

CANADA / JUDGMENT

Zadeh v. Yao

2025 BCSC 2215

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2215 Zadeh v. Yao

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zadeh v. Yao,

2025 BCSC 2215

Date: 20251010

Docket: S246622

Registry: Vancouver

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

Between:

Mohammadsaeid Yazdi Zadeh

Petitioner

And

Zhen Yao

Respondent

Before: The Honourable Mr. Justice Coval

On judicial review from: a Decision of the Residential Tenancy Branch,
dated September 16, 2024, and a Review Consideration Decision,
dated September 19, 2024 (RTB File No. 910166235).

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

A. Ehteshami

S.N. Benary

Counsel for the Respondent:

C. Wong

Place and Date of Hearing:

Vancouver, B.C.

October 2, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 10, 2025

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Introduction

[1] THE COURT: By judicial review, Mr. Zadeh applies to set aside an RTB decision granting his landlord, Mr. Yao, an order for possession of the rental apartment on Howe Street in Vancouver.

- [2] Mr. Zadeh argues that the decision should be set aside as both a breach of natural justice and patently unreasonable. He submits it was obtained without his involvement and by the deliberate omission of key facts about the parties' agreement to suspend rent after the premises suffered water damage rendering it uninhabitable. He wishes the opportunity to argue before the RTB that the landlord's 10-day notice to end the tenancy for non-payment of rent was therefore invalid.
- [3] Mr. Yao does not dispute that a flood occurred in May 2023, which rendered Mr. Zadeh's suite uninhabitable, or that the parties agreed that Mr. Zadeh could withhold rent during the repairs. He submits, however, that the unit was sufficiently repaired by February 2024 that Mr. Zadeh's obligation to pay rent recommenced but he nevertheless refused to pay for the next seven months.
- [4] Mr. Yao submits that the order for possession was validly obtained under the Residential Tenancy Act, S.B.C. 2002, c. 78 [RTA], rules and procedures, and Mr. Zadeh's arguments about non-disclosure of evidence were properly rejected in the RTB review consideration decision.
- [5] In my view, despite Mr. Wong's able submissions, the order for possession should be set aside and the matter returned to the RTB for a new hearing. With all due respect, the order was obtained without procedural fairness because key information was withheld from the adjudicator about the parties' tenancy agreement. Further, the review decision was patently unreasonable in misinterpreting key correspondence between the parties and concluding that the undisclosed evidence was unlikely to have changed the outcome of the initial decision.
- [6] The order for possession is therefore set aside, and the director of the RTB or her delegate is to hold a new hearing to consider whether such an order should be granted in all the circumstances.

Background Facts

- [7] On March 15, 2022, the tenancy commenced at a monthly rent of \$14,000. In all the dealings described below, the landlord was represented by its property manager as agent.
- [8] Mr. Zadeh provided a pre-authorized debit ("PAD") agreement allowing the landlord or his agents to withdraw monthly rent from the account automatically.
- [9] On May 23, 2023, the apartment building was flooded, rendering the main floor of Mr. Zadeh's suite uninhabitable. Mr. Zadeh moved elsewhere, while returning from time to time to use some of his office equipment.
- [10] On May 31, 2023, the parties agreed in writing that Mr. Zadeh could cease paying rent until the repairs were complete, as the landlord was receiving the rental loss income from its insurer. These communications concluded in Mr. Zadeh's text to the agent:

It is great to hear that the owner can receive the rental loss income from the insurance. In that case, I won't be making a payment for the month of incoming month of June until the repairs are completed.

