

CANADA / JUDGMENT

V.I.T. Estates Ltd. v. New Westminster (City)

2023 BCCA 183

COURT

British Columbia Court of Appeal

DECIDED

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2023 BCCA 183 V.I.T. Estates Ltd. v. New Westminster (City)

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

V.I.T. Estates Ltd. v. New Westminster (City),

2023 BCCA 183

Date: 20230501

Docket: CA47447

Between:

V.I.T. Estates Ltd., VIAM Holdings Ltd., Elmwood Apts. Ltd., 0730794 B.C. Ltd.,

Geordie Holdings Ltd., and 0964956 B.C. Ltd.

Appellants

(Petitioners)

And

The Corporation of the City of New Westminster

Respondent

(Respondent)

Before:

The Honourable Mr. Justice Groberman

The Honourable Justice Griffin

The Honourable Mr. Justice Butler

On appeal from: An order of the Supreme Court of British Columbia, dated March 30, 2021 (V.I.T. Estates Ltd. v. New Westminster (City), 2021 BCSC 573, Vancouver Docket S191254).

Counsel for the Appellants:

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N.S.A. Falzon

Place and Date of Hearing:

Vancouver, British Columbia

December 8, 2021

Place and Date of Judgment:

Vancouver, British Columbia

May 1, 2023

Written Reasons by:

The Honourable Mr. Justice Groberman

Concurred in by:

The Honourable Justice Griffin

The Honourable Mr. Justice Butler

Summary:

Purporting to exercise powers under the Local Government Act, the City of New Westminster adopted a bylaw designating certain multi-family residential buildings to be restricted to "residential rental tenure". The owners of the buildings challenged the bylaw, arguing that it was so vague as to be unenforceable, ultra vires the municipality, and contrary to provisions of the Residential Tenancy Act. The chambers judge dismissed the challenges. Held: Appeal dismissed. The petitioners' arguments all depend on the theory that the Residential Tenancy Act gives a landlord the right to occupy a residential dwelling. That is a misinterpretation of the statute, which, in fact, restricts the right of a landlord to occupy rented premises. The bylaw is not inconsistent with the Residential Tenancy Act. Further the Local Government Act, reasonably

interpreted, gave the municipality authority to enact it.

Reasons for Judgment of the Honourable Mr. Justice Groberman:

Overview

- [1] As part of a strategy to preserve rental housing, the City of New Westminster adopted zoning amendment bylaws that designated certain multi-family residential properties to be restricted to "residential rental tenure". Dwellings so designated can only be lawfully occupied if rented to residential tenants. Owner-occupation is not permitted.
- [2] The appellants owned the units in six of the buildings that were included in the residential rental tenure zoning when these proceedings were commenced. They challenged the rezoning bylaws, seeking to have them quashed or set aside, or, in the alternative, to obtain a declaration that they are inoperative insofar as their properties were concerned. The chambers judge dismissed the petition, concluding that the zoning amendments bylaws were within the City's powers and were not invalid. In my view, he was correct in coming to those conclusions.
- [3] On appeal, the appellants make similar arguments to those advanced in the court below. They allege the bylaws are:
- i. void for uncertainty as a result of internal contradictions;
 - ii. beyond the jurisdiction of the City to enact under the enabling legislation; or
 - iii. inoperative due to conflicts with Provincial statutory provisions.
- [4] While the arguments supporting these various contentions differ in their details, each relies, in part, on an assertion by the appellants that the Residential Tenancy Act, S.B.C. 2002, c. 78 gives landlords the right to occupy their residential premises and that no bylaw can interfere with that right. In my view, that is a mischaracterization of the provisions of the Residential Tenancy Act. Ultimately, none of the appellants' arguments are tenable.

Legislative Background

- [5] In 2018, British Columbia enacted the Local Government Statutes (Residential Rental Tenure Zoning) Amendment Act, 2018, S.B.C. 2018, c. 26, which made changes to the Local Government Act, R.S.B.C. 2015, c. 1 (and made similar changes to the Vancouver Charter, S.B.C. 1953, c. 55). The purpose of the legislation was to allow municipalities to implement zoning restrictions to require residential buildings to be used as rental properties. Several definitions were added to s. 455 of the Local Government Act, including the following:

"form of tenure" means the legal basis on which a person occupies a housing unit;

"residential rental tenure" means a form of tenure as such form of tenure is defined by a local government in a zoning bylaw .

