

CANADA / JUDGMENT

Volpe v. Stojkovich

2025 BCSC 1220

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1220 Volpe v. Stojkovich

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Volpe v. Stojkovich,

2025 BCSC 1220

Date: 20250630

Docket: S251704

Registry: Vancouver

In the Matter of the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241

Between:

Antonia Volpe

Petitioner

And

Samantha Stojkovich and Edward Pimley

Respondents

Before: The Honourable Justice Maisonville

On judicial review from: A decision of an arbitrator of the Residential Tenancy Branch dated January 6, 2025 (Residential Tenancy Branch File No.: 910173504)

Reasons for Judgment

Counsel for the Petitioner:

C. Hartnett

Counsel for the Respondents:

P.J. Dougan

Place and Date of Hearing:

Vancouver, B.C.

June 9, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 30, 2025

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Introduction

- [1] The petitioner landlord seeks to set aside a decision of an arbitrator of the Residential Tenancy Branch ("RTB") dated January 6, 2025 (the "Decision") based on inadequate reasons given by the arbitrator for the Decision arrived at, which disallows the landlord's claim against the former respondent tenants for damage to the premises he claims were caused by them. Instead of allowing the landlord's claim, the arbitrator directed the landlord to compensate the tenants with a monetary order in the amount of \$2,990.82. The landlord was awarded \$574.63 for cleaning the carpet of the rental unit.

- [2] Following the move-out inspection, the landlord had filed an application for dispute resolution under the Residential Tenancy Act, S.B.C. 2002, c. 78 [RTA] for, among other things, a monetary order for damage to the rental unit and common areas under ss. 32 and 67 of the RTA. The landlord, as well, sought an authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order request under s. 38 of the RTA.
- [3] The landlord obtained quotes for repairs to the property but had not conducted repairs at the time of the hearing before the arbitrator.
- [4] The parties agree that the standard of review in this matter is that of patent unreasonableness.

Law

- [5] The role of the court on judicial review is to ensure that a statutory decision-maker or tribunal acted within the authority bestowed upon it by the Legislature: *Senft v. Society For Christian Care of the Elderly*, 2022 BCSC 744, at para. 25. The role of the court in such cases is not to hear new evidence or argument or to decide or re-decide the case; it is simply to ensure that the tribunal 1) acted within its jurisdiction by deciding what it was directed to decide by its constituent legislation; and 2) did not lose jurisdiction by failing to provide a fair hearing or by rendering a decision outside the degree of deference owed by the reviewing court: *Senft* at para. 25.
- [6] For decisions of a RTB director as if the director were a tribunal (i.e. an arbitrator), the standard of review is patent unreasonableness to dispute resolution proceedings pursuant to s. 5.1 of the RTA and s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 [ATA]. The RTA's privative clause, found at s. 84.1. Section 58(3) of the ATA, defines "patently unreasonable" with respect to a discretionary decision. It does not define patent unreasonableness as it relates to a finding of fact or law, but an explanation can be found in case law: *Yee v. Monte*, 2016 BCCA 256 at paras. 21-22; *Hollyburn Properties Limited v. Staehli*, 2022 BCSC 28 at paras. 24-26 [Hollyburn]; *Li v. British Columbia (Residential Tenancy Director)*, 2024 BCCA 202 at paras. 30-32.
- [7] Arbitrators in a residential tenancy context are not required to meet the standard for adequacy of reasons applied to a court. This was discussed in *Ganitano v. Yeung*, 2016 BCSC 2227 at para. 24:
- [24] In assessing the adequacy of reasons, context is relevant. In *Christiansen v. Harwood*, 2015 BCSC 1440, Fisher J., at para. 20, held that in the context of residential tenancy disputes the standard of adequacy is lowered because the governing legal regime is relatively straightforward. The Court reiterated that the overriding test for adequacy is whether a reviewing court is able to understand how and why the decision was made.

- [8] The leading case on adequacy of reasons with respect to a RTB's arbitrator's reasons for decision is *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232. In that decision, Justice Davies set out what an RTB's arbitrator's reasons for decision must contain in order to be adequate. The reasons must:
- a) set out the legal test to be met by the party advancing its claim;
 - b) set out the adjudicator's findings of fact and the evidence they relied on to reach those findings; and
 - c) apply those findings of fact of the test to be met in reaching a conclusion that will allow the parties and others (including a reviewing court) to understand how and why the adjudicator reached that decision.

