

CANADA / JUDGMENT

Yu v. Carreiro

2025 BCSC 2241

COURT

Supreme Court of British Columbia

DECIDED

14 November 2025

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2025 BCSC 2241 Yu v. Carreiro IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Yu v. Carreiro, 2025 BCSC 2241 Date: 20251114 Docket: S255791 Registry: Vancouver Between: Feng Ying Yu Petitioner And Amber Carreiro Respondent Before: The Honourable Madam W.A. Baker On judicial review from: An order of the Residential Tenancy Branch, dated June 10, 2025 (Carreiro v. Yu, File No. 910196238), Reasons for Judgment Counsel for the Petitioner: K.H.Y. Chen The Respondent, appearing in person: A. Carreiro Place and Date of Hearing: Vancouver, B.C. September 11, 2025 Place and Date of Judgment: Vancouver, B.C. November 14, 2025

- [1] This is a petition brought by the landlord, Feng Ying Yu, seeking to set aside an order of Arbitrator Verdon of the Residential Tenancy Branch ("RTB"), dated June 10, 2025 (the "Merits Decision").
- [2] The respondent tenant, Ms. Carreiro, filed a notice of dispute with the RTB, arguing that the landlord, or their family member, did not occupy the property in accordance with s. 49(5) of the Residential Tenancy Act, S.B.C. 2002, c. 78 (the "RTA"), in accordance with the notice to end tenancy delivered to her. She sought compensation from the landlord pursuant to s. 51(2) of the RTA, representing 12 times the monthly rent she paid for the rental unit.
- [3] In the Merits Decision, Arbitrator Verdon found in favour of the tenant, and awarded her \$25,444.
- [4] On August 1, 2025, the landlord filed this application for judicial review, and on August 2, 2025 the tenant filed her response.
- [5] The Director of the RTB filed a response on August 29, 2025. The Director provided submissions on the relevant standard of review and on the available remedies on a judicial review. What is the Appropriate Standard of Review
- [6] The petition set out a number of grounds alleging the hearing was procedurally unfair. During the course of submissions, I asked the petitioner if in fact the intention was to claim the decision was patently unreasonable, as the grounds appeared to me to be allegations that the decision was patently unreasonable, and did not appear to be procedural fairness grounds. The submissions of the petitioner were ambiguous on this point. I advised that I would consider the grounds on either basis, as appeared appropriate. Having completed my

review, it is clear to me that the basis upon which the petition seeks relief is, in fact, that the decision is patently unreasonable and I proceed on that basis in this decision.

- [7] The appropriate standard of review of an arbitrator's decision under the RTA has been determined many times by this Court, and is grounded in ss. 5.1 and 84.1 of the RTA and s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 [ATA]. Questions of fact, law and discretion are only open to review if such decisions are patently unreasonable: *Campbell v. The Bloom Group*, 2023 BCCA 84 at paras. 11-14.
- [8] Under the ATA, a decision is patently unreasonable if there is no evidence to support the findings, or the reasoning in the decision is clearly irrational or so flawed that no amount of curial deference can justify letting it stand: *Yee v Montie*, 2016 BCCA 256 at para 21-22; *Pacific Newspaper Group Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2014 BCCA 496 at paras. 39-44 (citing *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52). *The Merits Decision*
- [9] The arbitrator found the following key facts:
- a) The tenancy began on March 1, 2021;
 - b) On January 23, 2025 the landlord delivered a four month notice to end tenancy for landlord's use of property, stating the rental unit would be occupied by the landlord's son. The effective date listed on the notice was May 31, 2025; and
 - c) The tenant moved out early, on March 28, 2025.
- [10] The evidence of the landlord was recited by the arbitrator as follows:
- a) The landlord's son moved into the unit on May 9, 2025 and he continues to live there;
 - b) The landlord submitted two utility bills in her son's name: a natural gas bill for the period April 9-28, 2025, and a hydro bill dated April 29, 2025;
 - c) A painter was hired to paint the rental unit so the son could move in. The arrangement was made on April 1, 2025, the work began on April 14, 2025, and the work completed on May 8, 2025; and
 - d) A friend of the landlord confirmed the son moved in after the painting was complete, and she assisted furnishing and moving the son into the unit.
- [11] The tenant's evidence was recounted by the arbitrator as:
- a) The tenant wanted to accommodate the son, and so moved out early;
 - b) The tenant heard from other people that no one moved into the unit after her departure; and
 - c) The tenant saw furniture being moved in around May 27, 2025, consistent with someone moving into the unit.