- [11] Later that same day, he texted to confirm that "there will be no rent applied until the repairs are done completely ?". To which the landlord's agent replied "Correct, we will claim the rent from the insurance company".
- [12] From October 2023 to January 2024, the parties disputed whether the tenant's furniture must be removed for repair of the flood damage to the flooring.
- [13] Beginning in December 2023, Mr. Zadeh claimed water damage had caused mould to grow under the flooring which would require repair.
- [14] In January 2024, the landlord's insurer took the position Mr. Zadeh was now regularly residing in the apartment and so ceased paying compensation to the landlord for lost rent. Mr. Zadeh denied he was residing there.
- [15] In January 2024, the landlord took the position that Mr. Zadeh was delaying its repair work by refusing to move his furniture out of the apartment. Mr. Zadeh's position was that the repairs could be done without this step.
- [16] In February 2024, the landlord said rent payments should resume, which Mr. Zadeh opposed. On February 8, the agent wrote "Hi Sid. We are going to charge the rent starting from Feb. just to let you know." Mr. Zadeh responded:

Excuse me? No that is not what we discussed. You said until the repairs are done there's no rent. It is not my fault the repairs did not start last week and are taking this long. You cannot charge me rent in this situation

We are also in February already. It's February 8th

[The Landlord's Agent:]

You never moved out. You didn't pay rent for the past 8 months. If you moved out we could finished the job in the months before December. We don't mind for that but the insurance company knows the situation.

[Mr. Zadeh:]

What do you mean I didn't move out? I had it ready for you guys last minute. You said they wanted rescheduled for February now

I have done nothing but cooperate with you

So do not dare put it on me it's all in writing

I was even the one following up with you guys

So don't tell me I'm doing anything when it's your company and restoration company

And as per our writing agreement until the repairs are fixed, I'm not liable for rent

Don't care between you and your insurance company what you decide

Fix it, and I'll gladly pay the rent

Until it's not fixed and there's mould in apartment - why would I pay rent I have it in writing too from you too that I shouldn't pay rent until repairs are done

When are they planning on starting repairs finally??

[17] From what I was shown in the record, there was little, if any, further communication regarding rent from February to August 2024.

[18] On August 14, 2024, a second flood occurred in the premises through no fault of Mr. Zadeh.

[19] On August 17, 2024, the landlord sent a 10-day notice to end tenancy by registered mail, based on the alleged failure to pay \$103,200 in rent. Under RTA s. 90, documents sent to a tenant's residence by registered mail are deemed received on the fifth day after mailing.

[20] Mr. Zadeh's evidence is that he did not actually receive this notice. His evidence is that he was still not residing in the suite due to the lack of complete repair and mould issue. Thus, he did not dispute the notice or pay the demanded rent within the five-day deadline. The landlord concedes that his agent did not advise Mr. Zadeh he was taking this step or send him an email copy of the notice, though that was their usual means of communication.

[21] On August 23, 2024, the landlord's agent emailed Mr. Zadeh that they needed the premises vacant for a week for urgent repairs from the second flood. There was no mention of the 10-day notice.

[22] On August 29, 2024, Mr. Zadeh's lawyer wrote to the landlord and his agent asking for future communications regarding the tenancy to go through the lawyer, and advising that Mr. Zadeh would be away from September 4 to 18, 2024 for the requisite repairs.

[23] On September 6, 2024, the landlord filed a direct request application for an order for possession based on the 10-day notice to end tenancy: RTA, ss. 46 and 55. Having served a 10-day notice for non-payment of rent, the landlord was entitled to apply for such an order in default of payment without further process. The rules for this direct request process ("DRP") are set out in Residential Tenancy Policy Guideline 39.

[24] On September 16, 2024, the RTB granted the order for possession without a hearing, effective in seven days, and sent Mr. Zadeh a copy of the decision ("Initial Decision"). Mr. Zadeh's evidence is that receiving the Initial Decision granting an order for possession was the first he learned of the 10-day notice.

[25] On September 18, 2024, Mr. Zadeh applied for a review of the Initial Decision based on new and relevant evidence and alleged fraud: RTA, s. 79(2)(b) and (c). On September 23, the RTB forwarded to Mr. Zadeh the September 19 review adjudicator's dismissal of his review application ("Review Decision").

[26] On October 17, 2024, the court stayed the order of possession pending the final decision in this petition or Mr. Zadeh's failure to pay monthly rent.