[6] Section 470 of the Act was amended to allow a municipal council, following a public hearing, to adopt or alter a bylaw in relation to residential rental tenure covering any part of the municipality.

[7] The City of New Westminster enacted Bylaw 8078 on January 28, 2019. The bylaw defined "residential rental tenure" in relation to privately-owned strata units as follows:

RESIDENTIAL RENTAL TENURE means, in relation to a dwelling unit in a multi-family residential building,

a tenancy governed by a tenancy agreement that is subject to the Residential Tenancy Act or, in the event that the Act is repealed and not replaced, that contains the standard terms set out in the Residential Tenancy Regulation B.C. Reg. 4 77 /2003 as of the date of enactment of Zoning Amendment Bylaw No.8078, 2019.

[8] The bylaw amended the City's Zoning Bylaw to limit specific parcels within the City to residential rental tenure. Six privately-owned apartment buildings were included. The apartments in the buildings had been rental units for decades, but the buildings had been put in strata title in order to allow the owners the flexibility of selling the units to individual owners at some point in the future if they wished to do so.

[9] In addition to the six buildings that are the subject of this appeal, the bylaw designated twelve buildings owned by the City as limited to residential rental tenure. The bylaw specifies a different definition for "residential rental tenure" in respect of publicly owned or non-profit housing, so the current litigation does not affect the buildings owned by the City.

[10] After the bylaw was adopted, the petitioners alleged that incorrect information had been provided to some interested parties during the hearing process. The information stated that the bylaw would prevent the strata owners from selling individual strata units. In fact, it would not prevent strata units from being sold, as long as they remained compliant with the residential rental tenure restrictions.

[11] The City, concerned that the arguably misleading information might be seen as tainting the legislative process, decided to re-enact the bylaw's provisions. Bylaw 8123 was adopted on June 10, 2019. It was in almost identical terms to Bylaw 8078, making only two changes. The first was in the definition of "residential rental tenure", which was modified by replacing the phrase "a tenancy agreement that is subject to the Residential Tenancy Act" with the phrase "a tenancy agreement that complies with the Residential Tenancy Act". The second change clarified that the re-zoning only applied to dwelling units and not to commercial strata lots within the buildings. The parties do not suggest that anything on this appeal turns on the fact that two bylaws were enacted, nor do they suggest that there were any substantive differences between the two bylaws. As I understand it, the parties are content to treat this appeal as being a challenge to the most recent bylaw, which I will refer to as the Bylaw.

Standard of Review

- [12] The parties agree that the role of this Court on appeal is to stand in the position of the reviewing judge below and apply the appropriate standard of review to the original decision: 1120732 B.C. Ltd. v. Whistler (Resort Municipality), 2020 BCCA 101, at para. 48. However, they do not agree on the standard of review applicable to the appellants' three grounds of appeal. The appellants maintain, as they did in the court below, that a correctness standard should be applied. The City acknowledges that different considerations arise as regards to the applicable standard for the three grounds of appeal, but argues that, in accordance with Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, the standard of review applicable to each is reasonableness.
- [13] For completeness, I note that with respect to the argument that the Bylaw is beyond the jurisdiction of the City, the appellants acknowledge that Vavilov suggests that the presumptive review standard of reasonableness should apply. However, it argues that the issue here falls into the category of exceptional cases, as referred to in Vavilov, to which the correctness standard should apply. It argues first that it concerns a general question of law that is of central importance to the legal system. Second, it argues that the "jurisdictional boundaries" exception is applicable because the question concerns whether the City interpreted its authority in a manner that is incompatible with the rights of a landlord under the Residential Tenancy Act.
- [14] I also note that both parties take the position that the same result will obtain whether a correctness or reasonableness standard of review is applied.
- [15] The question of the standard of review took on some importance in the court below as the decision in Vavilov was released shortly after the initial hearing of the petition. The chambers judge invited the parties to make further written submissions in light of Vavilov and the decision in 1193652 B.C. Ltd. v. New Westminster (City), 2020 BCSC 163. In August 2020, the parties were afforded the opportunity to make further oral submissions.
- [16] Referring to Whistler and Vavilov, the chambers judge concluded, at para. 47, that the appropriate standard of review was reasonableness.
- [17] Subsequent to the decision of the chambers judge, this Court issued its decision in 1193652 B.C. Ltd. v. New Westminster, 2021 BCCA 176. The Court dismissed the appeal and Justice Dickson rejected the appellant's arguments that a correctness standard should be applied on the basis that the case raised general questions of law that could not be resolved by applying a reasonableness standard, or that the jurisdictional boundaries exception should apply. As the City notes, this is the same argument that the appellants raise here in almost identical circumstances.

