IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Raju v. Red Door Housing Society,* 2025 BCSC 556

Date: 20250314
Docket: S246820
Registry: Vancouver

Between:

Rita Raju

Petitioner

And:

Red Door Housing Society

Respondent

Before: The Honourable Justice Hamilton

Oral Reasons for Judgment

On judicial review from: An order of the Residential Tenancy Branch, dated September 26, 2024

In Chambers

Appearing in person:	R. Raju
Counsel for the Respondent:	D. Fetterly
Place and Date of Hearing:	Vancouver, B.C. March 14, 2025
Place and Date of Judgment:	Vancouver, B.C. March 14, 2025

[1] **THE COURT:** I am prepared to provide oral reasons for judgment at this time. So in the interests of expediency, I am providing these reasons orally. Should either party request a written copy of these reasons, I reserve the right to edit them for grammar, style, and add citations, but the substantive results will not change.

[2] This is a petition seeking to set aside a decision of a Residential Tenancy Branch ("RTB") arbitrator dated September 26, 2024, which upheld a notice to end tenancy respecting Unit 5 - 7273 17th Avenue, Burnaby, BC, pursuant to s. 56(2)(b)(iii) of the *Residential Tenancy Act,* S.B.C. 2002*,* c. 78. Specifically, the petitioner seeks an order to set aside the order of possession issued by the arbitrator. Ms. Raju, the petitioner, occupies the unit with her son.

Background

[3] By way of background, on September 5, 2024, a notice to end tenancy on an expedited basis was served on the petitioner. The basis for the notice was that there was a sag in the ceiling of the unit requiring significant urgent repair. On inspection on July 15, 2024, and August 29, 2024, the landlord had noted that the ceiling in one of the upstairs bedrooms of the unit was sagging significantly, and the situation was worse than on previous inspections to the point of the ceiling being propped up by a piece of wood. The landlord was concerned that the ceiling would collapse and cause damage to the property and to the occupants.

[4] As well on August 29, 2024, materials were found stored inside the ceiling cavity, including mirror tiles and broken mirror tiles, posing additional danger to the occupants if the ceiling collapsed. The tenant was not permitting the landlord's contractor in to do an inspection of the situation. The contractor, Mr. Walton, reviewed the photographs taken by the landlord. Mr. Walton had confirmed the situation was dangerous, that repairs would be extensive, and the unit would have to be cleared of clutter to complete the work.

[5] At the hearing on September 17, 2024, among other things, Ms. Raju argued that the ceiling sag had existed for ten years and only required minor cosmetic,

non-urgent repair, was not dangerous, and the repairs could be done while she lived in the unit. She also denied that the unit was cluttered.

[6] The arbitrator's decision is contained in the petition record. The arbitrator summarizes the landlord representative's testimony and the tenant's testimony at the hearing. The arbitrator also summarizes a written statement provided by the landlord's contractor, Mr. Walton, in evidence. I also have before me an affidavit of December 12, 2024, from Lisa Clout at the RTB which appends the materials submitted by the parties to the dispute.

Legal Framework

[7] I will now turn to the legal framework that applies. Under s. 56(2)(b)(iii) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78, a landlord may request an order ending tenancy on a date **earlier** than the one-month notice to end a tenancy under s. 47 of the *Act* if the tenant has put the landlord's property at serious risk.

[8] Pursuant to s. 58(2)(a) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, and s. 5.1 of the *Residential Tenancy Act*, this Court may only intervene in a decision of the RTB when the decision is patently unreasonable. Courts have described a patently unreasonable decision as one that is openly, evidently, and clearly irrational; one that is unreasonable on its face; one that is unsupported by evidence or vitiated by failure to consider the proper factors; incapable of withstanding a probing examination; or one that is almost bordering on the absurd. See, for example, *Shuster v. Prompton Real Estate Services Inc.*, 2023 BCSC 1605, at para. 21, citing *Hollyburn Properties Limited v. Staehli*, 2022 BCSC 28, at para. 25.

[9] The Court of Appeal in *Yee v. Montie*, 2016 BCCA 256, at paras. 20 to 21, sets out what constitutes patent unreasonableness:

> [21] The *ATA* does not define patent unreasonableness as the term applies to questions of fact or law. In *Manz v. Sundher*, 2009 BCCA 92 at para. 39, Saunders J.A. adopted the meaning of the phrase in relation to factual matters from *Speckling v. British Columbia (Workers' Compensation Board),* 2005 BCCA 80:

> [37] As the chambers judge noted, a decision is not patently unreasonable because the evidence is insufficient. It is not for the court on judicial review, or for this Court on appeal, to second guess the conclusions drawn from the evidence considered by the Appeal Division and substitute different findings of fact or inferences drawn from those facts. A court on review or appeal cannot reweigh the evidence. Only if there is no evidence to support the findings, or the decision is "openly, clearly, evidently unreasonable", can it be said to be patently unreasonable. That is not the case here.