Initial Decision

[27] The RTB process proceeded by a without-notice direct request proceeding under RTA s. 55(4).

[28] The adjudicator found the tenant was served on September 11, 2024, by registered mail and so was deemed to have received the DRP package on September 16, 2024: RTA, ss. 89(1) and 90.

[29] The landlord's agent provided the adjudicator the following documents:

- March 15, 2022 residential tenancy agreement and a subsequent notice of rent increase;
- 10-day notice dated August 17, 2024, for \$103,200 in unpaid rent; this notice provided that the tenant had five days from the date of receipt to pay the rent in full or apply for dispute resolution or the tenancy would end on September 3, 2024;
- proof of service of the notice to end tenancy form, which indicated the 10-day notice was sent to the tenant by registered mail August 17, 2024, with a copy of the Canada Post customer receipt; and
- a direct request worksheet showing the rent owing and paid during the relevant portion of the tenancy.

[30] The adjudicator was not provided any information about the floods, the agreement to suspend the rent, the dispute about whether the repairs were complete and the unit was habitable, the lack of demand for this alleged outstanding rent, or the tenant having a pre-authorized debit arrangement to pay the rent.

[31] The adjudicator's analysis included the following:

Section 46 of the Act states that upon receipt of a 10 Day Notice the Tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

If the Tenant does not pay the arrears, or dispute the 10 Day Notice, they are conclusively presumed to have accepted the end of the tenancy under section 46(5) of the Act.

I have reviewed all documentary evidence, and I find that the Tenant was obligated to pay the monthly rent in the amount of \$14,280.00, as per the tenancy agreement and the Notice of Rent Increase.

In accordance with sections 88 and 90 of the Act, I find that the 10 Day Notice was served on August 17, 2024 and is deemed to have been received by the Tenant on August 22, 2024, five days after its registered mailing.

I find the notice to end tenancy complies with the form and content requirements of section 52 of the Act.

I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the five days granted under section 46(4) of the Act and did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under sections 46(5) and 53(2) of the Act to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, September 3, 2024.

Therefore, I find that the Landlord is entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act.

Review Decision

[32] Under RTA s. 79, a decision may be reviewed only on certain specified grounds. The grounds relied on by Mr. Zadeh were: (a) new evidence not before the original adjudicator; and (b) the Initial Decision was obtained by fraud due to the non-disclosure of key evidence (RTA, s. 79(2)(b) and (c)).

[33] On September 19, 2024, the review adjudicator dismissed the tenant's application.

[34] Regarding Mr. Zadeh's evidence of not receiving the 10-day notice, the adjudicator found a lack of evidence to rebut the deemed service provision in s. 90(a). The Residential Tenancy Policy Guidelines state, in s. 12, Service Provisions, that a party wishing to rebut a deemed receipt presumption should provide clear evidence that the record was not received or evidence of the actual date the record was received. The tenant did not through "proper evidence" provide an adequate explanation for why the mail was unseen or unclaimed.

[35] The adjudicator further found that Mr. Zadeh failed to provide new evidence demonstrating that the landlord had permitted the withholding of rent or any evidence that might have changed the outcome.

[36] The Review Decision said:

I find that while the Landlord emailed the Tenant on May 31, 2023 indicating a credit would be provided towards future rent payments the communication did not indicate the Tenant could withhold rent payments in the future.

Therefore, even if this evidence was accepted, it is not likely to have changed the outcome of the Direct Request Proceeding because it does not refute the Landlord's claim that the Tenant did not pay rent. For example, the Tenant has not provided any evidence that they did pay rent, had permission to withhold rent, or an order from an Adjudicator.

Furthermore, I find the Tenant has not sufficiently demonstrated that the outcome of the hearing would change as they have not provided sufficient evidence to demonstrate either that they paid the rent in full or had permission to withhold rent from the Landlord or an Arbitrator

I dismiss this portion of the application because the evidence provides no basis on which, even if the submission in the application were accepted, the decision or order of the Adjudicator should be set aside or varied.