- [18] I would reject the appellants' arguments on standard of review. After Vavilov, and in light of Whistler and 1193652, there is no question that, in general, the applicable standard of review when considering the validity of a bylaw is reasonableness. As discussed further below, I am of the view that is the applicable standard of review, except with regard to issue of vagueness.
- [19] The appellants do not dispute that the Bylaw, on its face, prohibits occupancy of their residential units except under a tenancy agreement that complies with the Residential Tenancy Act. They say, however, that such a prohibition cannot be allowed to stand. I turn now to consider the three grounds of appeal.

Is the Bylaw Void for Uncertainty Because of Internal Contradictions?

- [20] The appellants' primary contention is that the definition of "residential rental tenure" that applies to privately owned units is internally contradictory. They say that the contradictions mean that the Bylaw is impermissibly vague, and that it cannot be enforced. They seek to have it declared void.
- [21] Their contention is that a tenancy agreement that complies with the Residential Tenancy Act must contain a provision allowing the landlord to occupy a unit for the landlord's own accommodation. They say that ss. 49(3), (4) and (5) mandate that a tenancy may be terminated for the purpose of enabling a landlord, purchaser, or close family member to reside in the unit. Those provisions read as follows:
49. (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.
- (4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy 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;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

[22] The petitioners say that the Bylaw is contradictory because it requires a residential rental tenure to conform with the Residential Tenancy Act. That Act, they claim, grants landlords and purchasers, or their near relatives, the right to occupy their premises. At the same time, the Bylaw purports to prohibit occupation of a residential unit by anyone other than a tenant. To buttress their argument, the petitioners refer to the following additional provisions of the Residential Tenancy Act:

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(3) A term of a tenancy agreement is not enforceable if

(a) the term is inconsistent with this Act or the regulations .

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

[23] As the petitioners concede, the courts apply a very high threshold to challenges to legislation based on vagueness. The law was reviewed by this Court in *Kelowna Mountain Development Services Ltd. v. Central Okanagan (Regional District)*, 2014 BCCA 369. At para. 17 of that decision, the Court outlined certain fundamental principles applicable to the doctrine of vagueness, including the following:

- In the context of municipal bylaws, the test for assessing vagueness asks whether a reasonably intelligent person would be unable to determine the meaning of the bylaw and govern his or her actions accordingly. Mere difficulty in the interpretation of the bylaw is not sufficient: *Dhillon v. Richmond (Mun.)* (1987), 16 B.C.L.R. (2d) 80 (S.C.) at 85-86; *Okanagan Land Development Corp. v. Vernon (City)*, 2012 BCCA 332] at para. 50.

- A municipal bylaw is not necessarily void for uncertainty merely because its terms may be susceptible to more than one interpretation: *The City of Montreal v. Morgan*, (1920), 60 S.C.R. 393 at 404.

- Municipal bylaws are to be interpreted benevolently and supported if possible: *The City of Montreal* at 404; *Okanagan Land Development Corp.* at para. 50.

[24] The parties have made submissions with respect to the standard of review applicable to the issue of vagueness. The petitioners say that the standard is one of correctness, while the City says that it is entitled to deference on this issue.

