to protect tenants from improper evictions, and that it was the Landlord who completed and served the two-month notice to the Tenants, to conclude the Landlord ought to be responsible. As the Landlord was not entitled to provide the two-month notice to end tenancy, the conditions of s. 49(5) of the RTA not met, the arbitrator found the evidence of the extenuating circumstances of the Buyers which led to delay in their occupation of the unit was irrelevant.

[33] The arbitrator awarded the Tenants \$65,000, the maximum allowed under the RTA at the time of the second hearing: RTA, s. 58(2)(a.1). The arbitrator also awarded the Tenants the \$100 filing fee. The Tenants' original claim filed in 2022 sought \$35,000 as they were under the mistaken view that was the cap. The lack of notice to the Landlord of the higher amount was the reason the first RTB decision was set aside. While the Tenants had not amended their original claim to reflect the higher amount, the arbitrator found there was no lack of notice to the Landlord about the amount due to the circumstances of the first hearing and judicial review. In my view, that finding is not patently unreasonable and is supported by the record.

Conclusion

[34] The Landlord's petition to set aside the decision of the arbitrator dated December 18, 2024 is dismissed.

[35] If the parties wish to make submissions on costs, they may schedule a one-hour hearing at 9:00 am.

"Chan J."

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