Laverdure at para. 35.

- [9] The *Laverdure* test has been consistently applied in subsequent decisions considering the adequacy of RTB's arbitrator's decisions: *Shahcheraghi v. Divangahi*, 2021 BCSC 1576 at para. 36.
- [10] In *Shahcheraghi*, the court remitted a decision to the RTB for insufficiency of reasons, stating:
- [36] In my view, the Arbitrator's reasons do not meet the minimum standard articulated in *Laverdure*, and which has consistently been applied in subsequent decisions of this Court I conclude that the Arbitrator's findings of fact on the critical issues do not allow the parties and the reviewing court to understand how and why the decision was reached, or why seemingly relevant evidence of the Landlord was ignored or rejected.
- [11] Simply put, the question is whether a reviewing court can understand how and why the decision was made.
- [12] The RTB director is not necessarily required to address arguments that are legally irrelevant or may do so implicitly. In *Ganitano*, Justice Griffin, as she then was, held:
- [33] Given that the Officer's Decision took place in a context that the authorities have recognized sets a lower threshold for reasons, I hold that the Officer did not have to go one step further and indicate that she rejected the Tenant's explanation or found it legally irrelevant. As I will address below, the Officer had a valid basis for rejecting the Tenant's argument that the Landlord had led her to believe he would not proceed with the eviction. That the Officer rejected this argument is implicit in the result.
- [13] In *Laverdure*, at paras. 30 and 31, the court confirmed that patent unreasonableness is the standard of review when considering whether reasons are adequate.

- [14] In *Hollyburn*, Justice Brongers considered the standard of review of patent unreasonableness as helpfully summarized by Justice D. MacDonald in *Kong v. Lee*, 2021 BCSC 606 at paras. 58-60, 62-63, and 65. He helpfully summarized the principles highlighted in that decision as follows:
- 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): para. 58;
 - 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): para. 59;
 - 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): para. 60;
 - d) it is 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): para. 62;
 - 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 (*[Canada (Minister of Citizenship and Immigration v.) Vavilov*, 2019 SCC 65]): para. 63; 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): para. 65.

These principles are helpful in the present case.

The Decision

- [15] It is important, given the claim advanced and to properly review the decision of the arbitrator in these circumstances, to set out the entirety of the Decision of the arbitrator, that the Decision dated January 6, 2025:

Background and Evidence

Both parties submitted extensive documentation which I thoroughly reviewed and considered. I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on November 1, 2020, with a monthly rent of \$3,750.37, due on the first day of the month, with a security deposit in the amount of \$1,750.00 and a pet damage deposit in the amount of \$1,750.00.

Counsel for the Landlord submits that the Tenants caused significant damage to the home and that the Tenants should pay for the cost of repairs and cleaning.

The Landlord is applying for the following:

1.

Replace Hardwood Floor

\$21,837.04

2.

Kitchen Tiles

750.00

3.

Baseboard Heater

50.00

4.

Hot Water Tank

900.00

5.

Paint Exterior Doors

725.00

6.

Vinyl Decking

2,100.00

7.

Cabinet Handles

138.88

8.

Carpet Cleaning

186.90

9.

Suite Cleaning

248.85

10.

Blind Cleaning

297.34

11.

Ceramic Cooktop

753.37

12.

Estimated Labour and GST for Repairs only, not cleaning

1,444.63

13.

Filing fee

100

Total

\$29,532.01

[The landlord] testified that his understanding was that the home was renovated in 2010 or 2011. [The landlord] testified that he purchased the home in 2019. [The landlord] testified that a written condition inspection report was conducted at move in and move out with the Tenants participating in both inspections. [The landlord] testified that the cleaning of the carpet, suite and blinds have been done but none of the repairs. [The landlord] testified that the Tenants caused extreme damage to the hardwood floor near the entrance way and kitchen.

[The landlord] testified that the Tenants did considerable damage to the cooktop, kitchen cabinets, a baseboard, kitchen handles, two exterior doors by using poor quality paint, vinyl decking, floor tiles, and blinds. Counsel submits that the damage far exceeds normal wear and tear. Counsel submits that the Tenants should be held responsible for the claim as submitted.

[The landlord] testified that the carpet was left dirty along with the suite and blinds. [The landlord] testified that there is some blue detergent left all around the hot water tank that would require it to be removed to be cleaned.