- [25] In my view, the test for vagueness, which requires a benevolent interpretation of a bylaw, and militates against a finding that a bylaw is void, is a complete test. Because the threshold for vagueness is high, there is no room for residual deference to the lawmaker. The question is simply whether a reasonably intelligent person (or, as importantly, a court) can make some sense of the bylaw. If the answer to that question is "no", then no degree of deference will save it.
- [26] The petitioners assert that "a reasonably intelligent person cannot sensibly answer whether the words of the Bylaw include or exclude statutory rights under ss. 49(3)-(5) of the [Residential Tenancy Act]. These are opposite meanings in a nebulous law." With all due respect to the petitioners, I am unable to see any difficulty at all in squaring the language of the Bylaw with the various provisions of the Residential Tenancy Act that have been referred to.
- [27] Sections 5, 6 and 16 of the Residential Tenancy Act are clearly aimed at preventing landlords and tenants from entering into private arrangements that purport to oust provisions of the statute, and deal with the enforceability of statutory rights, obligations and prohibitions as "between a landlord and tenant".
- [28] The Residential Tenancy Act is a statute that comprehensively governs relations between residential landlords and tenants. It does not, however, purport to comprehensively govern rights to land use, nor does it prevent governmental regulation (including municipal regulation) from affecting the rights of landlords (or, indeed, of tenants).
- [29] Sections 49(3), (4), and (5) govern rights between a landlord and a tenant in respect to the termination of a tenancy. Where a landlord (or a purchaser or close relative) is going to move into the unit, they allow the tenancy to be terminated by notice.
- [30] The sections do not determine whether a landlord has the legal right to occupy the unit. They simply govern the manner in which the landlord/tenant relationship is to be terminated when the landlord (or a purchaser or close family member) has a "good faith intention" to occupy the residential unit.
- [31] There are many situations in which laws will prevent a landlord from occupying premises. A person may, for example, be unable to reside in Canada as a result of their lack of immigration status; or they may be confined to a prison or mental hospital. They may be subject to a probation order that restricts where they live, or to a civil injunction prohibiting them from being present in the area of the residential unit. An order respecting family protection may have been made under s. 183 of the Family Law Act, S.B.C. 2011, c. 25. It is obvious that nothing in the Residential Tenancy Act purports to allow a landlord to occupy premises in such circumstances.

- [32] It is equally possible that a municipal zoning bylaw will prevent a landlord from being able to occupy a unit. There can be no "good faith intention" to occupy a unit where either the law or other circumstances prevent such occupation. Without a "good faith intention" to occupy the premises, ss. 49(3)-(5) are simply inapplicable to the situation.
- [33] There is a more fundamental problem with the petitioners' reliance of s. 49 of the Residential Tenancy Act to establish a landlord's right to personally occupy premises. The Residential Tenancy Act, in governing relations between landlords and tenants, does not establish the right of a landlord to occupy premises; rather it serves to restrict that right. A landlord is prohibited from terminating a tenancy except in accordance with the statute.
- [34] The right of a landlord to occupy premises derives from common law incidents of ownership, not from the Residential Tenancy Act. The statute does not augment the right, but, rather, restricts it.
- [35] In the case before us, the Bylaw does not directly affect the relations between the landlord and the tenant. Rather, it restricts the manner in which the landlord is entitled to use land. That is not the subject of the Residential Tenancy Act.
- [36] Even if the Bylaw did impinge on the relations between the landlord and the tenant, however, the appellants' case would not be established. The Residential Tenancy Act places some restrictions on landlords' abilities to evict tenants, but that does not mean that a municipal bylaw augmenting the restrictions must be taken to be inimical to the provisions of the Residential Tenancy Act. In 1193652 B.C. Ltd., at para. 79, for example, this Court applied the subsidiarity principle to hold that a municipal bylaw dealing with renovations was "complementary legislation" to the Residential Tenancy Act in an area of jurisdictional overlap. A bylaw that augments the restrictions of the Residential Tenancy Act, then, will not necessarily give rise to a conflict with the statute.
- [37] In this case, I am not persuaded that anything in the impugned Bylaw contradicts the provisions of the Residential Tenancy Act, nor does there appear to be any difficulty in interpreting the Bylaw. I have no doubt that a "reasonably intelligent person would be [able] to determine the meaning of the bylaw and govern his or her actions accordingly".
- [38] I am unable to give effect to the petitioners' contention that the Bylaw is contradictory or confusing.