- [12] The arbitrator rejected the landlord's evidence that the son moved into the unit within a reasonable time after the effective date on the notice. This conclusion was based on the following:
- a) The landlord's son provided limited and vague testimony regarding his move-in date, offering few details about the date, process, or extent of his occupancy;
 - b) The landlord's son's testimony was not supported by any documentary evidence showing his actual presence in the unit. The utility bills cover a period of time before he says he moved in, so do not confirm actual use or occupation during the time he says he was living in the unit;
 - c) The landlord's friend can't be considered wholly independent; and
 - d) No photographs of the furnished unit, delivery receipts, move-in documentation, or witness statements from neighbours were provided.
- [13] I have significant concerns with the reasoning of the arbitrator. Rather than assessing the evidence before him, which included the unchallenged testimony of both the son and the friend, the arbitrator criticized the landlord for not producing additional evidence.
- [14] The arbitrator said the son gave limited and vague testimony. However, having read the transcript of the hearing, the son said he moved in May 9 or 10, 2025. The son explained that he thought he would not be moving in until the end of May and, when the tenant unexpectedly moved out early, he scrambled to get things in place to move in before May 31, 2025. The son testified that he continued to live in the unit, and no challenge was taken to his evidence. Similarly, there was no challenge taken to the friend's evidence, who confirmed that she helped the son move into the rental unit in May 2025. Both the friend and the tenant confirmed that the friend was a friend to both the tenant and the landlord. There is no rational basis for discounting the friend's evidence. I find there was no rational basis in the evidence on the hearing to reject the evidence of the son or the friend.
- [15] In addition, the tenant testified that she believed people moved into the rental unit approximately two weeks before the hearing on June 10, 2025. In other words, people moved into the unit in May 2025, and the tenant offered no testimony or evidence to contradict the landlord's evidence that it was her son who moved into the unit.
- [16] The effective date of the notice to end tenancy was May 31, 2025. It is irrelevant to the calculation of time under s. 51 if the tenant moved out, unilaterally, before the effective date of the notice to end tenancy.
- [17] The hearing was held on June 10, 2025, a mere 10 days after the effective date on the notice. Section 51(2) of the RTA provides that a landlord must pay a tenant an amount 12 times the monthly rent unless two conditions are met. The first condition is that the stated purpose for ending the tenancy was accomplished within a reasonable period of time after the effective date of the notice.

- [18] In the reasons of the arbitrator, the son said he moved in on May 9, 2025 and continued to live in the unit, and the tenant said the move-in happened on May 27, 2025. The son produced utility bills in his own name for the rental unit, for April 2025. There was no evidence before the arbitrator that could support a finding that the son was not living in the rental unit at the time of the hearing on June 10, 2025. Therefore, the only conclusion that can reasonably be drawn from the evidence is that the son moved into the rental unit sometime between May 9 and June 10, 2025 and, on balance, the move in date was likely before the end of May.
- [19] Given the effective date on the notice was May 31, 2025, I find it is clearly irrational for the arbitrator to conclude that a move-in date either before the effective date, or at most 10 days after the effective date, is unreasonable within the meaning of s. 51(2)(a).
- [20] Secondly, s. 51(2) requires the conditions of both (a) and (b) to be met in order for the monetary order to be made. Section 51(2)(b) requires the rental unit to be used for the stated purpose for 12 months. The hearing took place 10 days after the effective date under the notice. Twelve months have not passed and, therefore, the conditions under s. 51(2) cannot be met.
- [21] I find the reasoning in the decision is clearly irrational and so flawed that no amount of curial deference can justify letting it stand.

Conclusion

- [22] In the circumstances of this case, I see no benefit in remitting this matter to the RTB for a new hearing. I find that a dismissal of the tenant's dispute is inevitable as conditions under s. 51(2) cannot be met on the evidence before the arbitrator. As such, I decline to remit this matter to the RTB: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 142.
- [23] The decision of Arbitrator Verdon dated June 10, 2024, is set aside, without leave to reapply.
- [24] I order costs against the respondent, in favour of the petitioner. "W.A. Baker J."

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