[Edward Pimley] testified that he is responsible for the suite cleaning, carpet cleaning and replacement of four kitchen cabinet knobs. [Edward Pimley] disputes the remainder of the Landlords application. [Edward Pimley] submits that the home was built in 1939 and that the renovation was conducted in 2009 as per a Multiple Listing advertisement. [Edward Pimley] submits that even if he was found to be responsible for the damage, which he denies, the items claimed for have exceeded their useful life as per Residential Tenancy Policy Guidelines. [Edward Pimley] testified that the Landlord has not provided sufficient evidence of the actual age of the items claimed.

[Edward Pimley] testified that he was not informed about the damaged cooktop or damaged blinds at the inspection and only became aware of it as part of the Landlords application. [Edward Pimley] testified that the photos used in the Landlords application are those from the Multiple Listing advertisement which were from 2019 and not the actual condition of the unit at move in. [Edward Pimley] testified that he returned the keys on October 1, 2024 but an inspection wasn't done until October 15, 2024. [Edward Pimley] submits that there were gaps of time where he didn't have possession of the unit, and that damage could have been done after the tenancy ended and before the inspection was done.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Section 35 of the [RTA] establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the [RTA] states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

To be awarded compensation for a breach of the [RTA], the landlord must prove:

- the tenant has failed to comply with the [RTA], regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

As the Tenant took responsibility for the suite cleaning, carpet cleaning and replacement of cabinet knobs, I find that the Landlord is entitled to \$\$574.63 [sic].

For the remainder of the items claimed by the Landlord, I dismiss those claims without leave to reapply for the following reasons. The Landlord was unable to provide sufficient evidence to show the actual age of items claimed and whether those items were still within the useful life as determined by Residential Tenancy Policy Guideline 40 except for the stove; for which he did not provide sufficient evidence of damage. Secondly, the Landlord has not conducted any of the work and therefore not provided sufficient evidence of actual out of pocket costs as required and noted above.

Thirdly, the Landlord has not provided sufficient evidence of any loss as he has chosen to keep the unit empty and has not attempted to mitigate losses. Finally, the Landlord has not provided sufficient evidence to show that the Tenants were reckless or negligent. For the above reasons, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the [RTA] is dismissed, without leave to reapply.

[Emphasis in original.]

[16] That was the entirety of the decision and the evidence noted by the arbitrator.

The Hearing before the arbitrator

[17] At the hearing before the arbitrator, each of the landlord and the tenants called an expert witness in respect of the damage to the rental property and its hardwood floors in particular.

The Landlord's Evidence

[18] The landlord had purchased the home in 2019. The home was built in 1939 and it was renovated in 2009.

[19] The landlord had, in accordance with the form provided, filled out a chart of the damages that were being sought.

[20] The landlord had called a flooring estimator/project manager, Brian Lee, of Ocean Floor, to testify as an expert in hardwood flooring. Mr. Lee has dealt with flooring installation and restoration, including water-damaged hardwood flooring, which was the alleged cause of the damage to the floor of the rental unit. Mr. Lee has experience dealing with flood and fire claims with insurance companies. He attended at the rental unit and gave evidence that the floor in the kitchen area had "severe water damage" and would need to be restored. It was in his view "pretty typical signs of hardwood water damage" and was not "ordinary wear and tear".