Governing Law

Terminating for Arrears of Rent

- [37] Under RTA s. 46(1), if rent is unpaid after it is due, a landlord may give a notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. The notice may be sent where the tenant resides and is deemed received five days later.
- [38] Within five days of receipt of the notice, the tenant may either pay the overdue rent or apply to the RTB to dispute the notice. If they do neither, they are conclusively presumed to have accepted that the tenancy ends on the effective date and they must vacate the unit by that date.
- [39] Under ss. 55(2)(b) and (4), a landlord may then apply to the RTB for an order of possession, and a monetary order for unpaid rent, without notice and without a hearing.
- [40] *Mvano v. Affordable Housing Charitable Association*, 2024 BCSC 1014, says the following about the ss. 46 and 55 process:
- [62] The possibility of losing one's home can be extremely serious and this consequence suggests that a high degree of procedural fairness is required. At the same time, the conclusive presumption in s. 46(5) and the ex parte process permitted by s. 55(4) of the RTA serve a legitimate purpose - to streamline and expedite the process for landlords in circumstances where there is no dispute about the orders they seek. Through the review process, the statutory scheme provided safeguards that could be engaged if there were other reasons for Mr. Mvano's failure to dispute the Eviction Notice, or if he believed the Association knowingly adduced false or misleading evidence in the material it submitted in support of its request for an order of possession.

Standard of Review

- [41] Findings of fact, law, or mixed fact and law are reviewed under the highly deferential standard of patent unreasonableness. On this standard, a decision will be set aside only if it approaches being absurd. Another way to say this is that a patently unreasonable defect, once identified, can be explained simply and easily, leaving no real possibility of doubting that the decision is defective: *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, para. 52.
- [42] Under s. 58(2)(b) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all the circumstances, the tribunal acted fairly.
- [43] A decision reached through an unfair process cannot stand. The factors relevant to determining the content of the duty of fairness include, but are not limited to:
- the nature of the decision being made and the process followed in making it;
 - the nature of the statutory scheme and the terms of the statute pursuant to which the body operates;
 - the importance of the decision to the individual or the individuals affected;
 - the legitimate expectations of the person challenging the decision; and
 - the choices of procedure made by the decision-maker.

Ndachena v. Nguyen, 2018 BCSC 1468 at para. 55-57.

- [44] An order of a tribunal may be set aside on judicial review if obtained by reliance on knowingly false or misleading evidence. Proof that a party knowingly adduced false or misleading evidence is one of the exceptions to the usual rule that the review proceeds only on the record that was before the tribunal: *Carpenter v. Verlaan*, 2023 BCSC 920, para. 33.
- [45] Finally, the presumed acceptance process under s. 46 is not a barrier to seeking judicial review of a decision in one's absence if a valid ground for review exists: *Carpenter*, para. 41.

Which Decision to Review?

- [46] Mr. Zadeh's position is that the Initial Decision is appropriately subject to judicial review because the breach of procedural fairness is not one of the grounds that can be raised in a review: *RTA*, s. 79; *Solgi v. Gao*, (19 January 2024), Vancouver S236569 (B.C.S.C), para. 25. Alternatively, if the Review Decision is the appropriate subject, then he submits it was patently unreasonable.
- [47] The landlord says it is the Review Decision, because it considered Mr. Zadeh's evidence and arguments and decided the issues he raised on the merits.

- [48] If the alleged error can be considered in the RTB's internal review, then a person must first exhaust this internal review process, and it is then the review decision that is the subject of a judicial review, albeit with the original decision forming part of the contextual matrix: *Martin v. Barnett*, 2015 BCSC 426, paras. 15-25.
- [49] When the review does not consider the merits of the parties' dispute, it is the initial decision which is to be judicially reviewed: *Bedwell Bay Construction v. Ball*, 2022 BCSC 559, paras. 30-33.