Is the Bylaw Ultra Vires the Municipality?

- [39] A second argument raised by the petitioners is that the Bylaw is ultra vires the enabling provisions of the Local Government Act. In respect of this argument, it is clear that the municipality is entitled to deference. If the municipality's implicit reasons for concluding that it had authority to enact the Bylaw meet the test of reasonableness, then the Court must accept that reasoning.

- [40] This Court considered the appropriate approach to this kind of case in 1120732 B.C. Ltd. v. Whistler (Resort Municipality), 2020 BCCA 101:
- [49] Reasonableness review takes a different shape in cases where reasons are not required and have not been given: Vavilov [Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65] at para. 76. Vavilov clarified that, in such cases, the record as a whole may serve as reasons. When reviewing a municipal bylaw, the reviewing court is instructed to look to the "debate, deliberations, and the statements of policy that give rise to the bylaw": para. 137, citing Catalyst [Catalyst Paper Corp. v. North Cowichan (District), 2012 SCC 2] at para. 29.
- [50] In the present case, there were no reasons given by the Municipality's council as to why it concluded it had the statutory authority to enact the Zoning Amendment Bylaw. The record discloses the reasons the council wanted to enact the Zoning Amendment Bylaw. It also discloses that the council believed that it had the requisite zoning power. However, the record does not indicate the reasons why the council held that belief.
- [51] In such a case, the reviewing court must determine whether the decision is reasonable by "examin[ing] the decision in light of the relevant constraints on the decision maker": Vavilov at para. 138.
- [41] Here, the provision of the Local Government Act is clearly intended to give the municipality the ability to preserve the availability of rental accommodations within its boundaries, and, in doing so, to limit the ability of landowners to use property for other than residential rental tenure. It cannot be contended that the City's definition of "residential rental tenure" is an unreasonable one.
- [42] The petitioners' argument with respect to vires mirrors their argument on vagueness. They contend that the provisions of the Local Government Act "do not expressly confer a power on the municipality to interfere with the existing statutory rights under ss. 49(3)-(5) of the Residential Tenancy Act".
- [43] The difficulty with this argument, like the difficulty with the vagueness argument, is that it presumes that the Residential Tenancy Act establishes the right of a landlord to occupy residential premises. It does no such thing. Rather, the Act restricts the common law rights of the landlord to occupy premises, and establishes procedures and conditions that must be followed before those rights can be exercised. Nothing in the Residential Tenancy Act suggests that a municipality is unable, when exercising delegated powers under other legislation, to place additional restrictions or prohibitions on landlords' rights to occupy residential premises.
- [44] On the vires issue, the petitioners also refer to Dikranian v. Quebec (Attorney General), 2005 SCC 73 for the proposition that legislation must not be interpreted to allow interference with vested rights unless it is unequivocally intended to do so.