- [21] Mr. Lee gave evidence about precautions needed for someone who is in the home with a hardwood floor at the entry. If there is water on the hardwood floor, it is recommended that it be wiped up immediately and what he observed did not accord with that. If water is not being wiped up in time, it is going to "create the same kind of damage", even if it is to a new floor.
- [22] Mr. Lee noted that "flooring can last 10, 20 years, or can last you 100 years, depending on how it is cared for and maintained". Water damage impacted on the life of the floor.
- [23] The photos of the flooring before the water damage was that it was not at the end of its life. It still had its shiny gloss on top of it, meaning it still has its finish.
- [24] Mr. Lee also noted that water damage reduces the number of times you can refinish the floor. It was clarified that the damage to the floors, which was a softwood being fir, but had a hardwood installed flooring.
- [25] Mr. Lee agreed that he could not indicate whether the water damage happened 20 years ago or two months ago.
- [26] Mr. Lee testified that the water damage required refinishing costs, that the water damage also would cause visible damage and filler repair, and even after repair, that it may reduce the hardwood floor's useful life.
- [27] The cost of replacement of the floors in evidence was \$21,387.04. There was an alternate repair estimate in the amount of \$6,458.03, which would be a sand and finish but the damage would still be visually noticeable. As well, this alternate repair method reduces the life of the floor. The landlord took the position that approximately \$10,000 was a fair value for the loss suffered from that.
- [28] The landlord's materials before the arbitrator contain "before and after" photographs, depicting extensive damage to the hardwood floors near the entry; damage to the exterior entry; damage to the stove; cracked tile flooring; damaged blinds; damaged heating baseboards; damage to the vinyl decking and the exterior of the doors with Velcro stripping on it.
- [29] The landlord went in detail through the damages starting with the hardwood floor at the entry. Photographs of both "before and after" were tendered.
- [30] On the deck, the landlord detailed the damage that appeared to be some kind of burning or paint. Again, there were photographs taken of that.
- [31] In relation to the stove, which had been purchased during the tenancy by the landlord, the cooktop was damaged and not cleaned. There was an invoice for the purchase of the stove in the landlord's revised monetary worksheet, which is a form provided by the RTB. The only way to repair the stove was in evidence. It needs a new cooktop to repair the damage. That invoice for the replacement cost was in the materials before the arbitrator in the revised monetary worksheet document, as well as an installation cost of \$500. The landlord also

testified about the cleanup for the stove which was depicted in the photos provided. The fact that it had not been cleaned was evident from the photographs taken. An estimate was in evidence for \$237 plus tax.

- [32] Four tile panels in the kitchen were damaged during the tenancy. They had been cracked.
- [33] The kitchen cabinets' handles were broken off and re-glued and there were cracks in them. There was damage to the kitchen cabinets, showing a significant amount of wear in a short period of time. Photographs of the kitchen cabinet damage were before the arbitrator which depicted the condition they were in at the time the tenants moved in. As well, there were other photographs showing significant wear and tear of the lower kitchen cabinets. The arbitrator was also provided with the estimated repair cost of the kitchen blinds and installation fee.
- [34] There was a baseboard heater that was detached from the wall and the cost of the repair was recorded in the monetary worksheet before the arbitrator.
- [35] The landlord described in detail the two exterior doors that were repainted by the tenants. While the tenants had been granted permission to paint the exterior of the doors, they painted those doors with paint for interior use. The hardware was not removed at the time of the paint. There was paint on the hardware, paint on the glass of the doors, and a gap in the paint. The paint is failing. Consequently, the landlord indicated the doors need to be repainted. Velcro stripping was installed on the doors using glue, likely to be used for the screens which had to be removed.
- [36] As well, there was some kind of blue product spilt under the hot water tank.
- [37] There were damaged kitchen blinds, which were also not clean.
- [38] The stairway carpet in the home was not cleaned.
- [39] At the hearing before the arbitrator, the landlord provided steam cleaning estimates for the carpet and for the blinds.
- [40] During the course of the hearing, the arbitrator asked whether the tenants were agreeable to pay for certain cleaning and the tenants said that they agreed they were to certain of the cleaning costs, including cleaning of the carpet, but not the blinds. As noted earlier in these reasons, that was the only amount (\$574.63) allowed by the arbitrator to the landlord.

The Tenants' Evidence

- [41] One of the tenants, Edward Pimley, gave evidence that the various photographs the landlord used for "before" pictures were from the MLS listing in 2009; Mr. Pimley said that the conditions of the flooring depicted in the photographs were not at the state when they moved in and asserted that the photographs were taken from sometime before their tenancy.