[10] In *Pacific Newspaper Group Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2014 BCCA 496, at paras. 39 to 44, the Court affirmed that the standard of patent unreasonableness is at the high end of the deference spectrum and endorsed this description of the phrase from *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52.

> [52] … a patently unreasonable defect, once identified, can be explained simply and easily, leaving no real possibility of doubting that the decision is defective. A patently unreasonable decision has been described as "clearly irrational" or "evidently not in accordance with reason" (*Canada (Attorney General) v. Public Service Alliance of Canada*, [1993] 1 S.C.R. 941, at pp. 963-64, per Cory J.*; Centre communautaire juridique de l'Estrie v. Sherbrooke (City)*, [1996] 3 S.C.R. 84, at paras. 9-12, per Gonthier J.). A decision that is patently unreasonable is so flawed that no amount of curial deference can justify letting it stand.

[11] My task on this petition is to review the decision of the RTB arbitrator. It is not my role to engage in either a fresh examination of the merits of the RTB decision, or a re-examination of the merits based on the evidence that was before the RTB.

[12] Where, as here, the decision maker undertakes an assessment of credibility or preference for some evidence over others, the significant deference is owed to this assessment unless it can be found that the decision maker misapprehended the evidence.

Position of the Parties

[13] I will now describe the position of the parties on this judicial review. The petitioner submits that the arbitrator erred in concluding that the condition of the ceiling was anything other than a minor cosmetic issue. She submits that clearly

there was no emergency and that the situation was not dangerous because several months later, nothing has happened and no one has been injured. Although I do note that pursuant to Justice Thomas' interim order, there are better props in place to hold the ceiling up.

[14] The petitioner submits that the arbitrator effectively ignored her evidence about the ceiling being a minor issue. Subsequent to the hearing before the arbitrator, the petitioner contacted some ceiling repair people, and they told her that the repairs were minor, would take one or two days to be completed, and that she and her son could occupy the home during the work. The petitioner concedes that she did not provide any ceiling professional's evidence at the hearing before the arbitrator and that the only evidence from a ceiling professional was Mr. Walton's statement.

[15] The respondent submits that the arbitrator's decision that the landlord's property was at risk and that the tenant was required to vacate was not patently unreasonable. The respondent submits that there was evidence before the arbitrator to support the arbitrator's conclusion. The evidence included photographs of the sag in the ceiling being propped up by what appeared to be a lamp, actually a piece of wood; photographs of glass mirrored tiles in the attic; and “clutter” in the home, which would affect the contractor's access to complete the ceiling work.

[16] In addition to the photographs, the landlord's representative, Kevin Falconer, gave evidence regarding the condition of the ceiling, which was corroborated by the landlord's contractor, Mr. Wilton's, written statement regarding the extent of the repairs needed. Mr. Walton, the contractor, his statement included the following:

a) He is concerned that the drywall in the bedroom has let go and is sagging due to the storage of mirrored tiles in the attic;

b) There is improper support to hold the drywall up with will lead to the ceiling collapsing and could lead to someone being seriously hurt by falling glass;

c) The tenant and anyone working on the area are at high risk if the ceiling is not repaired.

d) The structural integrity has been compromised;

e) The whole ceiling needs to be removed. The clutter needs to be removed and pathways cleared in order to do the work. It will be a hazmat environment. The tenant cannot be there while the work is being done.

Decision

[17] I will now set out my decision. In light of the significant deference owed to RTB decisions, I am unable to conclude that the arbitrator's decision is patently unreasonable. It is not a situation where conclusions were made entirely unsupported by evidence. The arbitrator had photographs, the testimony of Mr. Falconer, and the written statement of the landlord's contractor, Mr. Walton, to support his findings that the sagging ceiling is a serious issue and has put the landlord's property at risk.

[18] The arbitrator clearly preferred the landlord's evidence over the petitioner's evidence where it was controverted, which was in the scope of his authority. There is no basis that I see for me to interfere with his assessment, which I owe significant deference. I do not find it was patently unreasonable for the arbitrator to conclude that the landlord's property was at significant risk.

[19] Therefore, the petition is dismissed.

“Hamilton, J.”