- [45] There are difficulties with this argument. First, it is not clear what "vested rights" the petitioners assert here. None of the appellants have taken any steps to assume occupancy of their rental units. Except for Geordie Holdings Ltd., the petitioners are ordinary corporate landlords who had no ability to occupy premises for residential purposes. While we are told that Geordie Holdings Ltd. is a "family corporation" under the Residential Tenancy Act, there is no suggestion that it had made any arrangements to have a close family member of a shareholder move into a unit. It does not appear, in this case, then, that any vested rights are in issue. Rather, these are properties that have been rented out for decades, with no steps taken by the landlords to "vest" themselves with the right to personally occupy the apartments.
- [46] The petitioners point out that in *Dikranian*, contractual rights were in issue -- specifically students' rights to rely on contractual loan provisions between themselves and their banks. The students successfully argued that changes in Federal Legislation should not, in the absence of a clear indication to the contrary, be found to interfere with those contractual relations.
- [47] By analogy, the petitioners argue that the enabling provisions of the Local Government Act should not be interpreted to allow the City to make changes to existing tenancy agreements. The analogy is not an apt one. Nothing in the Bylaw serves to change relations between landlords and tenants. What is changed is the right of landlords to occupy premises in the municipality, not their rights vis-à-vis their tenants.
- [48] I fully accept that, as a matter of statutory interpretation, there remains a presumption that, in the absence of a clear indication to the contrary, legislation should not be interpreted as interfering with property rights. The Bylaw uncontrovertibly does interfere with the rights of landlords to use their properties in certain ways. However, the enabling legislation clearly indicates an intention to allow such interference. Zoning bylaws, by their very nature, are designed to restrict the uses to which property can be put. In the case of the Bylaw, the references to "form of tenure" and to "residential rental tenure" in the enabling provisions of the Local Government Act indicate that municipalities are intended to have the power to restrict the ability of owners to occupy property themselves rather than renting it out. It was not unreasonable for the City to interpret the Local Government Act as furnishing it with authority to enact the Bylaw.
- [49] The provisions of the Local Government Act dealing with non-conforming tenures provide a clear indication of the extent to which the legislation intends to preserve existing property rights. Section 535.1 of the Local Government Act is as follows:
- 535.1(1) If, at the time a zoning bylaw that limits the form of tenure to residential rental tenure is adopted, a housing unit to which the bylaw applies has a form of tenure other than residential rental tenure, the other form of tenure continues as a non-conforming form of tenure.

- (2) If, at the time a zoning bylaw that limits the form of tenure to residential rental tenure is adopted, a local government has issued a building permit or a development permit in relation to a building that will contain housing units to which the bylaw would otherwise apply, and the housing units have or may have a form of tenure other than residential rental tenure, the other form of tenure continues as a non-conforming form of tenure.

535.3 [A] change of owners, tenants or occupants of a housing unit does not, by reason only of the change, affect the authority to continue a non-conforming form of tenure of the housing unit.

- [50] These provisions appear to protect the rights of landlords to use property designated as residential rental tenure for other purposes only to the extent that they have made arrangements for those uses prior to the adoption of the Bylaw.
- [51] The petitioners contend that a tenancy existing at the time a bylaw is adopted is, itself, a "non-conforming form of tenure". They say that if that interpretation is correct, then any change of tenants, owners, or occupants thereafter will not limit the ability of a landlord to continue to use the property for non-conforming forms of tenure. I am not persuaded that property that is subject to a residential tenancy when a bylaw is enacted can in any sense be said to be "non-conforming". Section 535.1 is not engaged, because the housing unit does not have "a form of tenure other than residential rental tenure".
- [52] The petitioners have failed to show that the City interpreted the enabling legislation unreasonably in finding that it gave it the power to designate residential properties within the municipality to be "residential rental tenure" properties for zoning purposes. Such an interpretation is natural and reasonable; indeed, it is difficult to interpret the legislation in any other way.

Does the Bylaw Conflict with Provincial Enactments?

- [53] Finally, the petitioners rely on section 10 of the Community Charter, S.B.C. 2003, c. 26:

10 (1) A provision of a municipal bylaw has no effect if it is inconsistent with a Provincial enactment.

- (2) For the purposes of subsection (1), unless otherwise provided, a municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not, by this, contravene the other enactment.
- [54] Again, the petitioners contend that the Bylaw is inconsistent with ss. 49(3)-(5) of the Residential Tenancy Act.
- [55] It is well-established that a finding of "inconsistency" will be available only where there is an operational inconsistency between a municipal bylaw and legislation of a senior level of government: 114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town), 2001 SCC 40.

[56] For reasons already expressed, I am not persuaded that anything in the Bylaw is inconsistent with the cited sections of the Residential Tenancy Act. The Spraytech test, accordingly is not met. I would reject this ground of appeal.

Disposition

[57] I would dismiss the appeal. Nothing in the Bylaw in any way contravenes or is inconsistent with the provisions of the Residential Tenancies Act, nor was it unreasonable for the City of New Westminster to consider the Local Government Act to authorize its adoption. The chambers judge correctly dismissed the petition.

"The Honourable Mr. Justice Groberman"

I AGREE:

"The Honourable Justice Griffin"

I AGREE:

"The Honourable Mr. Justice Butler"

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