- [42] The tenants also had a flooring contractor, Mr. Adam Stojkovich, from a firm by the name Legacy, to give evidence at the hearing before the arbitrator. Mr. Stojkovich is the brother of Mr. Pimley's co-tenant, Samantha Stojkovich.
- [43] Mr. Stojkovich gave expert evidence on a number of the issues the tenants argued should be considered.
- [44] With respect to the fir flooring, Mr. Stojkovich indicated simply that softwood flooring is not "usually recommended anymore, especially fir, just because fir has a tendency to mark-up easily and absorb any kind of impact". He detailed his belief that the quote to repair the flooring as provided by the landlord was high.
- [45] With respect to the vinyl decking, the tenants said that there is no photograph of it from the time before they moved in and, accordingly, they cannot explain for the damage. Mr. Stojkovich opined that because the surface's integrity is still intact, it does not leak and is therefore fine as is.
- [46] The tenants argued that the broken floor tile were actually "settling cracks". Mr. Stojkovich gave evidence that what was visible was stress cracking and not some kind of impact damage.
- [47] In terms of the hot water tank, Mr. Pimley did not believe it was necessary for him to take the water tank out to clean under it as there should have been a drain under there. Mr. Stojkovich indicated that new hot water tanks require drains to be present. He also indicated that one possibility was to just lift it and clean underneath it.
- [48] With respect to the damage to the stove, the tenants stated that the landlord had not raised the issue in the inspection report, although that report reveals that the landlord had written "Damaged" after a description of the cleaning required.
- [49] Respecting the cabinets and their handles, Mr. Pimley indicated they "fell off just randomly" and it was his position that the age of these cabinets goes beyond the actual useful age of household settings, according to the RTB website. However, during the hearing, the tenants agreed to replace the handles.
- [50] With respect to the damage to the blinds, they stated that the blinds were older than ten years and were therefore already past their useful life.
- [51] Respecting to the paint on the exterior of the doors, the tenants indicated that this was the first time the landlord raised issues with it although the landlord had been in and out of the house multiple times prior to them moving out.

Discussion - Adequacy of Reasons

[52] The question before the Court is whether the arbitrator's reasons sufficiently allow the parties to be able to know why the tribunal ruled as it did. The "reasons first" approach is one of the fundamental expectations of a court reviewing an adjudicator's written decision: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 84.

[53] The arbitrator set out the legal test for a landlord to be awarded a compensation for breach of the RTA as follows:

- the tenant has failed to comply with the act, regulation or tenancy agreement;
- the loss or damage has resulted from this failure to comply;
- the amount of or value of the damage or loss; and
- the landlord acted reasonably to minimize that damage or loss

(the "Compensation test")

[54] The "legal test" in a dispute resolution proceeding may often be straightforward and expressed in plain language terms: *Canon v. Short*, 2015 BCSC 830 at para. 43.

[55] While the arbitrator did not specify the relevant section of the act, it is presumed to be s. 67 of the RTA as the landlord is claiming under that section and the language of the Compensation test provided by the arbitrator mirrors s. 67 of the RTA, which sets out:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Emphasis added.]

[56] On the central issue of whether the landlord suffered damage or loss due to the tenant's non-compliance with the RTA, the arbitrator did not mention findings of fact or set out the evidence he relied upon to reach those findings.

[57] Nor did the arbitrator engage in applying findings of fact to the Compensation test. His reasons, on the four substantial contested elements of the Compensation test, do not permit a reviewing court or the parties to understand the rationale for his conclusion. In his analysis section, the arbitrator merely stated that the landlord had provided insufficient evidence and, therefore, failed to meet the elements of the Compensation test.

- [58] It is not sufficient to simply recite submissions and evidence and then state a conclusion without any discussion of how that conclusion was arrived at or any reasoning, however brief: *Collard v. British Columbia (Residential Tenancy Act Dispute Resolution Officer)*, 2011 BCSC 136 at para. 13. In *Laverdure*, the court set out that the arbitrator is expected to provide reasons for rejecting a party's evidence if it is not relied upon:
- [44] After considering the entirety of those reasons, the submissions of counsel and a review of the underlying evidence upon which the disputes in issue arose, I am satisfied that the Dispute Resolution Officer's reasons are so woefully inadequate that they must be set aside as patently unreasonable and that a new hearing before a different adjudicator must be ordered.
- [45] I have reached that conclusion for the following reasons:
- []
- 9) Ms. Laverdure was entitled to know not only what part of her evidence was rejected, but why. To rule otherwise would be to countenance unreviewable arbitrariness in decision making by administrative tribunals.
- [59] None of the evidence relevant to the landlord's claim was reviewed by the arbitrator. The competing expert opinion evidence was not reviewed, discussed, or analyzed. The quotes for damages were not mentioned. The landlord's evidence on negligence was never referred to. There is no articulation of a path of reasoning that leads to the arbitrator's conclusion.
- [60] In these circumstances, I find that the arbitrator's Decision on this basis is patently unreasonable. The reasons are devoid of an analysis that clarifies how the final conclusion was reached.
- [61] Further, on the issue of mitigation, which is the fourth element of the Compensation test, the arbitrator misapplied the principle of mitigation in these circumstances. The arbitrator set out that "the landlord has not provided sufficient evidence of any loss as he has chosen to keep the unit empty and has not attempted to mitigate losses". However, in the matter before the arbitrator, no claim for loss of rent was being advanced by the landlord.
- [62] Insofar as that reasoning may have been applicable to repairs (which is uncertain in any event given the lack of reasons), there is no requirement that the landlord perform the repairs before making a claim as the claim can be brought on estimates.
- [63] Here, the tenants retained possession of the rental unit until October 1, 2024. After they vacated the rental unit, the landlord promptly sought out compensation "for labour to repair the floors" as well as "for material" and left the damaged floor in the condition as the tenants have left it in good faith to enable the RTB to inspect the damage.