Analysis

- [50] In my view, the Review Decision is the proper subject of this review because it considered the merits of Mr. Zadeh's new evidence and allegations of non-disclosure. Although a breach of procedural fairness cannot be challenged under a s. 79 review, the Review Decision did address that issue when deciding that the new evidence was unlikely to have made a difference to the Initial Decision.
- [51] With all due respect, in my view, the Review Decision was patently unreasonable. It was patently unreasonable to find that the May 31, 2023 correspondence "did not indicate the Tenant could withhold rent payments in the future." It was also patently unreasonable to find that "the Tenant has not provided any evidence that they had permission to withhold rent".
- [52] The May 31, 2023 correspondence expressly said that Mr. Zadeh could withhold rent until the repairs were completed. Further, the evidence before the review adjudicator was that this withholding of future rent was carried out by mutual agreement of the parties from at least May 2023 to February 2024.
- [53] It was also patently unreasonable for the Review Decision to conclude that, because of the lack of evidence of agreement to withhold rent, the additional evidence was unlikely to have changed the perspective of the initial adjudicator about the validity of the eviction notice.
- [54] The new evidence about the floods, the agreement to suspend the rent until repairs were complete, the disagreement about whether that had occurred, and the lack of formal demand for the rent, all clearly entail that, before an order for possession could be granted, a finding needed to be made about whether the rent suspension agreement continued to apply or whether it had validly come to an end. No such finding was made, and it is only fair and reasonable for the tenant to have the opportunity to present his case on that issue.
- [55] If I am wrong, and it is the procedural fairness of the Initial Decision that is properly subject of this review, then I find that it was obtained in a procedurally unfair manner to the tenant.
- [56] The procedural unfairness is that it appears the adjudicator may have been deliberately misled by the landlord's agent withholding information about:
- the PAD agreement;

- the texts of May 2023 confirming the parties' agreement to suspend rent until the repairs were complete;
- the written disagreement in February 2024 about whether that suspension was properly terminated and whether Mr. Zadeh was in fact residing in the suite or just using it occasionally because some office equipment was there;
- the lack of any demand for payment of rent since February 2024, or any other communication about unpaid rent or intention to pursue an eviction;
- the lack of any prior demand for the alleged outstanding amount of \$103,200, which the landlord's materials claimed was owed at the time of the eviction notice; and
- Mr. Zadeh's position that he was not residing in the suite to receive the notice of eviction; and the absence of any email notice to him at the time about rent or eviction, despite texts and email being their common modes of communication.

- [57] In my view, this result is supported by Solgi, para. 38. The landlord obtained an order of possession by the same process as here. The tenant claimed there was not full disclosure to the arbitrator and applied for a review consideration under s. 79(2)(b) and (c). The court found the non-disclosure of material facts constituted a denial of procedural fairness. For this and other reasons, the decision was declared void and remitted for a new hearing.
- [58] See also Dehpour v. Mohammadi, 2025 BCSC 1791, where the court found the hearing leading to the RTB decision was procedurally unfair because the landlord was not present to explain the full context to the arbitrator. The tenant sent a dispute notice to the property in question after vacating it, but this was not the address given by the landlord in the tenancy agreement. The landlord denied receiving two emails sent by the RTB in advance of the hearing to the landlord's correct address. The court set aside the RTB decision and found the hearing was unfair because the landlord was not afforded the opportunity to explain the full context and should have been given an opportunity to present his evidence, despite being found to have been served in the underlying RTB decision but not having received the dispute notice, similar to Mr. Zadeh's position in the present matter (Dehpour, para. 47).

Conclusion

- [59] The order for possession is set aside, and the matter is returned to the RTB for a new hearing.
- [60] All right, counsel, I know that was a lot. Any questions, clarifications?
- [61] [Submissions on costs.]
- [62] THE COURT: All right, thank you. It seems to me the usual order should apply in this case. Mr. Zadeh has obviously succeeded, so I will order costs to Mr. Zadeh of the proceedings at Scale B.

[63] Thank you, counsel. Thank you for all your help.

"Coval J."

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