- [64] Instead of focusing on indicating that the landlord failed to mitigate by renting out the suite, the arbitrator could have focused on whether the delay in repairing the damaged floor (which makes up the bulk of the claim being advanced by the landlord in any way) demonstrated a failure to mitigate.
- [65] The arbitrator simply stated that the landlord has chosen to keep the rental unit empty and that was a failure of the landlord to mitigate. No claim was being made by the landlord for loss of rental income, however. The arbitrator's focus could have been on whether the delay in repairing the damaged floor has caused the damage to worsen. There was no evidence upon which the arbitrator could draw that conclusion and, instead, it appears that the arbitrator was confused about the claim being that the landlord had not been receiving rental income.
- [66] The arbitrator stated in the background and evidence sections of the Decision that Mr. Pimley testified that he returned the keys of the rental unit to the landlord on October 1, 2024 but an inspection was not done until October 15, 2024. Mr. Pimley indicated there are gaps of time when he did not have possession of the unit and that that damage could have been done after their tenancy ended and before the inspection was done.
- [67] However, the arbitrator misapprehended the evidence as that was not consistent with the evidence before him according to the transcript that was before the Court. In the transcript, Mr. Pimley stated:
- [] and when we left, the damage to the blind was not there, as we know. So we've done - it could have been done in that timeframe. No one was in the house from the September 1 until the 30th. And then - - we handed the keys back on October 1, but the actual inspection wasn't completed until October 15. So that falls with the - - same with the cleaning of the blinds. So we clean them. So it could have just been just build - up of dust settling. We're not sure. We also don't have any photos from - - evidence from the actual landlord to be able to understand what that might be from it all.
- [68] It appears that there were no gaps of time in terms of the possession of the rental unit until October 1, 2024. The tenants had exclusive possession until that time. By October 15, 2024, there was a build-up of dust. Instead, the arbitrator appeared to be accepting the tenants' submission regarding vacant possession from September 1, 2024 to October 1, 2024 (which was related to dust and damage on the blinds issue only), and based on it to conclude that the water damage to the flooring could have been connected to the vacant possession.
- [69] In argument before the Court, the tenants indicated that perhaps what the arbitrator had in mind was the type of analysis conducted by Justice Gerow in *Heuser v. Carnovale*, 2016 BCSC 2620:
- [47] As set out in *Kates v. Hall*, [1991] 53 B.C.L.R. (2d) 322, the appropriate award of damages in trespass is the amount necessary to compensate the plaintiff for remedial work a reasonable person would have incurred to address the loss and to compensate fairly for the loss of use

of enjoyment of the land to the extent that the remedial work does not fully replace the loss. In determining what is reasonable, the diminution in the value of the property as well as the cost of reasonable repairs is considered. The courts will balance the actual benefits to the plaintiff of meticulous reinstatement against the extra costs of the defendants over and above any damages based on the diminution in value of the land. The use to which the injured party has and will put the property is to be considered.

- [48] In *Kates*, the court noted that the plaintiff had taken no steps to restore their property, and that caused the court concern as to whether the plaintiffs were generally interested in restoring their property or whether they were seeking retribution against the defendant. The court noted that in determining the appropriate award a court is concerned with reinstatement, not retribution.
- [70] The tenants submitted that the arbitrator may have been considering this type of principle of law. The difficulty with that argument is that there is no reasoning in the Decision setting that out nor is there any consideration of the expert opinions or any analysis on this point. There is no discussion that would enable the Court to determine whether this is what the arbitrator was indicating.
- [71] The tenants argue that the reasons are not patently unreasonable and that, instead, there is a chain of reasoning. In support of that proposition, the tenants cite *Christiansen v. Harwood*, 2015 BCSC 1440, where Justice Fisher, as she then was, considered the requirement for adequate reasons in the context of the RTA:
- [17] Mr. Christiansen submits that there was no basis for the Arbitrator to reduce the hourly rate he charged for the fence repairs and that he failed to explain the basis on which he decided that \$250 was a reasonable amount, particularly considering the agreed rate of \$100 in the Rental Agreement for cleanup and maintenance.
- [18] On this issue, the Arbitrator concluded that the tenant was responsible for the reasonable cost of the fence repair, subject to a depreciation factor to take into account the age of the fence, which apparently was not disputed by the landlord. The landlord had fixed the fence himself and charged the tenant \$45 per hour for doing so. The Arbitrator did not consider the landlord's charges to be reasonable and found the invoiced sum of \$446 to be inflated. He reduced the amount of the repairs to \$250, and he further reduced this amount to \$85 to take into account depreciation. He did not say why he considered the charges to be unreasonable or the amount inflated.

[]

- [72] In this case, the Arbitrator's reasons explain the basis for the decision by setting out the issues, describing the evidence he considered, and there was evidence before him to support his conclusions. While he ought to have explained why he considered the fence repair cost to be inflated, I do not consider this failure sufficient in itself to justify a finding that his reasons overall were inadequate. I find that the reasons generally do explain how and why the decision was made.
- [73] Unlike the case before Fisher J., however, here, the arbitrator's reasons do not explain the basis for the Decision nor even describe the evidence considered. Particularly, where there were two expert opinions offered, no explanation was offered by the arbitrator for his complete rejection of the landlord's expert opinion.
- [74] The landlord, additionally, argues that there was an error by the arbitrator not considering the quoted repair where he stated: "the landlord has not conducted any of the work and therefore [has] not provide[d] sufficient evidence of actual out-of-pocket costs as required and noted above". However, the landlord had provided an estimate for the damage in the form of various quotes and ways of fixing the damage. There simply was no consideration of this evidence by the arbitrator nor was an explanation was provided as to why the quote was not reasonable or sufficient to assess the damage.
- [75] It may not be necessary for costs to have already been incurred by the landlord in order to receive a compensation order. An appropriate award of damages should be the amount necessary to compensate for remedial work that a reasonable person would incur, at a reasonable rate: Heuser at para. 47. Evidence capable of determining this was before the arbitrator but not considered or discussed in the Decision and simply dismissed without reasons.
- [76] Further, in respect of useful life and age of items, the arbitrator failed to justify why the quote was not sufficient to establish the damage. Nor did the arbitrator assess the ratio of damage to be covered by the tenants. He simply stated:

The landlord was unable to provide sufficient evidence to show the actual age of items claimed and whether those items were still within the useful life as determined by the Residential Tenancy Policy Guideline 40 except for the stove; for which he did not provide sufficient evidence of damage.

- [76] No consideration was given of the language of the Residential Policy Guideline 40, which does not indicate that useful life of the building element and the age of the item are requirements, rather, they are merely factors to be considered in assessing damages. Guideline 40 states: "when applied to damage(s) caused by tenant, the tenant's guests or tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item" Residential Tenancy Policy Guideline 40: Useful Life of Building Elements, Residential Tenancy Branch, (Updated February 5, 2025), (emphasis added).

- [77] Guideline 40 notes that the evidence may be provided in the form of "work orders, invoices, or other documentary evidence".
- [78] Here, the landlord did submit expert evidence to demonstrate a different expected useful life of the hardwood floor. The arbitrator failed to consider the expert evidence of the contractor tendered by the landlord.
- [79] Furthermore, the arbitrator erred by considering only the age of the items. According to Guideline 40, age of the item is not determinative and is merely a factor in considering whether an item still has useful life. Additionally, the fact that the landlord had not conducted any repair work at the time of the hearing does not mean that his claim must fail.
- [80] In summary, I find the arbitrator failed to outline adequate reasons in his Decision.

Conclusion

- [81] I find the arbitrator's Decision was patently unreasonable. On this basis, I order that the Amended Petition is allowed, the Decision is set aside, and the matter be remitted back to the RTB for reconsideration before a different arbitrator.

"Maisonville J."

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